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August 27, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
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; 2019-2020

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on large power transformers (LPTs) from the Republic of Korea (Korea) for the period of review (POR) August 1, 2019, through July 31, 2020. The review covers five producers/exporters of the subject merchandise: (1) Hyosung Heavy Industries Corporation (Hyosung); (2) Hyundai Electric & Energy Systems Co., Ltd. (Hyundai); (3) ILJIN; (4) Iljin Electric Co., Ltd. (Iljin); and (5) LSIS Co., Ltd (LSIS). We selected one respondent, Hyosung, for individual examination.

We preliminarily determine that Hyosung made sales of subject merchandise at less than normal value during the POR. We also preliminarily determine that LSIS had no shipments during the POR.

## II. BACKGROUND

On August 25, 2020, Hyosung requested an administrative review of its imports of LPTs. ABB Inc. and SPX Transformer Solutions Inc. (the petitioners) also requested administrative reviews of certain producers/exporters of the subject merchandise from Korea on August 31, 2020. Hyundai and Iljin separately requested an administrative review of their imports of LPTs on August 31, 2020. On October 6, 2020, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review of the AD order on LPTs from Korea.<sup>1</sup>

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 63081 (October 6, 2020) (*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.<sup>2</sup> We released the CBP data to interested parties under an administrative protective order on October 26, 2020, and we invited interested parties to submit comments on the data as well as potential respondent selection. Based on the results of the CBP data and a consideration of the comments, we determined that we could reasonably individually examine one producer/exporter in the current review (*i.e.*, Hyosung) as the producer/exporter accounting for the largest volume of the subject merchandise from Korea, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act).<sup>3</sup>

Hyosung submitted timely responses to Commerce's AD questionnaire between January 21, 2021, and February 12, 2021.<sup>4</sup> Commerce issued supplemental questionnaires between March 19, 2021, and July 27, 2021.<sup>5</sup> Between April 2, 2021, and August 6, 2021, Hyosung timely responded to Commerce's supplemental questionnaires.<sup>6</sup> On August 20, 2021, we received comments pre-preliminary comments from the petitioners on August 20, 2021.<sup>7</sup>

On April 15, 2021, we extended the deadline for issuing the preliminary results of the review by 120 days to August 31, 2021.<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> See Memorandum, "Administrative Review of Large Power Transformers from the Republic of Korea, 2019-2020: Respondent Selection," dated December 15, 2020.

<sup>4</sup> See Hyosung's Letter, "Large Power Transformers from Korea: Section A Questionnaire Response," dated January 21, 2021 (Section A Response); see also Hyosung's Letter, "Large Power Transformers from Korea: Sections B-D Questionnaire Response," dated February 12, 2021 (Section BCD Response).

<sup>5</sup> See Commerce's Letters, "Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2019-2020: Supplemental Questionnaire Regarding Quantity and Value," dated March 19, 2021; "Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2019-2020: First Sales Supplemental Questionnaire," dated April 9, 2021 (First Sales Supplemental Questionnaire); "Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2019-2020: Second Sales Supplemental Questionnaire," dated June 14, 2021; "Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea," dated June 15, 2021; "Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2019-2020: Third Sales Supplemental Questionnaire," dated July 9, 2021; and "Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2019-2020: Fourth Sales Supplemental Questionnaire," dated July 27, 2021.

<sup>6</sup> See Hyosung's Letters, "Large Power Transformers from Korea: Supplemental Quantity and Value Questionnaire Response," dated April 2, 2021; "Large Power Transformers from Korea: First Sales Supplemental Questionnaire Response," dated May 10, 2021 (First Sales Supplemental Response); "Large Power Transformers from Korea: Supplemental Section D Questionnaire Response," dated July 6, 2021; "Large Power Transformers from Korea: Second Sales Supplemental Questionnaire Response," dated July 8, 2021 (Second Sales Supplemental Response); "Large Power Transformers from Korea: Third Sales Supplemental Questionnaire Response," dated July 23, 2021; and "Large Power Transformers from Korea: Fourth Sales Supplemental Questionnaire Response," dated August 6, 2021.

<sup>7</sup> See Petitioners' Letter, "Large Power Transformers from Korea – Petitioners' Pre-Preliminary Comments, and Deficiency Comments on Hyosung's Supplemental Sales Responses," dated August 20, 2021.

<sup>8</sup> See Memorandum, "Large Power Transformers from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019-2020," dated April 15, 2021.

### **III. DEADLINE FOR SUBMISSION OF UPDATED SALES AND COST INFORMATION**

Because 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 U.S. sales and cost databases were based upon estimates.<sup>9</sup> Consistent with prior segments of this proceeding, we instructed the respondent 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, 2020. Therefore, when available, Commerce relied upon reported actual costs and expenses (related to sales) through and including December 31, 2020, in determining the preliminary weighted-average dumping margins for mandatory respondent(s).

### **IV. 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.

### **V. PRELIMINARY DETERMINATION OF NO SHIPMENTS**

On October 27, 2020, LS Electric Co., Ltd. (LS Electric), formerly known as LSIS Co., Ltd. (LSIS),<sup>10</sup> timely notified Commerce and certified that it had no exports, sales, or entries of subject merchandise during the POR.<sup>11</sup> Commerce issued a no shipment inquiry to CBP, and

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<sup>9</sup> Hyosung reported that, for this review period, it did not report estimated expenses associated with sales in the home market as all of the expenses were incurred or recording prior to January 2021. *See, e.g.,* Second Sales Supplemental Response at 2.

<sup>10</sup> Commerce determined that LS Electric is the successor-in-interest to LSIS. *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Successor-in-Interest Determination; 2018-2019*, 86 FR 30915 (June 10, 2021).

<sup>11</sup> *See* LSIS’s Letter, “Large Power Transformers from the Republic of Korea: LS Electric Co., Ltd. (formerly known as LSIS Co., Ltd.) No Shipment Letter,” dated October 27, 2020.

CBP found no evidence of shipments from LSIS during the POR.<sup>12</sup> Thus, based on record evidence, we preliminarily determine that LSIS had no shipments during the POR. Consistent with Commerce’s practice, we find that it is not appropriate to rescind the review with respect to LSIS but, rather, to complete the review and issue appropriate instructions to CBP based on the final results of this review.<sup>13</sup>

## VI. 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’s sales of the subject merchandise from Korea to the United States were made at less than normal value, we 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), Commerce 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, Commerce 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 to the comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act (*i.e.*, the average-to-average method). Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’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.<sup>14</sup>

In numerous investigations and reviews, Commerce 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)

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<sup>12</sup> See Memorandum, “No shipment inquiry with respect to the company below during the period 08/01/2019 through 07/31/2020,” dated November 20, 2020.

<sup>13</sup> See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013*, 79 FR 51306 (August 28, 2014); and *Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010).

<sup>14</sup> 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 (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

of the Act.<sup>15</sup> Commerce finds the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

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 POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce 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 accounts 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

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<sup>15</sup> 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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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 Hyosung, based on the results of the differential pricing analysis, we find 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.<sup>16</sup> Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, we preliminarily determine to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hyosung.<sup>17</sup>

### Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for products produced by Hyosung 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 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 Commerce 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.<sup>18</sup> Commerce 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.<sup>19</sup>

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<sup>16</sup> See Memorandum, “Analysis of Data Submitted by Hyosung Heavy Industries Corporation in the Preliminary Results of the 2019-2020 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,” dated concurrently with this memorandum (Hyosung Preliminary Analysis Memorandum).

<sup>17</sup> In these preliminary results, Commerce 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).

<sup>18</sup> 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*).

<sup>19</sup> 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

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.<sup>20</sup> However, in the 2014 – 2015 administrative review, Commerce found that the date of shipment was the date on which the material terms of sale had been established for Hyosung.<sup>21</sup> Furthermore, Commerce found that the earlier date of shipment was the appropriate date on which the material terms of sale were established for certain U.S. sales in the 2018 – 2019 administrative review.<sup>22</sup> Consistent with this finding, Hyosung adjusted its reported date of shipment for home market sales where a single sale resulted in multiple shipments to the first date of shipment in this review period.<sup>23</sup> Hyosung indicated that a significant number of sales in both markets had changes to the material terms of sale after the initial purchase order.<sup>24</sup> Consequently, Hyosung reported the shipment date for the first shipment as the date of sale for both home market and U.S. sales in this review.<sup>25</sup>

For sales in Korea, Hyosung reports that it is common practice in Korea to issue a tax invoice at the conclusion of a domestic sale.<sup>26</sup> Hyosung stated that it normally issues a tax invoice to home-market customers in accordance with a payment schedule and that it typically does not issue a single, all-inclusive tax invoice but rather multiple tax invoices.<sup>27</sup> Hyosung further stated that it generally issues a tax invoice covering a significant portion of the contract price based on completion of shipment.<sup>28</sup> Hyosung indicated that, for reported sales of LPT units in Korea during the POR, it had issued all applicable tax invoices.<sup>29</sup>

For sales in the United States, Hyosung stated that its U.S. affiliate, HICO America Sales and Technology, Inc. (HICO America), often issues multiple installment/progress invoices to its U.S. customer in accordance with an agreed upon invoicing schedule.<sup>30</sup> Once all obligations are

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23, 2004), and accompanying IDM at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

<sup>20</sup> 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 IDM at Comment 1.

<sup>21</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), and accompanying IDM at Comment 17. Hyosung noted the change by Commerce in its Section A Response. See Section A Response at A-32.

<sup>22</sup> See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Successor-in-Interest Determination; 2018-2019*, 86 FR 30915 (June 10, 2021), and accompanying IDM at Comment 2. At the time that Hyosung initially responded to Commerce's antidumping duty questionnaire for this administrative review, the decision in the 2018-2019 review period was not final. As a result, Commerce requested that Hyosung adjust its reported date of shipment for certain U.S. sales to reflect this decision. See Second Sales Supplemental Response at 24 and Appendix II.

<sup>23</sup> See Second Sales Supplemental Response at 11 and Appendix I.

<sup>24</sup> See Section A Response at A-36; see also First Sales Supplemental Response at 36, footnote 10. As noted above, Hyosung adjusted the reported shipment date for both the home and U.S. markets to the first date of shipment in instances where a single sale resulted in multiple shipments.

<sup>25</sup> See Section A Response at A-36.

<sup>26</sup> See Section BCD Response at B-26.

<sup>27</sup> See Hyosung's Section A Response at A-19, footnote 11, and A-38.

<sup>28</sup> *Id.*

<sup>29</sup> See Second Sales Supplemental Response at 10.

<sup>30</sup> See Hyosung's Section A Response at A-36.



satisfied, the last invoice related to sales is issued.<sup>31</sup> These obligations are generally satisfied after shipment.<sup>32</sup> Thus, we preliminarily conclude that, for Hyosung, the date of sale is the actual first shipment date, in accordance with Commerce's regulation and practice.<sup>33</sup>

### 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.<sup>34</sup> 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.

### Normal Value

#### C. 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), Commerce compared the volume of Hyosung's 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.<sup>35</sup> Based on this comparison, we determined that Hyosung had a viable home market during the POR. 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.

#### D. 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.<sup>36</sup> Pursuant to 19 CFR 351.412(c)(1)(iii), the level of trade for normal value is based on the

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at A-23 and A-33, n. 17; *see also* First Sales Supplemental Response at 35-36.

<sup>33</sup> *See* Hyosung Preliminary Analysis Memorandum for further discussion.

<sup>34</sup> *See* section 772(b) of the Act.

<sup>35</sup> *See* Hyosung's Section A Response at Exhibit A-1.

<sup>36</sup> *See also* section 773(a)(7) of the Act.

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.<sup>37</sup>

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.<sup>38</sup> 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 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).<sup>39</sup>

Hyosung reported a single channel of distribution to one category of customers for both home market and U.S. sales.<sup>40</sup> For sales in the comparison market, Hyosung reported the same selling functions at the same levels of intensity across all comparison market sales for the following selling function categories: provision of sales support, provision of training services, provision of technical services, provision of logistical services, and performance of sales related administrative activities.<sup>41</sup> We reviewed the intensity of all selling functions Hyosung claimed to perform for this single channel of distribution in the home market and, based on our analysis of all Hyosung's comparison-market selling functions, we preliminarily find all home-market sales were made at the same level of trade, or the normal-value level of trade.<sup>42</sup>

With regard to U.S. sales, Hyosung also reported one channel of distribution for all sales (*i.e.*, sales through HICO America).<sup>43</sup> Hyosung reported that the selling functions undertaken for its CEP sales were made at a lesser level of intensity for the selling function categories identified above, in contrast to its comparison market.<sup>44</sup> We reviewed the selling-functions chart provided by Hyosung. Based on this information, we preliminarily find that all CEP sales constitute one level of trade, or the CEP level of trade. Our review indicated that many of the selling activities were performed by the affiliate HICO America in the United States.<sup>45</sup>

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<sup>37</sup> See 19 CFR 351.412(c)(1)(ii).

<sup>38</sup> See 19 CFR 351.412(c)(2).

<sup>39</sup> 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)).

<sup>40</sup> See Hyosung's Section A Response at A-15.

<sup>41</sup> *Id.* at A-24 through A-26.

<sup>42</sup> *Id.* at A-24 through A-26, and Exhibits A-13(1), A-13(2), and A-13(3); see also Supplemental Section A Response at 42-71.

<sup>43</sup> *Id.* at A-26 through A30, and Exhibit Exhibits A-13(1), A-13(2), and A-13(3); see also First Sales Supplemental Questionnaire Response at 40-72.

<sup>44</sup> *Id.* at A-31.

<sup>45</sup> *Id.* at A-26 through A30, and Exhibit Exhibits A-13(1), A-13(2), and A-13(3); see also First Sales Supplemental Questionnaire Response at 40-72.

Based on this information, we 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 not performed at a higher degree of intensity, or are greater in number, than the selling functions performed for HICO America and that Hyosung has not provided supporting documentation to support its claim that the normal value level of trade is at a more advanced state than the CEP level of trade. Commerce requested that Hyosung provide a quantitative analysis showing how expenses assigned during the POR were incurred at different levels of trade and how they impact price compatibility.<sup>46</sup> Hyosung provided an incomplete analysis.<sup>47</sup> Commerce requested supporting documentation for the claimed contributions of selling activities in a supplemental questionnaire.<sup>48</sup> Hyosung provided calculations allocating indirect selling expenses between home market and export sales, stating that these allocations reflect the intensity and frequency with respect to each selling activity and sales activity in both the home and export markets.<sup>49</sup> Hyosung was unable to provide records showing the number of hours employees spend on specific sales activities, and Hyosung's narrative responses to supplemental questions regarding selling functions continue to indicate that Hyosung provides a high level of support in the CEP level of trade.<sup>50</sup> Thus, we preliminarily conclude that the normal-value level of trade is not at a more advanced stage than the CEP level of trade.

The courts have confirmed that the mere existence of a CEP entity and CEP sales do not, in themselves, establish an entitlement to a CEP offset. In *Corus*, the Court stated, "CEP offset analysis thus compares the indirect selling activities that are undertaken outside the United States in support of the U.S. and comparison market sales. It is not automatic each time export price is constructed ... {t}he burden of proof is upon the claimant to prove entitlement ... ('if a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment')." <sup>51</sup> Commerce recently explained the significance of the quantitative analysis as essential in supporting the claimed differences in selling functions and determining whether such differences are substantial in warranting a finding of sales being made at different LOTs.<sup>52</sup> Nevertheless, a purely quantitative analysis is not the sole analysis employed by Commerce in analyzing claimed differences in selling functions.<sup>53</sup> Due to the absence of certain quantitative information, and a

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<sup>46</sup> See Commerce's Letter, AD Questionnaire, dated December 16, 2020 (Antidumping Duty Questionnaire) at Question 3a, Part iv.

<sup>47</sup> See Section A Response at Exhibit A-13(2).

<sup>48</sup> See First Sales Supplemental Questionnaire.

<sup>49</sup> See First Sales Supplemental Questionnaire Response at 41 and Exhibits SSA-Q46(1) and SSA-Q46(2).

<sup>50</sup> *Id.* at 43-72.

<sup>51</sup> See *Corus Engineering Steels Ltd. v. United States*, 27 CIT 1286, 1290 (2003) (*Corus*) (citing *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315-16 (Fed. Cir. 2001) and quoting Statement of Administrative Action, H.R. Doc. No. 103-316 (1994) reprinted in 1994 U.S.C.C.A.N. 4040 at 829).

<sup>52</sup> See *Polyethylene Terephthalate Sheet from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020) (*PET Film Korea*), and accompanying IDM at Comment 4.

<sup>53</sup> See *Mattresses from Serbia: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Finding of Critical Circumstances*, 86 FR 15892 (March 25, 2021) and accompanying IDM at Comment 4.

thorough qualitative analysis of the reported selling activities, we do not find that Hyosung has met its evidentiary burden with respect to the claimed differences in levels of trade.

Accordingly, we have not made a preliminary LOT adjustment or CEP offset under sections 773(a)(7)(A) or (B) of the Act. Our determination, under identical circumstances, is supported by recent administrative precedents.<sup>54</sup> For further analysis and discussion, *see* the Preliminary Analysis Memorandum.

## E. 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,<sup>55</sup> Commerce required that the respondent 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.

### 1. Calculation of Cost of Production

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

### 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

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<sup>54</sup> See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020), and accompanying IDM at Comment 1 (where Commerce declined to find the existence of different LOTs or grant a CEP offset when the record lacked sufficient quantitative evidence corroborating a respondent’s LOT claims); *see also* *PET Film Korea* IDM at Comment 4.

<sup>55</sup> See 19 USC 1677b(b)(2)(A)(ii).

permit recovery of all costs within a reasonable period of time,” Commerce 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.”<sup>56</sup> 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.<sup>57</sup>

For Hyosung, 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.<sup>58</sup> 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.

#### F. Calculation of Normal Value Based on Comparison Market Prices

We calculated normal value for Hyosung 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, installation costs, and other charges), pursuant to section 773(a)(6)(B)(ii) of the Act. 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.

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.<sup>59</sup>

#### G. 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.

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<sup>56</sup> See section 773(b)(2)(C)(ii) of the Act.

<sup>57</sup> See section 773(b)(2)(D) of the Act.

<sup>58</sup> See Hyosung Preliminary Analysis Memorandum.

<sup>59</sup> See 19 CFR 351.411(b).

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. Commerce's normal practice is to rely on the financial information most contemporaneous with the POR.<sup>60</sup> Because the majority of this period fell within fiscal year 2020 rather than fiscal year 2019, we relied on Hyosung's G&A and financial expense rates for fiscal year 2020.

#### H. 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>.

### VII. RATE FOR NON-SELECTED COMPANIES

The statute and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "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 {on the basis of facts available}." In this review, Hyosung is the only mandatory respondent. Accordingly, we have applied a rate of 8.85 percent from Hyosung to the non-selected companies.

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<sup>60</sup> 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 IDM at Comment 3.

## VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree

\_\_\_\_\_  
Disagree

8/27/2021

X 

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Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance