



DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Results, Notice of Amended Final Results of Review; 2015-16

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

SUMMARY: On July 9, 2021, the Court of International Trade (CIT) sustained the final results of redetermination pursuant to remand pertaining to the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea) covering the period August 1, 2015, through July 31, 2016. The Department of Commerce (Commerce) is notifying the public that the final judgment is not in harmony with the final results of the administrative review, and that Commerce is amending the final results of review with respect to the weighted-average dumping margin assigned to Hyundai Heavy Industries Co., Ltd., Hyosung Corporation, and the non-examined company ILJIN Electric Co., Ltd.

DATES: Applicable July 19, 2021.

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

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2018, Commerce issued the final results of the administrative review for

the period August 1, 2015, through July 31, 2016.¹ In the *Final Results*, Commerce determined a weighted-average dumping margin for the two mandatory respondents, Hyundai Heavy Industries Co., Ltd. (Hyundai) and Hyosung Corporation (Hyosung), based on total facts available with an adverse inference, of 60.81 percent. Further, Commerce determined the weighted-average dumping margin for the three companies that were under review but not selected for individual examination, ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS), based on the rates determined for the mandatory respondents.

On August 5, 2019, the CIT remanded various aspects of the *Final Results* to Commerce.² Specifically, the CIT directed Commerce to further explain or reconsider its reliance on total facts available with adverse inferences for both Hyundai and Hyosung. For Hyundai, the Court directed Commerce to further explain or reconsider its reliance on total facts available with adverse inferences with respect to Hyundai's failure to: (1) provide information on accessories; (2) report home market gross unit prices properly; and (3) disclose an affiliated sales agent. For Hyosung, the Court directed Commerce to further explain or reconsider its reliance on total facts available with adverse inferences with respect to Hyosung's failure to: (1) report service-related revenues contained on order acknowledgement forms (OAFs); (2) report certain discounts and rebates; and (3) explain the use of one invoice for multiple sales across multiple administrative reviews.

Pursuant to the *First Remand Order*, Commerce reconsidered and further explained its finding regarding Hyundai's failure to: (1) provide information regarding accessories; (2) report home market gross unit prices properly; and (3) disclose an affiliated sales agent. Commerce also reconsidered and further explained its findings regarding Hyosung's failure to: (1) report service-related revenues recorded on OAFs; (2) report certain discounts and rebates; and

¹ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 11679 (March 16, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum.

² See *Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation, Iljin Electric Co., Ltd. v. United States and ABB Inc.*, Consol. Court No. 18-00066, Slip Op. 19-105 (CIT August 5, 2019) (*First Remand Order*).

(3) explain the use of one invoice for multiple sales across multiple administrative reviews.³

With respect to Hyosung, Commerce determined that the issues related to service-related revenues recorded on OAFs and the use of one invoice for multiple sales across multiple reviews were no longer a basis for Commerce's application of total facts available with adverse inferences but that the failure to report certain discounts and rebates continued to constitute a basis for Commerce's application of total facts available with adverse inferences. For Hyundai, Commerce found that Hyundai's reporting with respect to accessories was not a basis for Commerce's application of total facts available with adverse inferences, but continued to find that the application of total facts available with adverse inferences was warranted due to the understatement of home market prices and inconsistent treatment of merchandise under consideration.⁴

On November 18, 2020, the CIT remanded Commerce's Final First Results of Redetermination with respect to the application of total adverse facts available for both Hyundai and Hyosung, finding that Commerce's redeterminations were not supported by substantial evidence.⁵ Pursuant to the *Second Remand Order*, Commerce reconsidered its reliance on total facts available with adverse inferences for both Hyundai and Hyosung. Commerce determined that the application of partial facts available with no adverse inferences was warranted with respect to both Hyundai and Hyosung.⁶ Commerce calculated a weighted-average dumping margin of zero percent for both Hyundai and Hyosung.⁷ Commerce also applied an average of

³ See Memorandum, "Final Results of Redetermination Pursuant to Court Remand *Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation, Iljin Electric Co., Ltd. v. United States and ABB Inc.*, Consol. Court No. 18-00066, Slip Op. 19-105 (CIT August 5, 2019)," dated December 19, 2019, and available at <https://enforcement.trade.gov/remands/19-105.pdf>.

⁴ *Id.*

⁵ See *Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation and Iljin Electric Co., Ltd. v. United States and ABB Enterprise Software Inc.*, Consol. Court No. 18-00066, Slip Op. 20-165 (CIT November 18, 2020) (*Second Remand Order*).

⁶ See Memorandum, "Final Results of Redetermination Pursuant to Court Remand: *Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation, Iljin Electric Co., Ltd. v. United States and ABB Inc.*, Court No. 18-00066, Slip Op. 20-165 (CIT November 18, 2020)," dated April 5, 2021, and available at <https://enforcement.trade.gov/remands/20-165.pdf> (Final Results of Second Redetermination).

⁷ *Id.*

these two rates, *i.e.*, zero percent, to ILJIN Electric, which was not selected for individual examination during the period of review and which was party to this litigation.⁸

On July 9, 2021, the CIT sustained Commerce’s Final Second Results of Redetermination.⁹

Timken Notice

In its decision in *Timken*,¹⁰ as clarified by *Diamond Sawblades*,¹¹ the United States Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s July 9, 2021, judgment sustaining Commerce’s Final Second Results of Redetermination constitutes a final decision of the CIT that is not in harmony with the *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise at issue pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to the weighted-average dumping margin calculated for Hyundai, Hyosung and ILJIN Electric. Based on the Final Results of Second Redetermination, as affirmed by the CIT, the revised weighted-average dumping margin for Hyundai, Hyosung, and ILJIN Electric, from August 1, 2015, through July 31, 2016, are as follows:

Producer or Exporter	Weighted-Average Dumping Margin (Percent)
Hyundai Heavy Industries Co., Ltd.	0.00

⁸ *Id.*

⁹ See *Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation and Iljin Electric Co., Ltd. v. United States and ABB Enterprise Software Inc.*, Consol. Court No. 18-00066, Slip Op. 21-84 (CIT July 9, 2021)

¹⁰ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

¹¹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Producer or Exporter	Weighted-Average Dumping Margin (Percent)
Hyosung Corporation	0.00
ILJIN Electric Co., Ltd.	0.00

In the event that the CIT's final judgement is not appealed or, if appealed, is upheld by a final and conclusive court decision, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on the weighted-average dumping margins listed above for the Amended Final Results.

Cash Deposit Requirements

Since the *Final Results*, Commerce has established new cash deposit rates for Hyundai, Hyosung, and ILJIN Electric.¹² Therefore, this Final Results of Second Redetermination, as affirmed by the CIT, and as published in this notice, does not prospectively change the existing cash deposit rates for Hyundai, Hyosung, and ILJIN Electric.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 19, 2021.

Christian Marsh,

Acting Assistant Secretary

for Enforcement and Compliance.

[FR Doc. 2021-15743 Filed: 7/22/2021 8:45 am; Publication Date: 7/23/2021]

¹² See, e.g., *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16461 (April 19, 2019).