

**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**

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

**SUMMARY:** On October 10, 2017, the Court of International Trade (CIT or Court) sustained the final remand results pertaining to the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea) covering the period February 16, 2012, through July 31, 2013. The Department of Commerce (the Department) is notifying the public that the final judgment in this case is not in harmony with the final results, notice of amended final results, and notice of second amended final results of the administrative review and that the Department is amending the second amended final results with respect to the dumping margins assigned to Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), and the companies not selected for individual examination (ILJIN, ILJIN Electric Co., Ltd., and LSIS Co., Ltd.).

**DATES:** Applicable October 20, 2017.

**FOR FURTHER INFORMATION CONTACT:** Moses Song, 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) 482-5041.

**SUPPLEMENTARY INFORMATION:****Background**

On March 31, 2015, the Department issued the *Final Results*.<sup>1</sup> On May 6, 2015, in response to ministerial error allegations, the Department issued the *First Amended Final Results* and on June 22, 2015, the *Second Amended Final Results*.<sup>2</sup> Hyosung and Hyundai

are Korean producers/exporters of LPTs and were mandatory respondents in the underlying administrative review. In the *Second Amended Final Results*, the Department assigned dumping margins of 8.23 percent and 12.36 percent to Hyosung and Hyundai, respectively.

On October 7, 2016, the CIT remanded various aspects of the *Second Amended Final Results* to the Department.<sup>3</sup> Specifically, the Court instructed the Department to further address a sequencing issue regarding certain of Hyundai's U.S. sales documents on the record. The Court also directed the Department to further explain: (1) Its treatment of the U.S. commissions of Hyosung and Hyundai; (2) the record basis for such treatment; (3) whether such U.S. commissions resulted in the granting of commission offsets, and (4) the legal and factual basis for the granting or denial of the commission offsets.<sup>4</sup>

Pursuant to the *Remand Order*, the Department issued its Final Redetermination, which addressed the Court's holdings and revised the weighted-average dumping margins for Hyosung and Hyundai to 9.09 percent and 13.82 percent, respectively, and the rate assigned to the companies not selected for individual examination to 11.73 percent.<sup>5</sup> On October 10, 2017, the CIT sustained in whole the Department's Final Redetermination.<sup>6</sup>

**Timken Notice**

In its decision in *Timken*,<sup>7</sup> as clarified by *Diamond Sawblades*,<sup>8</sup> the United States Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's October 10, 2017, final judgment sustaining the Department's Final Redetermination constitutes a final decision of the Court that is not in

*Review; 2012-2013*, 80 FR 35628 (June 22, 2015) (*Second Amended Final Results*) and accompanying Decision Memorandum, respectively.

<sup>3</sup> See *ABB INC. v. United States*, Slip Op. 16-95 (CIT, October 7, 2016) (*Remand Order*).

<sup>4</sup> *Id.*

<sup>5</sup> See Department Memorandum, "Final Results of Redetermination Pursuant to Court Remand *ABB INC. v. United States* Court No. 15-00108, Slip-Op. 16-95 (CIT October 7, 2016)," February 2, 2017 (Final Redetermination) (*available at http://enforcement.trade.gov/remands/16-95.pdf*).

<sup>6</sup> See *ABB, INC. v. United States*, Court No. 15-00108, Slip Op. 17-137 (CIT 2017).

<sup>7</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

<sup>8</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

harmony with the *Second Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department 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, the Department is amending the *Second Amended Final Results* with respect to the dumping margins calculated for Hyosung, Hyundai, and the companies not selected for individual examination. Based on the Final Redetermination, as affirmed by the CIT, the revised dumping margins for Hyosung, Hyundai, and the companies not selected for individual examination from February 16, 2012, through July 31, 2013, are as follows:

Producer/exporter	Weighted-average margin (percent)
Hyosung Corporation .....	9.09
Hyundai Heavy Industries Co., Ltd .....	13.82
ILJIN Electric Co., Ltd .....	11.73
ILJIN .....	11.73
LSIS Co., Ltd .....	11.73

In the event that the CIT's rulings are not appealed or, if appealed, are upheld by a final and conclusive court decision, the Department will instruct Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margins listed above.

**Cash Deposit Requirements**

Since the *Second Amended Final Results*, the Department has established new cash deposit rates for the companies listed above.<sup>9</sup> Therefore, this Final Redetermination, and as affirmed by the Court, does not change the later-established cash deposit rates for the companies listed above.

**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.

<sup>9</sup> See, e.g., *Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Duty Administrative Review; 2013-2014*, 81 FR 27088 (May 5, 2016).

<sup>1</sup> See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 17034 (March 31, 2015) (*Final Results*) and accompanying Issues and Decision Memorandum.

<sup>2</sup> See *Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 26001 (May 6, 2015) (*First Amended Final Results*) and accompanying Decision Memorandum and *Large Power Transformers from the Republic of Korea: Second Amended Final Results of Antidumping Duty Administrative*

Dated: October 31, 2017.

**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.*

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-570-061]

**Fine Denier Polyester Staple Fiber From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination**

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

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of fine denier polyester staple fiber (fine denier PSF) from the People's Republic of China (PRC). The period of investigation is January 1, 2016, through December 31, 2016.

**DATES:** Applicable November 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** Yasmin Bordas or Davina Friedmann, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3813 or (202) 482-0698, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on June 27, 2017.<sup>1</sup> On August 8, 2017, the Department postponed the preliminary determination of this investigation, and the revised deadline is now October 30, 2017.<sup>2</sup> For a complete description of the events that followed the initiation of this investigation, see the Preliminary

<sup>1</sup> See *Fine Denier Polyester Staple Fiber from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 29029 (June 27, 2017) (*Initiation Notice*).

<sup>2</sup> See *Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Postponement of Preliminary Determination in the Countervailing Duty Investigations*, 82 FR 37048 (August 8, 2017).

Decision Memorandum.<sup>3</sup> A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

**Scope of the Investigation**

The product covered by this investigation is fine denier PSF from the PRC. For a complete description of the scope of this investigation, see Appendix I.

**Scope Comments**

In accordance with the preamble to the Department's regulations,<sup>4</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).<sup>5</sup> Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by the Department. The Department intends to issue its preliminary decision regarding comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations in the preliminary determination of the companion AD investigation.

**Methodology**

The Department is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, the Department preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>6</sup>

<sup>3</sup> See Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>4</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E)

The Department notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to the Department's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>7</sup> For further information, see "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

**All-Others Rate**

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, the Department shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all-others" rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, for the "all-others" rate, we calculated a simple average of the two responding companies' rates.

**Preliminary Determination**

The Department preliminarily determines that the following estimated countervailable subsidy rates exist:

of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>7</sup> See sections 776(a) and (b) of the Act.

<sup>8</sup> As discussed in the Preliminary Decision Memorandum, the Department has found the following companies to be cross-owned with Jiangyin Hailun Chemical Fiber Co. Ltd.: Jiangyin Bolun Chemical Fiber Co., Ltd. (Bolun); Jiangyin Fenghua Synthetic Fiber Co., Ltd. (Fenghua); Jiangsu Hailun Petrochemicals Co., Ltd. (Hailun Petrochemical); Jiangyin Huamei Special Fiber Co., Ltd. (Huamei); Jiangyin Huasheng Polymerization Co., Ltd. (Huasheng); Jiangyin Huaxing Synthetic Co., Ltd. (Huaxing); Jiangyin Huayuan Polymerization Co., Ltd. (Huayuan); Jiangsu Sanfangxiang Group Co., Ltd. (Sanfangxiang Group); Jiangsu Sanfangxiang International Trading Co., Ltd. (Sanfangxiang Trading); Sanhai International Trading PTE Ltd. (Sanhai); Jiangyin Xingsheng Plastic Co., Ltd. (Xingsheng Plastic); Jiangyin Xingtai New Material Co., Ltd. (Xingtai); Jiangsu Xingye Plastic Co., Ltd. (Xingye Plastic); Jiangsu Xingye Polytech Co., Ltd. (Xingye Polytech); Jiangyin Xingyu New Material Co., Ltd. (Xingyu); Jiangyin Xinlun Chemical Fiber Co., Ltd. (Xinlun); Jiangyin Xinyuan Thermal Power Co., Ltd. (Xinyuan Thermal); and Jiangyin Yunlun Chemical Fiber Co., Ltd. (Yunlun).

<sup>9</sup> As discussed in the Preliminary Decision Memorandum, the Department has found Jiangsu Huahong Industrial Group Co., Ltd. to be cross-owned with Jiangyin Huahong Chemical Fiber Co. Ltd.; Jiangyin Hongkai Chemical Fiber Co., Ltd.