

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by these investigations consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigations are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See* Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 78 FR 11150 (February 15, 2013).

Merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

Appendix II—List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Scope Comments
- V. Use of Facts Otherwise Available
- VI. Subsidies Valuation Information
- VII. Analysis of Programs
- VIII. Analysis of Comments
 - Comment 1: Whether Commerce Should Rely on Facts Available to Determine Non-Countervailability, Non-Use, and Benefits of the Programs Under Investigation in the Absence of the Government Verifications
 - Comment 2: Whether the Federal ACCA and Quebec ACCA for Class 29 Assets Programs are Specific
 - Comment 3: Whether the Additional Depreciation for Class 1 Assets Program is Specific and Provides a Countervailable Benefit
 - Comment 4: Whether the Ontario LCR Program Provided Countervailable Subsidies to Marmen during the POI
 - Comment 5: Whether the Quebec LCR Program Provided Countervailable Subsidies to Marmen during the POI
 - Comment 6: Whether Marmen's Total Sales Denominator Should Be Revised to Reflect Marmen's Total Sales as Expressed in Canadian Dollars
 - Comment 7: Whether Marmen's Other Wind—Time-Billed Activities, Repair Charges, Early Payment Discounts, Deferred Revenue, Inter-Company Revenues, and Other Non-Production Related Income Should Be Included in Marmen's Total Sales Denominator
 - Comment 8: Whether Additional Income Taxes Paid by Marmen during the POI on the Previous Year's GASPÉTC Should Be Deducted from Marmen's POI GASPÉTC Benefit
 - Comment 9: Tax credit for On-The-Job Training
- IX. Recommendation

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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 May 26, 2020, the Court of International Trade (CIT) 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

August 1, 2013 through July 31, 2014. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final results and notice of amended final results of the administrative review and that Commerce is amending the amended final results with respect to the dumping margins assigned to Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation USA, and the non-selected respondent companies ILJIN, ILJIN Electric Co., Ltd., and LSIS Co., Ltd.

DATES: Applicable June 5, 2020.

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, 2016, Commerce issued the *Final Results*.¹ In the *Final Results*, Commerce assigned dumping margins of 9.40 percent and 4.07 percent to Hyosung Corporation (Hyosung) and Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai, USA (Hyundai USA) (collectively, Hyundai), respectively.² Upon consideration of various ministerial error allegations, Commerce issued the *Amended Final Results* on May 5, 2016, and calculated a weighted-average margin of 7.89 percent for Hyosung, and margins of 5.98 percent for ILJIN, ILJIN Electric, and LSIS.³ Hyosung and Hyundai are Korean producers/exporters of LPTs and were mandatory respondents in the underlying administrative review, while ILJIN, ILJIN Electric, and LSIS are Korean producers/exporters of LPTs which were not selected for review.

On October 10, 2017, the CIT remanded various aspects of the *Final Results* and *Amended Final Results* to Commerce.⁴ Specifically, the CIT instructed Commerce to clarify the

¹ *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum.

² Commerce also assessed margins of 6.74 percent on ILJIN Electric Co., Ltd. (ILJIN Electric), ILJIN, and LSIS Co., Ltd. (LSIS), based on the margins calculated for Hyosung and Hyundai. *See Final Results*.

³ *See Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 27088 (May 5, 2016) (*Amended Final Results*).

⁴ *See ABB INC. v. United States*, Slip Op. 17-138 (CIT, October 10, 2017) (*Remand Order*).

treatment of the respondents' U.S. commissions based on record evidence, as well as re-examine whether to cap Hyundai's service-related revenues based on associated expenses.

Pursuant to the *Remand Order*, Commerce issued its Final Redetermination, which addressed the CIT's holdings and revised the weighted-average dumping margins for Hyosung and Hyundai to 8.74 percent and 25.51 percent, respectively.⁵

On November 13, 2018, the CIT sustained Commerce's Final Redetermination with respect to commissions, but remanded the issue of service-related revenues to Commerce a second time.⁶ Hyosung moved for partial final judgement on issues affecting its entries. On August 29, 2019, the CIT issued the partial final judgement with regard to issues which affected Hyosung.⁷ Commerce issued a Timken Notice with respect to Hyosung on October 11, 2019, which established Hyosung's final dumping margin at 8.74 percent.⁸

Pursuant to the second *Remand Order*, Commerce again reconsidered its treatment of service-related revenues with respect to Hyundai and did not cap revenue for transactions for which substantial evidence did not support a finding that the services were separately negotiable with third parties.⁹ Commerce also did not apply its capping methodology to the delayed delivery charges associated with two transactions, and instead made circumstance of sale (COS) adjustments to normal value for those delayed delivery charges.¹⁰

On February 19, 2020, the CIT sustained Commerce's Second Remand Results with respect to the revised capping of certain of Hyundai's transactions, but remanded the issue of the COS adjustment.¹¹ Pursuant to this third *Remand Order*, Commerce

reconsidered its treatment of the COS adjustments.¹² Commerce calculated a weighted-average dumping margin for Hyundai of 16.13 percent for the period of review.¹³ On May 26, 2020, the CIT sustained the Third Remand Results.¹⁴

Timken Notice

In its decision in *Timken*,¹⁵ as clarified by *Diamond Sawblades*¹⁶, the United States Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce 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 May 26, 2020, judgment sustaining Commerce's Third Remand Results with respect to COS adjustments constitutes a final decision of the CIT that is not in harmony with the *Amended 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 *Amended Final Results* with respect to the dumping margins calculated for Hyundai and the non-selected respondent companies ILJIN, ILJIN Electric, and LSIS. Based on the Third Remand Results, as affirmed by the CIT, the revised dumping margins for Hyundai and ILJIN, ILJIN Electric, and

LSIS from August 1, 2013 through July 31, 2014, are as follows:

Producer/exporter	Weighted-average margin (percent)
Hyundai Heavy Industries Co., Ltd	16.13
ILJIN Electric Co., Ltd	17 12.44
ILJIN	12.44
LSIS Co., Ltd	12.44

In the event that the CIT's rulings are not appealed or, if appealed, are 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 revised dumping margins listed above.

Cash Deposit Requirements

Since the *Amended Final Results*, the Department has established a new cash deposit rate for Hyundai and the non-selected companies.¹⁸ Therefore, this Final Redetermination, and as affirmed by the CIT, does not change the later-established cash deposit rates for Hyundai, ILJIN, ILJIN Electric, and LSIS.

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: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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⁵ See Memorandum, "Final Results of Redetermination Pursuant to Court Remand *ABB INC v. United States* Court No. 16-00054, Slip-Op. 17-138 (CIT October 10, 2017)," dated February 7, 2018 (Final Redetermination) available at <http://enforcement.trade.gov/remands/17-138.pdf>.

⁶ See *ABB, INC. v. United States*, Court No. 16-00054, Slip Op. 18-156 (CIT 2018).

⁷ See, *ABB, INC. v. United States*, Court No. 16-00054 (CIT August 29, 2019).

⁸ See *Large Power Transformers From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results, Notice of Amended Final Results*, 84 FR 54843 (October 11, 2019)

⁹ See Memorandum, "Final Results of Redetermination Pursuant to Court Remand: *ABB INC v. United States*, Consol. Court No. 16-00054, Slip Op. 18-156 (CIT November 13, 2018)" dated April 26, 2019, (Second Remand Results).

¹⁰ *Id.*

¹¹ See *ABB, INC. v. United States*, Court No. 16-00054, Slip Op. 20-21 (CIT 2020).

¹² See Memorandum, "Final Results of Redetermination Pursuant to Court Remand: *ABB INC v. United States*, Consol. Court No. 16-00054, Slip Op. 20-21 (CIT February 19, 2020)" dated April 14, 2020, (Third Remand Results).

¹³ *Id.*

¹⁴ See *ABB Inc. v United States and Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation USA*, Court No. 16-00054, Slip Op. 20-72 (CIT 2020).

¹⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

¹⁶ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

¹⁷ In the Final Results, we explained that "As we did not have publicly-ranged U.S. sales volumes for Hyosung for the period August 1, 2013, through July 31, 2014, to calculate a weighted average percentage margin for the non-selected companies (*i.e.*, ILJIN, ILJIN Electric, and LSIS) in this review, the rate applied to the non-selected companies is a simple-average percentage margin calculated based on the margins calculated for Hyosung and Hyundai." See *Final Results* at 14088, n.11. As noted above, the revised margin for Hyosung is now 8.74 percent and the revised margin for Hyundai is 16.13 percent. The simple average of these two numbers is 12.44 percent.

¹⁸ See, *e.g.*, *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Duty Administrative Review; 2016-2017*, 84 FR 16461 (April 19, 2019).