

## Background

On August 2, 2017, Commerce found Midwest's strike pin anchors, which consist of four components—a steel pin, a threaded body, a nut, and a flat washer—to be within the scope of the AD order on certain steel nails from the People's Republic of China.<sup>1</sup>

Midwest appealed Commerce's *Final Scope Ruling*. On October 19, 2018, the CIT remanded Commerce's scope ruling to Commerce for further consideration.<sup>2</sup> On April 25, 2019, Commerce issued its First Remand Redetermination, determining that the "pin" portion "of the product is subject to the {*Order*}, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer anchor, would not be subject."<sup>3</sup>

On March 4, 2020, the CIT again remanded Commerce's scope determination.<sup>4</sup> Pursuant to the *Second Remand Order*, on June 17, 2020, Commerce issued its Second Remand Redetermination, finding that Midwest's strike pin anchors, in their entirety, are covered by the scope of the *Order*.<sup>5</sup>

On August 28, 2020, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued its final decision in *OMG*.<sup>6</sup> In light of the CAFC's decision, on January 21, 2021, the CIT remanded the *Final Scope Ruling* to Commerce.<sup>7</sup>

In its final remand redetermination, issued in March 2021, Commerce found Midwest's strike pin anchors to be outside the scope of the *Order*.<sup>8</sup> The CIT sustained Commerce's final redetermination.<sup>9</sup>

<sup>1</sup> See Memorandum, "Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People's Republic of China: Final Scope Ruling on Midwest Fastener Strike Pin Anchors," dated August 2, 2017 (*Final Scope Ruling*); see also *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).

<sup>2</sup> See *Midwest Fastener Corp., v. United States*, 348 F. Supp. 3d 1297 (CIT October 19, 2018).

<sup>3</sup> See Final Results of Redetermination Pursuant to Court Remand (First Remand Redetermination), *Midwest Fastener Corp., v. United States Court*, No. 17-00231, Slip Op. 18-142 (CIT October 19, 2018) (First Remand Redetermination).

<sup>4</sup> See *Midwest Fastener Corp., v. United States*, 435 F. Supp. 3d 1262 (CIT March 4, 2020) (*Second Remand Order*).

<sup>5</sup> See Final Results of Redetermination Pursuant to Court Remand, *Midwest Fastener Corp., v. United States*, Court No. 17-00231, Slip Op. 20-28 (CIT March 4, 2020) (Second Remand Redetermination).

<sup>6</sup> See *OMG, Inc. v. United States*, 972 F.3d 1358 (Fed. Cir. 2020) (*OMG*).

<sup>7</sup> See *Midwest Fastener Corp., v. United States*, 494 F. Supp. 3d 1335 (CIT January 21, 2021).

<sup>8</sup> See Final Results of Redetermination Pursuant to *Midwest Fastener Corp., v. United States*, Court No. 17-00231, Slip Op. 21-07 (CIT January 21, 2021), dated March 23, 2021.

<sup>9</sup> See *Midwest Fastener Corp., v. United States*, Slip Op. 21-86, Court No. 17-00231 (CIT July 12, 2021).

## Timken Notice

In its decision in *Timken*,<sup>10</sup> as clarified by *Diamond Sawblades*,<sup>11</sup> the CAFC 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 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 12, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Scope Ruling*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

### Amended Final Scope Ruling

In accordance with the CIT's July 12, 2021, final judgment, Commerce is amending its *Final Scope Ruling* and finds that the scope of the order does not cover the products addressed in the *Final Scope Ruling*.

### Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, Midwest's strike pin anchors will not be subject to a cash deposit requirement.

In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to liquidate entries of Midwest's strike pin anchors without regard to antidumping duties and to lift suspension of liquidation of such entries.

At this time, Commerce remains enjoined by CIT from liquidating entries included in the scope of the *Order* by the *Final Scope Ruling*. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) of the Act.

Dated: July 19, 2021.

### Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

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<sup>10</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>11</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

## 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.<sup>1</sup> 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.

<sup>1</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) (*Final Results*), and accompanying Issues and Decision Memorandum.

(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.<sup>2</sup> 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 (3) explain the use of one invoice for multiple sales across multiple administrative reviews.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> Commerce calculated a weighted-average dumping margin of zero percent for both Hyundai and Hyosung.<sup>7</sup> Commerce also applied an average of 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.<sup>8</sup>

On July 9, 2021, the CIT sustained Commerce's Final Second Results of Redetermination.<sup>9</sup>

#### Timken Notice

In its decision in *Timken*,<sup>10</sup> as clarified by *Diamond Sawblades*,<sup>11</sup> 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),

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

<sup>5</sup> 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*).

<sup>6</sup> 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).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 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).

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

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

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
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.<sup>12</sup> 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.

<sup>12</sup> 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).

<sup>2</sup> 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*).

<sup>3</sup> 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>.

## 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.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-025; C-533-862]

### Polyethylene Terephthalate Resin From the People's Republic of China and India: Final Results of the Expedited First Sunset Reviews of the Countervailing Duty Orders

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

**SUMMARY:** As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) orders on polyethylene terephthalate (PET) resin from the People's Republic of China (China) and India would be likely to lead to continuation or recurrence of countervailable subsidies at the levels as indicated in the "Final Results of Sunset Review" section of this notice.

**DATES:** Applicable July 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joshua A. DeMoss, 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) 482-3362.

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 6, 2016, Commerce published the CVD orders on PET resin from China and India in the *Federal Register*.<sup>1</sup> On March 31, 2021, Commerce published the notice of initiation of the first sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> Commerce received a notice of intent to participate from DAK Americas, LLC, Indorama

<sup>1</sup> See *Certain Polyethylene Terephthalate Resin from India and the People's Republic of China: Countervailing Duty Order (India) and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (People's Republic of China)*, 81 FR 27977 (May 6, 2016) (*Orders*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Review*, 86 FR 16701 (March 31, 2021).

Ventures USA Inc., and Nan Ya Plastics Corporation, America (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> Each claimed interested party status under section 771(9)(C) of the Act as domestic producers engaged in the production of PET resin in the United States.

On April 30, 2021, Commerce received a substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> On May 3, 2021, two respondent interested parties, CG Roxane, LLC (CG Roxane) and Niagara Bottling, LLC (Niagara), filed substantive responses pursuant to 19 CFR 351.218(d)(3), to the record of the China sunset review.<sup>5</sup> However, for the substantive responses of respondent interested parties to be considered adequate under this regulation, the respondents must account for, on average, more than 50 percent (volume or value) of total exports during the five-year period preceding the year of publication of the initiation notice, pursuant to 19 CFR 351.218(e)(1)(ii)(A). CG Roxane and Niagara failed to demonstrate this. We did not receive a substantive response from any other interested party in these proceedings.

On May 21, 2021, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>6</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce

<sup>3</sup> See Domestic Interested Parties' Letters, "Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Polyethylene Terephthalate Resin from the People's Republic of China—Domestic Interested Parties' Notice of Intent to Participate," dated April 15, 2021; and "Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Polyethylene Terephthalate Resin from India—Domestic Interested Parties' Notice of Intent to Participate," dated April 15, 2021.

<sup>4</sup> See Domestic Interested Parties' Letters, "Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Polyethylene Terephthalate Resin from the People's Republic of China—Domestic Interested Parties' Substantive Response to Notice of Initiation," dated April 30, 2021 (China Substantive Response); and "Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Polyethylene Terephthalate Resin from India—Domestic Interested Parties' Substantive Response to Notice of Initiation," dated April 30, 2021 (India Substantive Response).

<sup>5</sup> See CG Roxane's Letter, "Sunset Review of Polyethylene Terephthalate Resin from China and Oman: Response to Notice of Institution," dated May 3, 2021; and Niagara's Letter, "Sunset Review of Polyethylene Terephthalate Resin from China: Response to Notice of Institution," dated May 3, 2021.

<sup>6</sup> See Commerce's Letter, "Sunset Review for April 2021," dated May 21, 2021.

conducted expedited (120-day) sunset reviews of these *Orders*.

#### Scope of the Orders

The merchandise covered by these orders is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to these orders is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by these orders is dispositive.

#### Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of countervailable subsidies and the net countervailable subsidy likely to prevail if the *Orders* were revoked.<sup>7</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://enforcement.trade.gov/frn/index.html>. A list of the issues discussed in the decision memorandum is attached to the appendix to this notice.

#### Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of countervailable subsidies at the following rates:

<sup>7</sup> See Memorandum, "Issues and Decision Memorandum for the Expedited First Sunset Review of the Countervailing Duty Orders of Polyethylene Terephthalate Resin from the People's Republic of China and India," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).