

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On July 14, 2011, the Department of Commerce (“the Department”) received a petition concerning imports of large liquid dielectric power transformers (“large power transformers”) from the Republic of Korea (“Korea”), filed in proper form on behalf of ABB Inc., Delta Star, Inc. and Pennsylvania Transformer Technology, Inc., (collectively, “the Petitioners”). See the Petition for the Imposition of Antidumping Duties on Large Power Transformers from the Republic of Korea, filed on July 14, 2011 (“the Petition”). On July 20, 2011, the Department issued a request for additional information and clarification of certain areas of the Petition. The Petitioners filed a response to this request on July 26, 2011 (hereinafter, “Supplement to the Petition”). In accordance with section 732(b) of the Tariff Act of 1930, as amended (“the Act”), the Petitioners allege that imports of large power transformers from Korea are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. On July 28, 2011, the Petitioners filed an amendment to the Petition in which they revised the scope language, amended the lost sales listing and provided the Harmonized Tariff Schedule of the United States (“HTSUS”) page for HTSUS number 8504.90.9540, (hereinafter, “Second Supplement to the Petition”). On August 1, 2011, the Petitioners filed an additional amendment to the Petition with respect to industry support for the Petition (hereinafter, “Third Supplement to the Petition”).

On July 28, 2011, the Department received a standing challenge to the Petition by Hyosung Corporation, a Korean producer and exporter of the subject merchandise, and its U.S. affiliate HICO America Inc. (collectively, “Hyosung”). On July 29, 2011, the Department received a standing challenge to the petition by Hyundai Corporation, a Korean producer and exporter of the subject merchandise, and its U.S. affiliate Hyundai Corporation, USA (collectively, “Hyundai”). The Petitioners responded to HICO’s and Hyundai’s submission on August 1, 2011 (hereinafter, “Fourth Supplement to the Petition”).

The Department finds that the Petitioners filed the Petition on behalf of

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019 or David Cordell at 202–482–0408, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of

the domestic industry because the Petitioners are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigation which the Petitioners are requesting that the Department initiate (see “Determination of Industry Support for the Petition” section below).

Period of Investigation

The period of investigation (“POI”) is July 1, 2010, through June 30, 2011. See 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are large power transformers from Korea. For a full description of the scope of the investigation, please see the “Scope of Investigation,” in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department’s regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department invites all interested parties to submit such comments by August 23, 2011, 20 calendar days from the signature date of this notice. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

All comments must be filed on the record of the investigation. If filed after August 5, 2011, all comments and submissions to the Department must be filed electronically using Import Administration’s Antidumping Countervailing Duty Centralized Electronic Service System (“IA ACCESS”).¹

¹ See <http://www.gpo.gov/fdsys/pkg/FR-2011-07-06/pdf/2011-16352.pdf> for details of the Department’s Electronic Filing Requirements, which go into effect on August 5, 2011. Information on help using IAACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of large power transformers to be reported in response to the Department’s antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe large power transformers, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the hierarchy under which the physical characteristics should be considered in product matching.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, we must receive comments by August 23, 2011. Additionally, rebuttal comments must be received by August 30, 2011.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for

more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. Although both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that large power transformers constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Large Power Transformers from the

Republic of Korea ("Checklist"), at Attachment II, Analysis of Industry Support for the Petition Covering Large Power Transformers from Korea, on file in the Central Records Unit, Room 7046 of the main Department of Commerce building.

In determining whether the Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, the Petitioners provided their production of the domestic like product in 2010 and compared this to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petition at Exhibit 2 and Supplement to the Petition, at Exhibit 9. To estimate total 2010 production of the domestic like product, the Petitioners used their own data and industry specific knowledge. *See* Volume I of the Petition, at Exhibit 2 and Supplement to the Petition, at Exhibit 9; *see also* Checklist at Attachment II. We have relied upon data the Petitioners provided for purposes of measuring industry support. For further discussion, *see* Checklist at Attachment II.

As noted above, on July 28, 2011, and July 29, 2011, we received submissions on behalf of Hyosung and Hyundai, respectively, Korean producers and exporters of the subject merchandise, questioning the domestic like product definition and the industry support calculation in the Petition. On August 1, 2011, the Petitioners filed a reply. For further discussion of these submissions, *see* Checklist at Attachment II.

Based on information provided in the Petition, supplemental submissions, and other information obtained by the Department, we determine that the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See* Checklist at Attachment II for further details on the Department's evaluation of industry support for the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigation that they are requesting the Department initiate, in accordance with section 732(c)(4)(A) of the Act.

Allegations and Evidence of Material Injury and Causation

The Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, the Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The Petitioners contend that the industry's injured condition is illustrated by reduced market share, reduced shipments, reduced capacity utilization, underselling and price depression or suppression, a decline in financial performance, lost sales and revenue, an increase in import penetration, and threat of future injury. *See* Volume I of the Petition, at 21–22, 24–33, and Exhibits 5, 7–9, and 10–11, and Second Supplement to the Petition at 3 and at Attachment 1. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petition Covering Large Power Transformers from the Republic of Korea.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of large power transformers from Korea. The sources of data for the deductions and adjustments relating to the U.S. price, and cost of production ("COP") are also discussed in the initiation checklist. *See* Checklist at 6–9.

Export Price

The Petitioners based U.S. export price ("EP") on the prices of four large power transformers manufactured in

Korea and offered for sale in the United States by two Korean producers/exporters. *See* Checklist at 7; *see also* Volume II of the Petition at II–2 and Exhibit AD–2 and Supplement to the Petition at 29, 30 and Exhibits 18 and 21. Based on the stated sales and delivery terms, the Petitioners then adjusted the U.S. prices to account for certain expenses associated with exporting and delivering the product to the U.S. customers (*i.e.*, U.S. inland rail freight, ocean freight and U.S. port fees). While the Department will normally make additional downward adjustments to U.S. price for U.S. brokerage and handling, foreign brokerage and handling, direct selling and credit expenses, the Petitioners took a conservative approach and did not include any such adjustments in their calculation of U.S. price. *See* Checklist at 7; *see also* Volume II of the Petition at page II–3, 5, 7, and 10 and Exhibits AD–2–3, and Supplement to the Petition, at 29–31 and Exhibits 18–21.

Normal Value

According to the Petitioners, large power transformers are highly complex and specialized products that are manufactured to a customer's unique specifications. As such, identifying sales of identical or similar large power transformers in the U.S. and Korean markets that could be compared on a price-to-price basis is virtually impossible because they differ substantially. Accordingly, the Petitioners based normal value on constructed value ("CV") in accordance with section 773(a)(4) of the Act.

Constructed value consists of the cost of manufacturing, selling, general and administrative ("SG&A") expenses, financial expenses and profit. *See* section 773(a)(4) of the Act. The Petitioners calculated constructed value based on the U.S. producer's bid proposal cost of production model for the U.S. sales of large power transformers used in the Petition. The U.S. producer develops the cost of production for each transformer when bidding on large power transformers contracts in the United States, and thus the costs were developed based on the specific transformer for each U.S. sale identified in the Petition.

In calculating constructed value, the Petitioners adjusted the U.S. producer's cost of manufacturing for known differences, where available, between the U.S. and Korean markets. Specifically, the Petitioners based the cost of labor on the Korean manufacturing wage from the International Labor Statistics as published on the Department's Web site.

See Supplement to the Petition at Exhibit 13. The Petitioners also adjusted the U.S. producer's energy costs based on publicly available Korean electricity and natural gas costs. See Supplement to the Petition at Exhibits 14 and 15. The Petitioners did not adjust the U.S. producer's cost of materials for the differences between the U.S. and Korean markets. According to the Petitioners such an adjustment is not practical because the materials used in the production of large power transformers are specialized inputs, the costs of which are not reflected accurately in published data. The Petitioners also state that the U.S. material costs are comparable to the costs in the Korean market because most of the inputs are commodity-type products that are widely traded on world markets. To calculate the variable and fixed overhead costs, the Petitioners relied upon the variable and fixed overhead rates of the U.S. producer calculated as a percentage of the labor costs adjusted for known differences between the U.S. and Korean markets. See Supplement to the Petition at Exhibit 16.

To determine constructed value, the Petitioners added to the cost of manufacturing amounts for SG&A expenses, financial expenses and profit based on financial statements of the Korean producers that manufactured the specific transformers sold to the United States pursuant to each U.S. sale identified in the Petition. See Supplement to the Petition at Exhibits 16 and 17; see also Checklist, at 8 and 9.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of large power transformers from Korea are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for large power transformers range from 43.01 percent to 60.81 percent. See Checklist at 9.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on large power transformers from Korea, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of large power transformers are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1),

unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that “{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.” *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of known exporters or producers for this investigation is large, the Department intends to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports under the HTSUS numbers 8504.23.0040 and 8504.23.0080 for the large power transformers.² We intend to release the CBP data under Administrative Protective Order (“APO”) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications

² The scope also covers HTSUS number 8504.90.9540 of all transformer parts. However, we will not use this number in our respondent selection analysis as it is a basket category and would not allow for a meaningful analysis.

may be found on the Department's Web site at <http://ia.ita.doc.gov/apo>.

Distribution of Copy of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the Government of Korea. The Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version of the Petition to the Government of Korea, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 29, 2011, whether there is a reasonable indication that imports of large power transformers from Korea are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (“*Interim Final Rule*”) amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of

the *Interim Final Rule*. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 3, 2011.

Ronald K. Lorentzen

Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of Investigation

The scope of this investigation 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 investigation 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 investigation is dispositive.

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