Level 26, 385 Bourke Street, Melbourne VIC 3000
GPO Box 1533N, Melbourne VIC 3001 | DX 252 Melbourne
T +61 3 8602 9200 | F +61 3 8602 9299

hunt & hunt lawyers

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The Director
Operations 1
Anti-Dumping Commission
5 Constitution Avenue
Canberra ACT 2600

Our ref: ATH
Matter no: 9565878

By email: Operations1@adcommission.gov.au

Dear Sir or Madam

Investigation into alleged dumping of Power Transformers exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam
Submission by Hyosung Corporation in response to Issues Paper 2014/01

We refer to our previous correspondence to the ADC on behalf of Hyosung Corporation ("**Hyosung**") in relation to the Investigation.

We have now been instructed to make the following submission in response to the Issues Paper.

Please note that this submission does not exclude further comments made throughout the Investigation or further comments our client elects to make.

For the purposes of this submission, all defined terms have the same meaning as set out in the attached Schedule of Definitions unless otherwise defined.

1. Summary of submission

In summary, Hyosung makes the following contentions, which are discussed in more detail in the subsequent paragraphs:

(a) While Hyosung is pleased that the ADC has published the Issues Paper, it is disappointed that the Issues Paper does not seek comments on a number of other issues, which our client believes to be of importance.

(b) In relation to the determination of profit for constructed normal values:

(1) The products that were produced by Hyosung's Power System PU and sold on the domestic market during the Investigation Period are in the "same general category of goods" as those Power Transformers exported to Australia during the Investigation Period for the purpose of calculating the profit for the constructed normal value. The ADC verified the data for these sales during the Verification Visit and included these in the Revised Calculation.

(2) The profit calculated for products that are the subject of the domestic sales should account for both those domestic sales that made at a loss and those that realised a profit as this would reflect the actual amounts realised by the exporter.

(c) In relation to exchange rates:

(1) The ADC's proposal to use the exchange rate as at the date of contract will result in an unfair and inaccurate comparison between the constructed normal value and the export price.

(2) The "sale date" (which was provided by Hyosung in its Exporter Questionnaire and in its recent Visit Report Submission) is when the converted rate of export sales is created in Hyosung's accounting system. This is the net realised value of the sale in the same currency as Hyosung's domestic sales. As such, there is no need to convert Hyosung's export sales for the purpose of comparing the export price and constructed normal value.

(3) Accordingly, for Hyosung, the exchange rates should be as follows:

(A) the date that the contractual amounts were realised in Hyosung's accounting system for the different aspects of the export sales to **[redacted – customer information]**; and

(B) the contract date for the **[redacted – customer information]** sale as this had not yet been realised in Hyosung's accounting system when the ADC conducted the Verification Visit.

(4) Hyosung also contends that any exchange rates the ADC uses should be the official exchange rate of the country of export as the constructed normal value is calculated based on cost of production denominated by that country's currency.

2. General comments with respect to the Issues Paper

While Hyosung is pleased that the ADC has decided to publish the Issues Paper, which deals with a number of key issues for this Investigation, it is disappointed that the Issues Paper does not seek comments on the following (for which Hyosung has previously advocated):

(a) how the ADC proposes to calculate the export price;

(b) how it proposes to treat other aspects of the constructed normal value (other than that addressed in the Issues Paper)

(c) how it proposes to calculate the dumping margin;

(d) how it proposes to assess causation; and

(e) how material injury will be determined.

3. Determination of profit for constructed normal values

3.1 The ADC's position

The ADC contends that the ordinary course of trade test cannot be fulfilled. Therefore, Regulation 181A(2) cannot be relied upon to determine the profit on domestic sales for the purpose of constructing the normal value of the GUC.

Accordingly, the ADC must use one of the methods in Regulation 181A(3) to calculate the profit on domestic sales, and has chosen to use that in Regulation 181A(3)(a). This means that the ADC must use the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export to determine the profit.

3.2 Same general category of goods

Hyosung contends that all the domestic sales of Power Transformers produced by Hyosung's Power System PU are of goods in the "same general category of goods" as those Power Transformers exported to Australia during the Investigation Period. The ADC verified the data for these sales during the Verification Visit and included these sales in the Revised Calculation.

Both the domestic sales and the **[redacted – commercial information]** contracts for the export sales during the Investigation Period were produced by Hyosung's Power System PU. These comprised the majority of products produced by the Power Systems PU during the Investigation Period. The other products produced by the Power Systems PU include a small number of resin transformers and high voltage switchgears, however this does not mean that they should be discounted.

The Power System PU is one of the four PU's that form Hyosung's Power & Industrial Systems Performance Group. Each PU has a separate trial balance and income statement. Hyosung reported the SG&A costs based on the Power System PU's data on the basis that the Power System PU is the lowest business unit that produces Like Goods. As such, the Power System PU produces goods that are in the "same general category of goods". This was accepted by the ADC during the Verification Visit for the purpose of calculating the SG&A costs and the same approach should be used to determine the profit for the constructed normal value.

On this basis, Hyosung's calculation of its profit ratio would result in a dumping margin rate of 10.3%. Please see the relevant calculations in worksheets 1, 2 and 3 in the spreadsheet entitled "Calculation of Profit Ratio V4 20140602" at "**Attachment A**" supported by the three corresponding Appendices.

3.3 Actual amounts realised

The ADC has not provided further guidance as to what the term "actual amounts realised" means in practice. In Hyosung's view, there are two possible interpretations of this term, as follows:

(a) That the term "actual amounts realised" from the domestic sales of goods that are in the "same general category of goods" as the GUC means the total amounts gained and lost from all of those domestic sales of goods during the Investigation Period.

(b) Alternatively, that the term "actual amounts realised" means that the ADC will consider only those domestic sales of goods that are in the "same general category of goods" as the GUC, which are made at a profit.

Hyosung is of the view that the approach in subparagraph (a) is the correct interpretation.

This is supported by the comment in the ADC Manual that it is possible for a constructed normal value "to include a zero profit in certain circumstances".

Further, the interpretation in subparagraph (b) would fail to accurately reflect the profits made by Hyosung in the domestic market for the goods that are in the "same general category of goods" as the GUC. In addition, this approach would receive the same criticism the ADC's previous approach had received in that it would generate a profit that will be determined by reference to an unrepresentative sample of sales that are all profitable (as the ADC has stated in the Issues Paper).

Accordingly, Hyosung expects that the ADC will take into account all of the domestic sales made by Hyosung at a profit and all those made at a loss for the goods that are in the "same general category of goods" as the GUC in order to determine an accurate profit to consequently calculate an appropriate constructed normal value.

4. Exchange rates

4.1 Overview of Hyosung's position

The ADC has stated that it will use the exchange rate for converting currencies in relation to the export price at the date of contract, as this is the date when the material terms of sale were finalised. Notwithstanding this, the ADC has stated that it will use an alternative date if it is satisfied that this is necessary to do so.

Hyosung contends that the date of the exchange rate used for each exporter should be determined on a case by case basis and that in Hyosung's circumstances:

(a) using the date of contract to determine the exchange rate for export sales will result in an unfair comparison between Hyosung's domestic sales and export sales because different dates are relied upon to make the necessary calculations; and

(b) there is no need to convert the currency as the amounts for both domestic sales and export sales have been realised in Hyosung's accounting system.

4.2 Unfair comparison between export sales and a constructed normal value

The ADC is proposing to use one approach in calculating the figures for domestic sales and another approach for export sales. This approach would prevent the ADC from making a fair and accurate comparison of Hyosung's constructed normal value and the export price to determine any dumping margin rate.

This is because the calculations for the domestic sales price and their CTMS (used to determine the constructed normal value) are based on the dates that those sales were realised in Hyosung's accounting system and these will be compared with export sales converted on the contract date.

The ADC requested in the exporter questionnaire it provided to Hyosung that exporters provide "details of ALL of your invoiced sales during the investigation period". This suggests that the ADC would compare all recorded domestic sales, regardless of their contract date. If this is the case, the export sales should be calculated based on the same criteria, the date when the sale was realised in Hyosung's accounting system.

The ADC's proposal will result in a distorted comparison and thus an unfair and inaccurate dumping margin rate (if any). Accordingly, the same approach should be used for both domestic and export sales. Both calculations should be based on the dates that the sales were realised in Hyosung's accounting system.

4.3 No need to convert currency

Further, there is no need to convert the currency as the amounts for both domestic sales and export sales have been provided to the ADC in the same currency, KRW.

As Hyosung explained in its Visit Report Submission, the sale price for export sales is fixed in the foreign currency on the date that the contract is executed. Hyosung's accounting system then converts that price from the fixed currency amount to KRW on the "sale date".

Therefore, the export sales Hyosung provided for in its Exporter Questionnaire were provided in both the foreign currency and KRW as converted on the "sale date". As the amount in KRW has been provided, no further conversion of currencies is required.

The date when the material terms of sale are realised in Hyosung's circumstances is when the sale is entered into Hyosung's accounting system. That amount is the net realised revenue and is the amount that most accurately reflects the export price to be compared to the constructed normal value.

Therefore, to make a fair comparison of export price and the constructed normal value, the ADC should use the net invoice value realised in its accounting system without any adjustments. This removes the need to make the conversion from the “gross invoice value shown on invoice” into “the net invoice value expressed in your domestic currency as it is entered in your accounting system”, as explained in the exporter questionnaire provided to Hyosung.

4.4 Result for Hyosung's export sales

For the reasons outlined in the above paragraphs, the date for the exchange rate for Hyosung's export sales to **[redacted – customer information]** should be the date that the contractual amounts were realised in Hyosung's accounting system for the different aspects of the export sales.

For Hyosung's contract with **[redacted – customer information]**, the appropriate date for converting the amount of the contract value in AUD to KRW is the exchange rate at the contract date. This is because, at the time of submitting the Exporter Questionnaire, Hyosung's accounting system had not yet realised the sales revenue in its accounting system as this project was still "on-hand".

4.5 Source for exchange rate

The ADC has not advised what source it has used for the exchange rates it claims are applicable on the date of contract for each of the export sales.

Hyosung contends that any exchange rates used to convert figures from KRW to AUD and USD should be that published by the Bank of Korea.

Hyosung uses the rates published by the Bank of Korea to convert figures in its accounting system. As the constructed normal value is calculated based on cost of production denominated by KRW, this source should be used to make a fair comparison of export price and normal value.

Further, there is a significant difference between the exchange rate applied by ADC and the official exchange rate published by the Bank of Korea. As shown in worksheet 4 of **Attachment A**, the exchange rate used by the ADC for the contract with **[redacted – customer information]** was 1,067.95 KRW/AUD while the rate published by the Bank of Korea was 1,152.66 KRW/AUD.

Application of the two exchange rates results in significantly different figures. For instance, worksheet 4 in **Attachment A** shows that the total difference of the three export sales between the ADC's rate and the Bank of Korea's rate is KRW 253,319,052, which is a significant amount.

Accordingly, Hyosung contends that the ADC should use the official exchange rate in the country of export to best reflect the contractual terms and provide a fair comparison with the constructed normal value.

Hyosung strongly urges that the information above be considered by the ADC and looks forward to its response.

Yours faithfully
Hunt & Hunt

Andrew Hudson
Partner

D +61 3 8602 9231
E ahudson@hunthunt.com.au

Attachments

A **Calculation of Profit Ratio V4 20140602 (CONFIDENTIAL)**

Appendix 1 (CONFIDENTIAL)
Appendix 2 (CONFIDENTIAL)
Appendix 3 (CONFIDENTIAL)

Schedule of Definitions

(a) "**Act**" means the *Customs Act 1901*.

(b) "**ADC**" means the Anti- Dumping Commission.

(c) "**ADC Manual**" means the ADC Dumping and Subsidy Manual published in December 2013.

(d) "**Applicant**" or "**Wilson**" means Wilson Transformer Co Pty Ltd being the applicant for the measures.

(e) "**Application**" means the application dated 4 July 2013 by Wilson seeking publication of dumping duty notices in respect of Power Transformers exported to Australia from the PRC, Indonesia, Korea, Taiwan, Thailand and Vietnam as referred to in the ADN.

(f) "**AUD**" means the Australian dollar.

(g) "**CTMS**" means the cost to make and sell as provided for in the Visit Report.

(h) "**Exporter Questionnaire**" means Hyosung's response to the exporter questionnaire submitted to the ADC on 16 October 2014.

(i) "**GUC**" means those Power Transformers the subject of the Application.

(j) "**Investigation**" means the investigation by the ADC in response to the Application.

(k) "**Investigation Period**" has the same meaning as in Consideration Report Number 219 issued by the ADC in response to the Application dated 4 July 2013 by the Applicant.

(l) "**Issues Paper**" means Issues Paper 2014/01 the ADC published on 27 May 2014.

(m) "**Korea**" means the Republic of Korea.

(n) "**KRW**" means Korean Won.

(o) "**kV**" means kilo volts.

(p) "**Like Goods**" has the same meaning as defined by the ADC in the Application.

(q) "**MVA**" means mega volt amperes.

(r) "**Power Transformers**" means power transformers as described in the Application, the ADN and the Consideration Report.

(s) "**PU**" means the Performance Unit within Hyosung.

(t) "**Regulation**" means a regulation of the *Customs Regulations 1926*.

(u) "**Revised Calculation**" means the spreadsheet containing the revised calculation of Hyosung's dumping margin, provided to Hyosung on 17 April 2014.

(v) "**SG&A costs**" means the selling, general and administrative costs.

(w) "**USD**" means the United States dollar.

(x) "**Verification Visit**" means the ADC's visit to Hyosung's premises to verify the data provided from 17 February 2014 to 21 February 2014.

(y) "**Visit Report**" means the draft Exporter Visit Report for Hyosung, provided to Hyosung on 28 April 2014.

(z) "**Visit Report Submission**" means the submission made to the ADC on behalf of Hyosung in response to the Visit Report on 16 May 2014.