

NON-CONFIDENTIAL

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November 1, 2024

SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Program
Canada Border Services Agency
11th Floor, 100 Metcalfe Street
Ottawa ON K1A 0L8

RE: Reply to HD Hyundai Electric Co., Ltd.’s Comments Concerning the Request for a Normal Value and Export Price Review of Large Power Transformers and Small Power Transformers Exported by HD Hyundai Electric Co., Ltd.

On behalf of Northern Transformer Corporation, PTI Transformers Inc., PTI Transformers L.P., and Transformateurs Delta Star Inc. (collectively, the “domestic producers”), we submit below in response to HD Hyundai Electric Co., Ltd.’s (“HD Hyundai”) comments concerning the domestic producers’ request for a normal value and export price review (“NVR”) of large and small power transformers (“LPT” and “SPT” respectively) exported from Korea by HD Hyundai. In sum: (i) HD Hyundai fails to acknowledge the evidence establishing that the volume of LPT and SPT imports from Korea remains material and has increased in recent years; and (ii) HD Hyundai does not dispute the fact that its home market profitability and costs have changed significantly since its normal values were last determined. In addition, HD Hyundai’s reliance on an ongoing appeal and the alleged lack of injury evidence to argue against an NVR is misplaced and should thus be disregarded.

I. THE VOLUME OF SUBJECT IMPORTS IS MATERIAL AND GROWING

HD Hyundai argues that “volumes of LPTs and SPTs have not increased since the most recent CBSA reviews.”¹ Such a claim is in sharp contrast to the submission by Mr. Jun Kang, the Head of Overseas Sales and Marketing Department for High Voltage products of HD Hyundai, during the last expiry review of LPTs from Korea: “{o}rders for LPTs for sale to Canada from the Ulsan facility increased... from 2021 to 2022;”² and that the company’s “performance in the first half of 2023” was “strong” due to the “increases in 2023 in terms of new orders, sales, market demand, and order backlogs.”³ HD Hyundai likewise submitted to the Tribunal that it “posted a strong order intake over the last 12 months” from April 2022 to March 2023 in Canada, and that it “expects this trend to continue over the next 24 months.”⁴ The Tribunal’s public investigation report confirmed

¹ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at para 5.

² Non-Confidential Attachment 1.

³ Non-Confidential Attachment 2.

⁴ Non-Confidential Attachment 3.

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that Korean LPT imports increased 498 percent from interim 2022 to 2023,⁵ which corresponds the Statistics Canada (“StatsCan”) import value data showing a significant increase in Korean LPTs in 2023.⁶

HD Hyundai criticizes the use of import values instead of import volumes to argue that domestic producers “have no actual data.”⁷ This argument misses the point that import volumes appear to be reported in different units of measure (e.g. MVA versus units),⁸ which makes them fundamentally unreliable for import trend analysis. While HD Hyundai provides, confidentially, its own export data, these also appear to be cherry-picked: specifically, HD Hyundai compares its LPT exports from the 24-month period in November 2016 to October 2018 to its exports during the 24 months period in August 2022 to July 2024; and then compares its SPT exports from the one year period of 2021 to an undisclosed two-year period, to show that LPT and SPT imports have not increased.⁹ Crucially, these comparisons are flawed because they compare the import volumes when the normal values were largely outdated (LPTs) or not in place (SPTs), ignoring the fact that imports declined thereafter once effective normal values came into place. This has been elaborated in the domestic producers’ request for an NVR, but in sum:

- HD Hyundai’s exports in 2017 and 2018 represent sales in the Canadian market prior to the conclusion of the last NVR of HD Hyundai in TR 2018 UP 01, which concluded in July 2019.¹⁰ In 2017 and 2018, LPT imports from Korea reached \$56.49 million and \$45.67 million respectively. Subsequently, the value of Korean LPT imports during 2019 to 2022 declined to a just 11~50% of the level achieved in 2017 and 2018 (i.e., ranging from \$5.38 million in 2019 to \$21.36 million in 2020). However, the import value reached over \$40.78 million in 2023, a level not seen since 2018.¹¹
- With respect to SPTs, 2021 is the year in which the anti-dumping case was initiated (April 15) and concluded (December 24). Thus, the Finding would not have materially impacted imports in 2021. Indeed, StatsCan data show that the value of Korean SPT imports peaked in 2021 at \$35.47 million, before declining to \$16.34 million in 2022 and

⁵ Non-Confidential Attachment 4.

⁶ *Domestic Producers Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (August 26, 2024) at 2-3.

⁷ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at paras 2(a) and 4.

⁸ *Domestic Producers Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (August 26, 2024) at fn 3. For example, *ibid.* at Attachment 1 show that there were 2,197 units of Korean LPT imports in the first half of 2023 for the total value of \$22.11 million (\$10,063/unit), compared to just 6 units in the same period 2024 for the total value of \$12.42 million (\$2,070,228/unit).

⁹ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at paras 6-7.

¹⁰ *Domestic Producers Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (August 26, 2024) at 3.

¹¹ *Domestic Producers Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (August 26, 2024) at Attachment 1.

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to just \$4.13 million in 2023 once after the Finding was made. However, there was already over \$4.57 million worth of Korean SPT imports in the first half of 2024, more than the entire year's value achieved in 2023.¹²

HD Hyundai does not dispute that Korean LPT imports continue to be material and have increased in 2023-2024 compared to 2019-2022; and that Korean SPT imports increased in 2024 compared to 2023. Instead, HD Hyundai wants the CBSA to compare the current levels of imports to the period when the normal values were outdated (LPTs) or non-existent (SPTs). Viewed in this light, the proposition that there has “not {been} an increase in the volume of LPT exports over the course of 2023 and 2024 year-to-date”¹³ *proves* that the normal values have become stale and supports the initiation of an NVR. To this end, the latest StatsCan data covering up to August 2024 show that the value of Korean LPT and SPT imports continues to be significant, standing at approximately \$22.42 million and \$5.83 million respectively for the first eight months of the year.¹⁴

II. SIGNIFICANT CHANGES IN HD HYUNDAI'S PROFITABILITY AND COSTS

According to the CBSA's Memorandum D14-1-8, changes in the selling prices and costs of exporters are factors supporting the initiation of an NVR.¹⁵ This is consistent with the “importance of keeping prospective normal values {and} export prices... up-to-date in order to ensure effective enforcement of the Canadian International Trade Tribunal's (Tribunal) orders and findings.”¹⁶ In this regard, exporters are cautioned that “where there are increases in domestic prices and/or costs... the export prices for sales to Canada should be increased accordingly to ensure that any sale made to Canada is not only above the normal value but at or above selling prices and full costs and profit of the goods in the exporter's domestic market.”¹⁷ Keeping normal values updated with the exporter's home market selling prices and costs, as well as the difference between them, *i.e.*, “reasonable amount for profits,” is thus the core objective of an NVR, which is in turn critical in ensuring that anti-dumping duties are effective.

In this regard, the domestic producers have shown that Korean LPT and SPT producers have experienced significant changes in their home market costs and, importantly, profitability.¹⁸ HD Hyundai does not dispute them but tries to disregard them based on the CBSA's normal value

¹² *Domestic Producers Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (August 26, 2024) at Attachment 1.

¹³ *HD Hyundai's Comments Concerning the Domestic Producers' Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at para 6.

¹⁴ Confidential Attachment 5.

¹⁵ CBSA, *Memorandum D14-1-8: Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)* at paras 12(d), (f) and (g).

¹⁶ CBSA, *Memorandum D14-1-8: Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)* at para 1.

¹⁷ CBSA, *Memorandum D14-1-8: Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)* at para 29.

¹⁸ *Domestic Producers Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (August 26, 2024) at Sections C and D.

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reporting methodology used with respect to LPTs and SPTs.¹⁹ This argument fails for the following reasons.

First, notwithstanding that HD Hyundai may be required to report its material, labour and overhead costs for determining the product specific normal values for each importation, such normal values would still be outdated insofar as the reasonable amount for profit used to construct the normal values under paragraph 19(b) of the *Special Import Measures Act* (“SIMA”) is outdated. In their request, the domestic producers have shown that HD Hyundai’s profitability improved from an operating loss in 2019 to a breaking even point in 2021 and to an operating margin of nearly 20 percent by 2023 and first half 2024.²⁰ This is not disputed by HD Hyundai.

Second, reporting requirements cannot substitute the CBSA’s investigation and verification. As such, notwithstanding that HD Hyundai may be reporting its costs to the CBSA, the CBSA should still investigate and verify HD Hyundai’s data through an NVR, including the methodologies HD Hyundai used to allocate certain costs. Such an investigation/verification is especially important when a company undergoes a change, such that previously verified costing methodologies may no longer be appropriate. In HD Hyundai’s case, its first half 2024 report shows that it is currently undertaking a major investment of approximately KRW 55 billion to its transformer production facility at the Ulsan plant to increase production capacity, comprised of: an investment of over KRW \$16 billion to upgrade the 300 kV transformer production line; an investment of approximately KRW 12 billion to establish transformer core manufacturing equipment; and an investment of over KRW 27 billion for the transformer core factory.²¹ According to a recent report, HD Hyundai completed construction of a *new transformer core factory on October 27, 2024* and held an opening ceremony. Through this construction, the core production lines that were previously scattered across the Ulsan plant are expected to be relocated to the new factory, and the existing core workshop is to be used for transformer assembly. In so doing, HD Hyundai expects to increase production thereby increasing its annual sales to approximately KRW 140 billion.²² This appears to be a major investment that has a significant impact on HD Hyundai’s production and costs.

Given the foregoing, the changes in HD Hyundai’s profitability and costs are not “irrelevant;”²³ they are critical in order to ensure that anti-dumping duties are fully effective.

¹⁹ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at paras 11-13.

²⁰ *Domestic Producers Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (August 26, 2024) at 6-7.

²¹ Non-Confidential Attachment 6.

²² Non-Confidential Attachment 7.

²³ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at para 13.

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III. ONGOING APPEAL AND INJURY EVIDENCE ARE NOT RELEVANT

HD Hyundai makes two additional arguments that are not related to the factors listed in D14-1-8 at paras 12(a) to (o): that an NVR would be premature due to an “ongoing appeal” before the Tribunal;²⁴ and that the domestic producers have not provided “any allegations of lost business, decreased sales margins, or any other form of financial injury caused by {HD Hyundai’s} exports to Canada.”²⁵ Both of these claims are misplaced.

First, an ongoing appeal does not prevent an NVR and/or other enforcement actions. This is clearly evident from the fact that HD Hyundai offers no basis for making this claim. The CBSA has previously carried out enforcement actions while appeals were pending. For example, in 2020, Hyundai Canada Inc. (“HCI”) and Remington Sales Co. (“Remington”) each appealed the CBSA’s export price determination in TR 2018 UP 01. The Tribunal’s decisions were rendered on May 12, 2022,²⁶ which were subsequently appealed to the Federal Court of Appeal, whose judgement was delivered on February 2, 2024.²⁷ While the appeals were pending, the CBSA conducted an export price review of imports of LPTs exported by HD Hyundai’s predecessor.²⁸

Nor does HD Hyundai’s position make much sense. By HD Hyundai’s logic, an appeal would bar any enforcement action, potentially allowing continuation of dumping and irreversible injury to the domestic industry, which undermines anti-dumping protection. If this were to be followed in the example above, had further appeal been made to the Supreme Court and/or the WTO dispute settlement mechanism by the Government of Korea, HCI and Remington’s appeals could have barred the CBSA from taking an enforcement action for many years, likely well over the five year time limit for an anti-dumping duty unless the duty is extended (as noted above, the last appeals concerning HD Hyundai’s predecessor’s exports to Canada took over four years to resolve by the Tribunal and the Federal Court of Appeal).²⁹ HD Hyundai’s position results in an absurd result and should thus be rejected. To argue that CBSA enforcement should be on hold for this entire period simply encourages exporters and importers to file appeals to delay for extended periods of time any CBSA action against them. To the extent that an appeal results in any changes that should apply to enforcement action that took place while the appeals were underway, *SIMA*

²⁴ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at para 14.

²⁵ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at para 18.

²⁶ *Hyundai Canada Inc. v. President of the Canada Border Services Agency* (May 12, 2022), EA-2019-008 and EA-2019-010 (CITT); *Hyundai Heavy Industries (Canada) d.b.a. Remington Sales Co. v. President of the Canada Border Services Agency* (May 12, 2022), EA-2019-009 (CITT).

²⁷ *Hyundai Canada Inc. v. President of the Canada Border Services Agency and Hitachi Energy Canada Inc.* (February 2, 2024), A-162-22 and A-163-22, 2024 FCA 25 (CanLII) (FCA).

²⁸ *TR 2023 UP1: Liquid dielectric transformers – Conclusion of export price review* (February 8, 2022), TR 2023 UP 1 (CBSA).

²⁹ *Hyundai Heavy Industries (Canada) d.b.a. Remington Sales Co. v President of the Canada Border Services Agency* (May 12, 2022), EA-2019-009 (CITT) at para 10; *Hyundai Canada Inc. v. President of the Canada Border Services Agency and Hitachi Energy Canada Inc.* (February 2, 2024), A-162-22 and A-163-22, 2024 FCA 25 (CanLII) (FCA).

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paragraph 59(1)(d) allows the CBSA to re-determine any imports “at any time, for the purpose of giving effect to a decision of the Tribunal, the Federal Court of Appeal or the Supreme Court of Canada with respect to the goods.”³⁰

Second, HD Hyundai’s criticism regarding the lack of injury evidence is fundamentally flawed. The purpose of an anti-dumping duty is to offset the margin of dumping so as to “provide help to Canadian producers who face unfair foreign competition in the Canadian market place.”³¹ As such, it is hardly surprising the anti-dumping duty has mitigated the full extent of the injury caused by dumped Korean imports.

However, given that the Canadian anti-dumping system is based on prospective normal values, it is incumbent upon the CBSA to “keep{ } protective normal values {and} export prices... up-to-date in order to ensure effective enforcement of the {Tribunal’s} orders and findings.”³² This is why the CBSA examines the conditions that could reasonably have an impact on the normal values and export prices, such as the volume of subject imports, the elapsed time since values were last issued, and changes in the selling prices/costs of the exporters³³ as discussed in the domestic producers’ request. Thus, “economic harm due to inadequate normal values” is precisely what the CBSA intends to *prevent* by initiating an NVR, not a prerequisite for initiating one as HD Hyundai suggests.³⁴

For the reasons elaborated above, the domestic producers respectfully submit that the CBSA should initiate an NVR of HD Hyundai’s normal values and export prices for LPTs and SPTs.

Sincerely yours,



Hugh Seongseok Lee
Cassidy Levy Kent (Canada) LLP

³⁰ *Special Import Measures Act*, RSC 1985 c S-15, s 59(1)(d).

³¹ *SIMA Handbook* (April 18, 2024) at 1.

³² CBSA, *Memorandum D14-1-8: Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)* at para 1.

³³ CBSA, *Memorandum D14-1-8: Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)* at para 12.

³⁴ *HD Hyundai’s Comments Concerning the Domestic Producers’ Request for a Normal Value and Export Price Review of LPTs and SPT from Korea* (September 27, 2024) at para 18.