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16 May 2014

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 the Visit Report**

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 ADC's Revised Calculation and Visit Report.

Hyosung asks that the ADC first consider the requested changes contained in this submission prior to publishing the Visit Report on the public file. It is for this reason that Hyosung is not yet in a position to provide its version for the public file and retains its right to make the necessary redactions to the Visit Report once it has received the ADC's response to this submission.

Please note that this submission does not exclude further comments made throughout the Investigation.

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

We are instructed that Hyosung has reviewed the ADC's Calculation and Visit Report and is of the view that the revised dumping margin has been mistakenly calculated on the following basis.

- (a) The date of the exchange rate used for each of the contracts referred to in the Exporter Questionnaire should not be the date of the contract for each of the contracts but the date that each aspect of the sale is realised in Hyosung's accounting system. This is the most accurate reflection of the material terms of sale for each of the contracts.
- (b) The exchange rates used to convert figures from KRW to AUD and USD should be that published by the Bank of Korea and not that adopted by the ADC.

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- (c) The amount of duty drawback refunded for the materials used in the export sales contract should be accounted for as a negative expense in the export sales calculation as this cost relates only to export sales.
- (d) All of Hyosung's domestic sales submitted should be included in calculating the normal value as only **[redacted – commercial information]** of these sales were made at a loss. Therefore, the required 20% of sales made at a loss (to consider those sales to not have been made in the ordinary course of trade) is not met.

Accordingly, Hyosung requests that the ADC accommodate the above requests and make the corresponding changes to the Revised Calculation.

Further, Hyosung requests that the ADC adequately address in the Visit Report the matters Hyosung raised in the Visit Submission. In particular, the ADC has not adequately addressed Hyosung's position with respect to the matters relating to material injury.

2. Net invoice value and exchange rate

2.1 Issues raised in the Visit Report

The Visit Report explains that in its export sales spreadsheet attached to the Exporter Questionnaire, Hyosung:

- (a) used a different date for each of the exports to establish the rate of exchange for conversion of currencies; and
- (b) used different methods for determining the appropriate rate of exchange for each of the exports.

The Visit Report states that Hyosung explained at the verification visit that it had taken out forward exchange contracts for its exports, but it did not provide sufficient information in relation to this, as required by section 269TAF(2) of the Act. Further, Hyosung's methods in relation to paragraph 2.1(b) above, according to the ADC, did not appear to address the issue of when material terms of sale were established.

As a result, the ADC considers it appropriate to use the rate of exchange on the date of the contract, when the parties agreed to the terms and conditions of the sale.

2.2 Hyosung's approach

Hyosung reported the exact net invoice value in KRW of each sales value of each of the three relevant contracts that was recorded in its accounting system. This information was shown to the ADC in the sales ledger provided during the verification visit.

This is consistent with the instructions provided in the Exporter Questionnaire, which in Section B, requested that the following be provided by Hyosung:

Column heading	Explanation
Gross invoice value	gross invoice value shown on invoice in the currency of sale, excluding taxes.

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Invoice currency	the currency used on the invoice
Exchange rate	Indicate the exchange rate used to convert the currency of the sale to the currency used in your accounting system
Net invoice value in the currency of the exporting country	the net invoice value expressed in your domestic currency as it is entered in your accounting system

Hyosung reported [redacted – commercial information] projects (through [redacted – commercial information] contracts) of exports of the GUC to Australia during the Investigation Period for [redacted – customer information].

(a) Date of exchange rate

The ADC will see in the spreadsheet entitled "Net Invoice Value Summary" at "**Appendix 1**" that each of the contracts were broken down into separate invoices for separate aspects or stages of the sale.

With the exception as explained in paragraph 2.5, Hyosung used the sale date, which is the date that the sale was realised in its accounting system for each of the different invoices to determine the date of the exchange rate.

This is the most appropriate date to reflect an accurate conversion of currencies. The price is fixed in the foreign currency on the date that the contract is executed. The sale date is the first date that Hyosung's system converts that price from the fixed currency amount to KRW. Therefore, this is the date and exchange rate that best reflects the material terms of sale (specifications, quantity and amount in foreign currency), as required by section 269TAF of the Act.

Further, in order to accurately compare the domestic price, the domestic contracts should be considered when the same currency value (KRW) is fixed. The first time that the KRW is fixed for both domestic and export sales is the date that the sale is realised in Hyosung's accounting system.

Section 269TAF of the Act also provides that currency conversion can be applied where the export price is reported in a different currency from the corresponding normal values. However, where the export price and normal value are submitted in the same currency (as is the case here), Hyosung contends that there is no need to convert the currencies from "gross invoice value shown on invoice" into "the net invoice value expressed in your domestic currency as it is entered in your accounting system".

Therefore, the most accurate comparison between export sales and normal values will be realised by not converting the currencies at all, or alternatively by using the date that the sale is realised in Hyosung's accounting system for the date of the exchange rate.

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(b) Different methods of calculating the exchange rate

Hyosung used the official exchange rate published by the Bank of Korea for each of the dates of sale referred to in **Appendix 1**. These official rates are ordinarily applied to all Korean Companies including Hyosung. Please see the spreadsheet entitled "Exchange rate published by Bank of Korea" at "**Appendix 5**", which shows the exchange rates between Korean Won and UDS and AUD from 1 March 2010 until 31 December 2013.

As mentioned in paragraph 2.2(a) above, Hyosung contends that the sales value in Korean Won recorded in its accounting system is the **net realised revenue** and should be compared to the normal value. As the normal value is calculated based on cost of production denominated by KRW, to make a fair comparison of export price and normal value, ADC should use net invoice value realised in 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.

We have explained these two issues further in relation to each of the contracts in the following paragraphs.

2.3 Export sales to [redacted – customer information]

Hyosung provided the sales ledger to the ADC during the verification visit which is enclosed in **Appendix 2**. This shows the net sales value of the **[redacted – commercial information]** different invoices that formed the sale to **[redacted – customer information]** in both Korean Won and USD. The sales ledger in **Appendix 1** also shows the dates on which the sales were realised in Hyosung's accounting system for each of the invoices that the ADC can cross-reference with the date for the relevant exchange rate used in **Appendix 5**.

Hyosung contends that the ADC's revised calculation of the net invoice value (**[redacted – commercial information]**) using the exchange rate on the date of the contract (**[redacted – commercial information]**) is an unfair reflection of the amounts received by Hyosung to establish the export price and should be rectified to reflect the original date Hyosung used, the sale date.

The exchange rate used by the ADC in relation to the date of contract (that being **[redacted – commercial information]**) differs from the official exchange rate set by the Bank of Korea on **[redacted – commercial information]** (as shown in **Appendix 5**). No explanation is given as to where this rate has been obtained.

2.4 Export sales to [redacted – customer information]

Hyosung provided the sales ledger to the ADC during the verification visit demonstrating the dates of sale for the different invoices for the sale to **[redacted – customer information]**, as shown in the spreadsheet entitled "Extract from the verification visit "Export to Aus. Sample #2 Project No.: **[redacted – commercial information]**" at "**Appendix 3**".

Hyosung realised these sales in 2011 and 2012. As shown in **Appendix 1** and **Appendix 3**, the total contract amount for subject Power Transformer (**[redacted –**

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commercial information]) consists of the main body (**[redacted – commercial information])** and the installation service (**[redacted – commercial information])**).

Hyosung reported the net invoice value and the exchange rate for the main body and installation service using Korean Won and AUD on the two separate days that the AUD for each of these invoices was first converted to KRW in Hyosung's accounting system. Hyosung has also calculated the weighted average exchange rate for these two invoices in **Appendix 1**.

Hyosung contends that the ADC's revised calculation of the net invoice value (**[redacted – commercial information])** using the exchange rate on the date of the contract (**[redacted – commercial information])** is an unfair reflection of the amounts received by Hyosung to establish the export price and should be rectified to reflect the original date Hyosung used, the sale date.

The exchange rate used by the ADC in relation to the date of contract (that being **[redacted – commercial information])** differs from the official exchange rate set by the Bank of Korea **[redacted – commercial information])** (as shown in **Appendix 5**). No explanation is given as to where this rate has been obtained.

2.5 Export sales to **[redacted – customer information]**

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". Accordingly, Hyosung converted the amount of the contract value in AUD to KRW using the exchange rate for the contract date.

As shown in **Appendix 1** and in the spreadsheet entitled "Extract from the verification visit "Export to Aus. Sample #3 Project No.: **[redacted – commercial information]**).

Hyosung contends that the exchange rate converting KRW to USD used by the ADC for the **[redacted – commercial information]** using the exchange rate of **[redacted – commercial information]** is incorrect. The rate should be **[redacted – commercial information]**, as provided by the Bank of Korea and evidenced in **Appendix 5**. Again, the ADC has not yet provided an explanation as to where this rate has been obtained.

Further, **[redacted – commercial information]** (as shown on pages 18 and 19 of Appendix 4).

Accordingly, Hyosung used different exchange rates for the corresponding dates, in accordance with the rates provided by the Bank of Korea in **Appendix 5**.

Hyosung believes that this is the most accurate way to report the "net invoice value in the currency of the exporting country" of those two contracts, as required by the Exporter Questionnaire and the Act.

3. Unfair Adjustment in Export Sales and Normal Value.

3.1 Installation expense

The Visit Report provided that the ADC has calculated the export price at the FOB level and constructed a normal value.

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In calculating the domestic sales, the ADC subtracted the CTMS from the net invoice value and calculated the profit as **[redacted – commercial information]**, without considering any adjustments, such as deducting the installation expenses.

Certain domestic transactions have installation expense due to the delivery terms under the contract as “Delivered and Installed”, others do not. However, ADC did not deduct the installation expense in calculating the profit ratio.

When calculating the FOB export price, the ADC deducted installation expense using the following formula:

- FOB Export price = Net invoice value - Ocean freight - Marine insurance
(For CIF term)
- FOB Export price = Net invoice value - Ocean freight - Marine insurance
- *Installation expense* - Other costs (Import duties)
- Other costs (Inland freight in AUS)
(For DDP term)

The ADC deducted installation expense in the export price calculation resulting in an unfair comparison between the constructed normal value and export price.

3.2 Duty Drawback

Duty drawback should be accounted for as a negative expense in the calculation of the FOB export price as Hyosung has received refunded duty drawback when it has used imported materials and then exported the final product.

As contained in the material provided during the verification visit and in the document entitled "Duty Drawback Application - Extract from verification visit for each project" at **Appendix 6**, Hyosung requested and refunded duty drawback for each of the relevant contracts. As this cost relates only to export sales, it should be considered as a post-exportation cost and be included as an adjustment for export price.

Hyosung provided all relevant documents related to the calculation of the duty drawback during the verification visit and it is also provided in **Appendix 6**.

4. Ordinary Course of Trade

The Visit Report provides that where a domestic transaction was found to have been sold at a loss, it is not considered to be in the ordinary course of trade.

Section 269TAAD of the Act provides that sales made at a loss (in that the goods are sold at a price that is lower than the cost of such goods) are not considered to be in the ordinary course of trade if those sales over an extended period of time are not less than 20% of the total volume of sales during that period.

Most of Hyosung's power transformers were produced after the relevant contracts were executed. Therefore, for unexpected reasons (for example increase of raw material, increase of exchange rate in purchase of import of raw material, increase of fabrication cost due to various reason), over the duration of the contract, the costs may increase above that originally anticipated for reasons outside of Hyosung's control.

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Accordingly, [redacted – commercial information] domestic sales contracts submitted in the Exporter Questionnaire were sold at a loss. Therefore, as the domestic sales at a loss amount to [redacted – commercial information] of the total volume of sales, all of the domestic sales (even those sold at a loss) should be included in calculating the constructed normal value and profit ratio.

5. Material injury

Hyosung also maintains its position (as mentioned in our previous submissions to the ADC on behalf of Hyosung dated 11 September 2013, 17 October 2013, 16 January 2014 and in the Visit Submission) that here is insufficient evidence of causation and no ample evidence of material injury having been suffered by the Applicant.

Hyosung asks that these issues be adequately addressed in the Visit Report, or alternatively in the SEF.

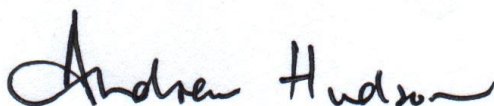
6. Right of review

Should the ADC fail to take into consideration the issues identified above and if the Parliamentary Secretary ultimately publishes a dumping duty notice in accordance with section 269TG of the Act that Hyosung believes is inaccurate due to a failure to take into account these issues, Hyosung reserves all rights to seek a review of that decision.

The mistakes identified in this letter affect Hyosung's dumping margin rate significantly. Therefore, Hyosung requests that the ADC review the Revised Calculation imposed on Hyosung and make the suggested alterations.

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

Yours faithfully
Hunt & Hunt



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Appendix

- 1 Spreadsheet entitled "Net Invoice Value Summary". (CONFIDENTIAL)**
- 2 Extract from the verification visit "Export to Aus. Sample #1 Project No.: [redacted – commercial information]". (CONFIDENTIAL)**

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- 3 **Extract from the verification visit "Export to Aus. Sample #2 Project No.: [redacted – commercial information]". (CONFIDENTIAL)**
- 4 **Extract from the verification visit "Export to Aus. Sample #3 Project No.: [redacted – commercial information]". (CONFIDENTIAL)**
- 5 **Exchange rate published by Bank of Korea. (CONFIDENTIAL)**
- 6 **Duty Drawback Application - Extract from the verification visit for each project. (CONFIDENTIAL)**

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Schedule of Definitions

- (a) "**Act**" means the *Customs Act 1901*.
- (b) "**ADC**" means the Anti- Dumping Commission.
- (c) "**Applicant**" or "**Wilson**" means Wilson Transformer Co Pty Ltd being the applicant for the measures.
- (d) "**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.
- (e) "**AUD**" means the Australian dollar.
- (f) "**CTMS**" means the cost to make and sell as provided for in the Visit Report.
- (g) "**Exporter Questionnaire**" means Hyosung's response to the exporter questionnaire submitted to the ADC on 16 October 2014.
- (h) "**GUC**" means those Power Transformers the subject of the Application.
- (i) "**Investigation**" means the investigation by the ADC in response to the Application.
- (j) "**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.
- (k) "**Korea**" means the Republic of Korea.
- (l) "**KRW**" means Korean Won.
- (m) "**Power Transformers**" means power transformers as described in the Application, the ADN and the Consideration Report.
- (n) "**Revised Calculation**" means the spreadsheet containing the revised calculation of Hyosung's dumping margin, provided to Hyosung on 17 April 2014.
- (o) "**SEF**" means the statement of essential facts in relation to the Investigation to be published on 16 July 2014.
- (p) "**USD**" means the United States dollar.
- (q) "**Visit Report**" means the draft Exporter Visit Report for Hyosung, provided to Hyosung on 28 April 2014.
- (r) "**Visit Submission**" means the submission made by Hyosung during the verification visit dated 21 February 2014.