



Canada Border
Services Agency

Agence des services
frontaliers du Canada

4214-35
AD/1395

OTTAWA, August 7, 2012

STATEMENT OF REASONS

Concerning the preliminary determination with respect to the dumping of

**CERTAIN LIQUID DIELECTRIC TRANSFORMERS
ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF KOREA**

DECISION

Pursuant to subsection 38(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made a preliminary determination of dumping on July 23, 2012, respecting the alleged injurious dumping of liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Korea.

Cet énoncé des motifs est également disponible en français.
This Statement of Reasons is also available in French.

Canada

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SUMMARY OF EVENTS

[1] On March 2, 2012, the Canada Border Services Agency (CBSA) received a written complaint from ABB Inc. (ABB) of Varennes, Quebec, and CG Power Systems Canada Inc. (CG) of Winnipeg, Manitoba (the complainants), alleging the injurious dumping into Canada of certain liquid dielectric transformers originating in or exported from the Republic of Korea (Korea).

[2] On March 23, 2012, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainants that the complaint was properly documented. The CBSA also notified the government of Korea that a properly documented complaint had been received.

[3] The complainants provided evidence to support the allegations that certain liquid dielectric transformers from Korea have been dumped. The evidence also disclosed a reasonable indication that the dumping has caused injury and is threatening to cause injury to the Canadian industry producing these goods.

[4] On April 23, 2012, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated an investigation respecting the dumping of certain liquid dielectric transformers from Korea.

[5] Upon receiving notice of the initiation of the investigation, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence disclosed a reasonable indication that the alleged dumping of certain liquid dielectric transformers from Korea has caused injury or retardation or is threatening to cause injury to the Canadian industry producing the goods. On June 22, 2012, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping of certain liquid dielectric transformers from Korea has caused injury or is threatening to cause injury.

[6] On July 23, 2012, as a result of the CBSA's preliminary investigation and pursuant to subsection 38(1) of SIMA, the President made a preliminary determination of dumping with respect to certain liquid dielectric transformers originating in or exported from Korea.

[7] On July 23, 2012, pursuant to subsection 8(1) of SIMA, provisional duty was imposed on imports of dumped goods that are of the same description as any goods to which the preliminary determination applies, and that are released during the period commencing on the day the preliminary determination was made and ending on the earlier of the day on which the President of the CBSA causes the investigation to be terminated pursuant to subsection 41(1) of SIMA or the day the Tribunal makes an order or finding pursuant to subsection 43(1) of SIMA.

PERIOD OF INVESTIGATION

[8] The period of investigation (POI) covered all subject goods released into Canada from October 1, 2010 to March 31, 2012.

PROFITABILITY ANALYSIS PERIOD

[9] The profitability analysis period (PAP) covered domestic sales and costing information for goods sold from January 1, 2010 to March 31, 2012.

INTERESTED PARTIES

Complainants

[10] The complainants account for a major proportion of the production of like goods in Canada.

[11] The names and addresses of the complainants are:

ABB Inc.
1600 Lionel Boulet Boulevard
Varenes, Quebec J3X 1S4

CG Power Systems Canada Ltd.
101 Rockman Street
Winnipeg, Manitoba R3T 0L7

[12] The only other known producer of the subject goods in Canada is Alstom Grid Canada Inc. (Alstom), located in St. Jean-sur-Richelieu, Quebec. Subsequent to the initiation of the investigation, Alstom was contacted by the CBSA for purposes of requesting information concerning the complaint. Alstom did not respond to the CBSA's request.

Exporters

[13] At the initiation of the investigation, the CBSA identified three potential exporters of the subject goods under investigation based on CBSA import entry documentation and the complaint. An Exporter Request for Information (RFI) was sent to each party. Two of the exporters were located in Korea, while the third was located in the United States of America (US).

[14] The investigation revealed that during the POI, 100% of the subject imports had been shipped to Canada by the two Korean exporters. The subject goods believed to have been exported by the US company were in fact Korean origin goods that had been transshipped through the US and incorrectly declared as being exported from the US.

[15] The CBSA received responses to the Exporter RFI from both Korean exporters: Hyosung Corporation (Hyosung) and Hyundai Heavy Industries Co., Ltd. (HHI). These submissions were considered sufficiently complete for purposes of the preliminary determination.

Importers

[16] At the initiation of the investigation, the CBSA identified two potential importers of the subject goods under investigation based on CBSA import entry documentation and an Importer RFI was sent to each party. Shortly thereafter, an additional importer was identified and an Importer RFI was forwarded to this company.

[17] The CBSA received responses to the Importer RFI from all three importers: HICO America Sales & Technology Inc. (HICO), Hyundai Canada Inc. (HC) and Remington Sales Co. (Remington). Remington is also known as Remington Sales Co., Remington Transport and Hyundai Heavy Industries Canada. These submissions were considered sufficiently complete for purposes of the preliminary determination.

Consignees

[18] At the initiation of the investigation, the CBSA identified five potential consignees of the subject goods under investigation and a Consignee RFI was sent to each party. The consignee is named on the customs documentation and is the company in Canada to which the subject goods were shipped.

[19] The CBSA received responses to the Consignee RFI from three out of the five companies: ATCO Electric Ltd., BC Hydro and Power Authority and Hydro One Networks Inc.

[20] Additional consignees were identified during the preliminary investigation. These parties were notified of the preliminary determination of dumping and requested to respond to the Consignee RFI for the final phase of the investigation.

PRODUCT INFORMATION

Product Definition

[21] For the purpose of this investigation, the subject goods are defined as:

Liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Korea.

Liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (KVA) (60 megavolt amperes (MVA)), whether assembled or unassembled, complete or incomplete, will hereafter be referred to as Power Transformers.

Additional Product Information

[22] Power Transformers are used to increase, maintain or decrease electric voltage in high voltage transmission and distribution systems. Incomplete Power Transformers are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of the Power Transformer. The active part of the Power 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 and/or the mechanical frame for a Power Transformer.

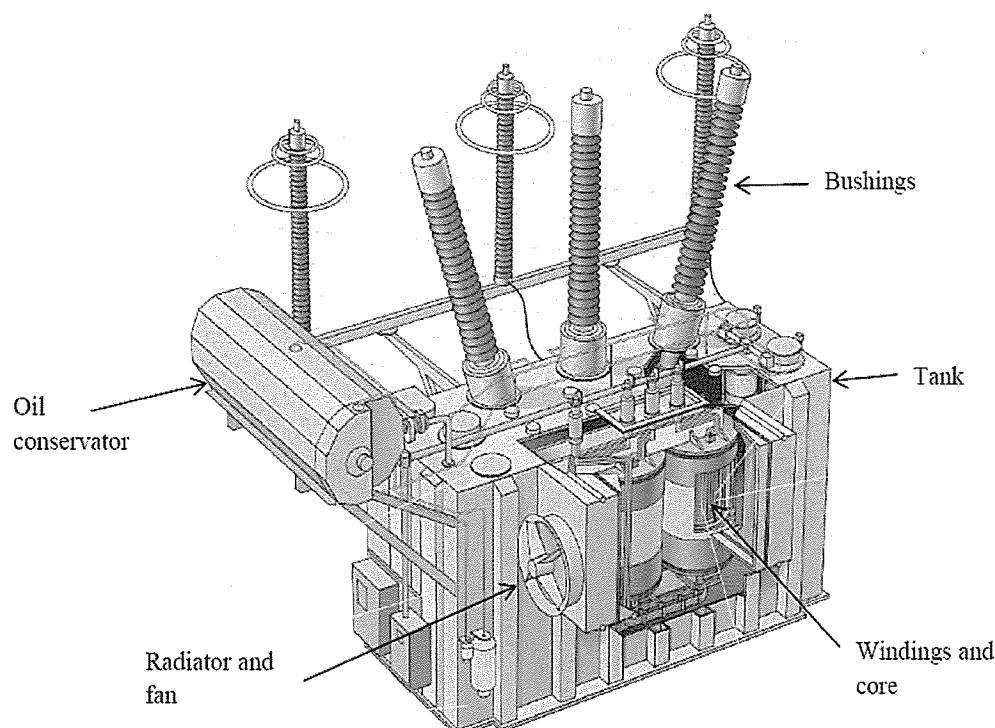
[23] The product definition encompasses all Power Transformers regardless of name designation, including but not limited to: step-up transformers, step-down transformers, auto-transformers, interconnection transformers, voltage regulator transformers, high voltage direct current transformers and rectifier transformers.

Description of the Subject Goods

[24] Power Transformers are capital goods that are made to order from a customer's specifications based on the customer's particular needs. Power Transformers use electromagnetic induction between circuits to increase, decrease or transfer the output voltage levels being transmitted. Induction occurs when the electromagnetic field caused by electricity moving through a conductor crosses a second electrical conductor and generates a voltage in the second conductor even though the two conductors are not directly connected. This requires a fluctuating magnetic field generated by alternating current entering into an input conductor.

[25] Power Transformers all share certain basic, key physical characteristics. All Power Transformers have at least one active part where the electromagnetic induction occurs. This consists of a core, winding, electrical insulation between the windings and a clamping system to hold the internal assembly together. The internal assembly is placed into a metal tank that is filled with a cooling media and has a cooling system attached. A diagram showing the major components of a Power Transformer follows:

Figure 1: Power Transformer Showing Major Components



[26] The core is made of silicon steel and is laminated with an inorganic coating. The silicon steel is layered in pieces and shaped into the legs and yokes of the core. Cores typically consist of two, three, four or five legs depending on the number of phases, capacity and transport restrictions.

[27] Upon the core are windings made of copper conductor covered in insulation paper and/or enamel coating to insulate the turns from one another. They provide both electrical power input and output. There are typically windings for each voltage level and there can also be one or more windings for voltage regulation. Winding can be done through layer winding, helical winding, disc winding or interleaved disc winding. The winding method employed depends on the capacity, voltage and tap range of each Power Transformer as specified by the customer.

[28] The core and winding are placed in a tank, which protects the active parts of the Power Transformer. The tank must be strong enough to withstand an internal pressure of a full vacuum and external factors such as weather. The tank is usually filled with fluid (typically, oil) for cooling and insulation. The size of the tank varies depending on the size of the core, number of windings and type of regulation, which itself is a function of the energy being transformed and customer specification.

[29] All Power Transformers possess a cooling system which ensures that heat is dissipated and prevents exceeding the specified temperature rise in the Power Transformer. The cooling method is determined by the customer's requirements and use. Power Transformers can employ several different cooling systems including: natural oil cooling/natural air cooling, natural oil

cooling/forced air cooling, forced oil cooling/forced air cooling, directed oil cooling/forced air cooling, and forced oil cooling/forced water cooling.

Production Process of the Subject Goods

[30] Regardless of the customized configuration, all Power Transformers follow the same basic production process. Assuming there is no order backlog, the process can take anywhere from several to 12 months from order to delivery, depending on the size of the Power Transformer. Larger Power Transformers typically take a much longer time to produce than smaller Power Transformers. Power Transformer production involves a number of key steps: design, core fabrication, coil fabrication, coil-and-core assembly, tanking, testing and delivery.

[31] The first step in the production process is the design of the Power Transformer. As a customized product, engineers must set out the electrical and mechanical design of the Power Transformer, subject to customer approval. The engineer prepares mechanical drawings, detailed and transport drawings, schematics control designs, cabling diagrams and control cabinet diagrams.

[32] After the design phase, the manufacturing phase begins. The first step in the manufacturing phase is creating the core of the Power Transformer. The core is made by cutting laminated electrical steel sheets and stacking them one upon the other in a well-defined way. The stacked sheets are then pressed together and positioning equipment is used to set the core in an upright position.

[33] The next step is to prepare the windings (coil fabrication). The windings are fabricated from copper wire and covered with insulation paper. They are dried to eliminate all moisture content. The particular winding method employed can vary depending on the particular Power Transformer design.

[34] The windings are then placed over the core and the necessary connections are made. The optimum design of the core-coil assembly is achieved by considering the required technical particulars, including cooling, size, compactness and tapping arrangement. After assembly, the core-winding assembly is dried a second time to eliminate any moisture.

[35] The core-coil assembly is then lowered into a steel tank and bolted in place. The tank is usually painted inside and out to prevent corrosion and is equipped with a cooling system. The cooling system is specified by the customer to meet its requirements.

[36] After the manufacturing steps are complete, the Power Transformer is subjected to rigorous testing in accordance to the applicable standards defined by the customer before it is sent for delivery to the customer.

Classification of Imports

[37] The subject goods are usually classified under the following Harmonized System (HS) classification code:

8504.23.00.00

Unassembled or incomplete subject goods may also be imported under the following HS codes:

8504.90.90.10

8504.90.90.82

8504.90.90.90

[38] These HS codes are for convenience of reference only. The HS codes listed may include non-subject goods. Also, subject goods may fall under HS codes that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

CANADIAN INDUSTRY

[39] As previously stated, the complainants account for the major proportion of the production of like goods in Canada. The only other known producer is Alstom.

[40] ABB and CG are both global manufacturers of power technologies. ABB's global head office is located in Zurich, Switzerland, its Canadian head office is located in Ville St-Laurent, Quebec, and its plant is located in Varennes, Quebec. CG's global head office is located in Mumbai, India, and its Canadian division is located in Winnipeg, Manitoba.

[41] There are no producer-only associations that represent manufacturers of Power Transformers in Canada. There is, however, an industry association, known as the Electrical Equipment Manufacturers Association of Canada (EEMAC),¹ which includes not only Canadian manufacturers of Power Transformers but also a number of Korean importers of Power Transformers. EEMAC also includes producers of electronics, appliances and telecommunications products, such as wire and cable, motors, generators and electric heating.

¹www.eemac.ca

IMPORTS INTO CANADA

[42] The CBSA estimated total imports of Power Transformers using its internal import entry documentation. The following table provides these estimates by percentage of volume.

Country	2009	2010	2011	Jan. 1- Mar. 31, 2012
Korea	33.3%	38.8%	28.9%	27.3%
Other Countries	66.7%	61.2%	71.1%	72.7%
Total	100%	100%	100%	100%

[43] During the POI, imports of the subject goods from Korea represented 30.1% of the total imports.

[44] Import statistics will continue to be reviewed and refined during the final phase of the investigation.

INVESTIGATION PROCESS

[45] During the preliminary phase of the investigation, information was requested from all known and potential exporters, importers and consignees, concerning subject goods released into Canada during the POI.

[46] After reviewing the exporters' and importers' responses to the RFIs, supplemental RFIs were sent to each of the responding parties to clarify information provided in the submissions.

[47] The preliminary determination is based on the information available to the President at the time of the preliminary determination.

[48] During the final phase of the investigation, the submissions of the exporters will be verified on-site by CBSA officers. The results of these verifications will be taken into consideration for the President's final decision.

DUMPING INVESTIGATION

Normal Value

[49] For purposes of the preliminary determination, normal values are generally estimated based on the domestic selling prices of like goods in the country of export or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits.

Export Price

[50] Export price of the goods sold to the importers in Canada is generally estimated based on the lesser of the adjusted exporter's selling price or the adjusted importer's purchase price. These prices are adjusted, where necessary, by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods. Where there are sales between associated persons and/or a compensatory arrangement exists, the export price is estimated based on the importer's resale price of the imported goods in Canada to unrelated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs included in the resale price that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the average industry profit in Canada.

Summary of Preliminary Results of the Dumping Investigation

[51] The CBSA estimated the margin of dumping at the preliminary determination by comparing the estimated total normal value with the estimated total export price. When the total export price was less than the total normal value, the difference was the margin of dumping.

[52] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. If it was determined that a given exporter had dumped the subject goods on an overall or net basis, the total quantity of that exporter's exports (i.e., 100%) was considered to have been dumped. Similarly, if a given exporter's net aggregate dumping result was zero, then the total quantity of that exporter's exports was considered not to have been dumped.

[53] In calculating the estimated weighted average margin of dumping, the overall estimated margins of dumping found in respect of each exporter were weighted according to each exporter's volume of the subject goods exported to Canada during the POI.

[54] A summary of the preliminary results of the dumping investigation respecting all subject goods released into Canada during the POI follows.

Country	Estimated Volume of Dumped Goods as Percentage of Country Imports	Estimated Weighted Average Margin of Dumping	Estimated Volume of Country Imports as Percentage of Total Imports	Estimated Volume of Dumped Goods as Percentage of Total Imports
Korea	100%	17.0%	30.1%	30.1%

[55] Based on the preceding, 100% of the subject Power Transformers from Korea were dumped by an estimated weighted average margin of dumping of 17.0%, expressed as a percentage of the export price.

[56] Under subsection 35(1) of SIMA, the President is required to terminate an investigation prior to the preliminary determination if he is satisfied that the margin of dumping of the goods of a country is insignificant or that the volume of dumped goods of a country is negligible. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% is defined as insignificant, whereas a volume of dumped goods from a country forming less than 3% of total imports is considered negligible.

[57] The estimated weighted average margins of dumping of Power Transformers from Korea is above 2% and is, therefore, not insignificant. As well, the volume of dumped goods from Korea is above 3%, and is, therefore, not negligible.

Preliminary Results of the Dumping Investigation by Exporter

[58] Specific details relating to the two exporters that responded to the CBSA's Exporter RFI follow.

Hyundai Heavy Industries Co., Ltd.

[59] HHI is a producer and exporter of Power Transformers to Canada from Korea, its importers in Canada being HC and Remington. HHI also sells goods of the same general category in its domestic market.

[60] The subject goods produced by HHI are custom-made, produced to the specific needs of each of its customers and therefore, there are no domestic sales of like goods. As such, it was not possible to estimate normal values in accordance with the principles of section 15 of SIMA, based on domestic sales of like goods. Normal values were, however, estimated in accordance with the principles of paragraph 19(b) of SIMA, based on an aggregate of the cost of production, administrative, selling and other costs, and an amount for profits. The cost of production was estimated in accordance with paragraph 11(1)(a) of the *Special Import Measures Regulations* (SIMR), based on HHI's unverified cost data associated with the subject goods shipped to Canada. The amount for profit was estimated in accordance with subparagraph 11(1)(b)(ii) of the SIMR, based on HHI's profitable sales of transformers in the domestic market, during the PAP, within the same general category as the subject goods sold to Canada. The amount for administrative, selling and other costs was estimated in accordance with 11(1)(c)(i) of the SIMR, and are attributable to the production and sales of goods in the domestic market.

[61] Since HHI is related to one of its importers, HC, a reliability test was performed to determine whether the estimated section 24 export prices between HHI and HC were reliable as envisaged by SIMA. This test was conducted by comparing the estimated section 24 export prices with the estimated section 25 "deductive" export prices based on the importer's resale prices of the imported goods in Canada to unrelated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that were additional to those

incurred on sales of like goods for use in the country of export, all costs included in the resale prices that were incurred in reselling the goods in Canada (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the average industry profit in Canada. The test revealed that the estimated export prices in accordance with section 24 of SIMA were unreliable and therefore, export prices were estimated in accordance with the principles of section 25. The amount for profit was estimated in accordance with paragraph 22(b) of the SIMR, based on sales of goods of the same general category by vendors in Canada.

[62] Although the other importer, Remington, stated that it is not related to HHI, the evidence indicates that it may not be operating at arm's length with its exporter. Such being the case, a reliability test was performed to determine whether the estimated section 24 export prices between HHI and Remington were reliable as envisaged by SIMA. The test revealed that the export prices estimated in accordance with section 24 were unreliable and therefore, export prices were estimated in accordance with the principles of section 25. The amount for profit was estimated in accordance with paragraph 22(b) of the SIMR, based on sales of goods of the same general category by vendors in Canada. The relationship between Remington and HHI will be further examined during the final phase of the investigation.

[63] The estimated total normal value was then compared with the estimated total export price and this resulted in an estimated weighted average margin of dumping for HHI of 16.9%, expressed as a percentage of the export price.

Hyosung Corporation

[64] Hyosung is also a producer and exporter of Power Transformers to Canada from Korea, its importer in Canada being HICO. Hyosung sells goods of the same general category in its domestic market.

[65] The subject goods produced by Hyosung are also produced to the specific needs of each of its customers. There are no sales in the domestic market of like goods and therefore, normal values were estimated based on the principles of paragraph 19(b) of SIMA, based on an aggregate of the cost of production, administrative, selling and other costs, and an amount for profits. The cost of production was estimated in accordance with paragraph 11(1)(a) of the SIMR, based on Hyosung's unverified cost data associated with the subject goods shipped to Canada. The amount for profit was estimated in accordance with subparagraph 11(1)(b)(ii) of the SIMR, based on Hyosung's profitable sales of transformers in the domestic market, during the PAP, within the same general category as the subject goods sold to Canada. The amount for administrative, selling and other costs was estimated in accordance with 11(1)(c)(i) of the SIMR, and are attributable to the production and sales of the goods in the domestic market.

[66] Since Hyosung is related to its importer, HICO, a reliability test was performed to determine whether the estimated section 24 export prices between Hyosung and HICO were reliable as envisaged by SIMA. The test revealed that the export prices estimated in accordance with section 24 were unreliable and therefore, export prices were estimated in accordance with the principles of section 25. Again, the amount for profit was estimated in accordance with

paragraph 22(b) of the SIMR, based on sales of goods of the same general category by vendors in Canada.

[67] The estimated total normal value was then compared with the estimated total export price and this resulted in an estimated weighted average margin of dumping for Hyosung of 17.4%, expressed as a percentage of the export price.

DECISION

[68] Based on the information available to the President, on July 23, 2012, the President made a preliminary determination of dumping with respect to certain liquid dielectric transformers originating in or exported from the Republic of Korea, pursuant to subsection 38(1) of SIMA. The President also considered that the imposition of provisional duty is necessary to prevent injury from the dumped imports.

REPRESENTATIONS CONCERNING THE IMPOSITION OF PROVISIONAL DUTY

Counsel Representations

[69] On June 11, 2012, counsel for HICO and Hyosung made representations to the CBSA concerning the imposition of provisional duty in the event that the Tribunal made an affirmative preliminary determination of injury and the President of the CBSA made an affirmative preliminary determination of dumping.² On this same date, counsel for HHI, HC and Remington indicated their support for HICO and Hyosung's position.³

[70] Counsel for HICO and Hyosung submitted that, upon making a preliminary determination of dumping, in accordance with subsection 8(1) of SIMA, the President must consider that the imposition of provisional duty is necessary to prevent injury, retardation or threat of injury before it can be imposed. Counsel argued that the imposition of provisional duty is not necessary to prevent injury or threat of injury for the following reasons:

1. "A provisional duty will have no effect on the injury or threat of injury from past sales", as any injury would have occurred at the time of sale, which was well before the provisional period;
2. "A provisional duty will have no effect on injury or threat of injury from new sales of subject transformers during the provisional period", since as a result of the long construction lead times, any sale during the provisional period would result in the importation of the transformer well after the end of the provisional period;
3. "The absence of provisional duty will have no effect on the ability of the domestic producers to prove their allegations of injury or threat of injury", since the injury allegations are tied to the sales and not to the importation of the resulting transformers during the provisional period; and

² CBSA Exhibit 59 (NC)

³ CBSA Exhibit 86 (NC)

4. The absence of provisional duty will not lead to the circumvention of any possible future anti-dumping duty as it would not be possible for importers to import and stockpile the subject goods during the provisional period.

[71] It was further stated that, due to the nature of the products covered under the investigation, the imposition of such duties is fundamentally unfair as the importers and their Canadian customers could not have foreseen the imposition of such a duty at the time of sale nor could they have taken any commercial steps to protect themselves at that time.

[72] Counsel requested that, if a preliminary determination of dumping is made, the President should determine the imposition of provisional duty is not necessary to prevent injury, retardation or threat of injury within the meaning of subsection 8(1) of SIMA and provisional duty will not be imposed.

[73] On June 29, 2012, counsel for the complainants made counter-representations to the CBSA concerning the imposition of provisional duty.⁴ Counsel submitted that, although the terms of subsection 8(1) allow for the President to consider circumstances in which the imposition of provisional duty is unnecessary, no such circumstances exist in this investigation.

[74] Counsel for the complainants argued that the representations made on behalf of HICO and Hyosung are not supported by the record of evidence and that they lack a legal basis under SIMA. It was further argued that the record of evidence shows it would be possible to produce and ship a transformer within the 120-day provisional period. Further, counsel argued that it was for HICO and Hyosung to have provided compelling evidence to demonstrate that circumstances exist in this investigation that render the Tribunal's preliminary determination of injury or threat of injury, to be, for whatever reason, inapplicable during the provisional period. Counsel stated that no such evidence was submitted and requested that the President reject as unfounded the request made on behalf of HICO and Hyosung to forego the imposition of provisional duty in this investigation.

CBSA's Position

[75] The CBSA considers that the imposition of provisional duty is necessary to prevent injury. Such duty was put in place at the preliminary determination of dumping.

[76] While the product under investigation involves a capital good with long production timeframes, the circumstances surrounding the imposition of provisional duty for this investigation are not unique. There have been several investigations in the past involving seasonal goods, such as bicycles, barbeques and footwear, in which orders were placed well in advance of the importations. Likewise, there have been past investigations involving long-term supply contracts. In each of these investigations, the parties involved could not have foreseen the dumping investigation that resulted in the imposition of provisional duty on product that was ordered before the initiation of the investigation. As for whether the imposition of such unforeseeable duties is unfair, subsection 8(1) of SIMA requires the President to impose

⁴ CBSA Exhibit 79 (NC).

provisional duty if he considers them necessary to prevent injury, retardation or threat of injury, which is the case here. There is no possibility for discretion based on contracts made in advance of the imposition of the provisional duty.

[77] Furthermore, contrary to counsel's arguments that provisional duty will have no effect on the injury or threat of injury from past sales, on June 22, 2012, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the alleged dumping has caused injury or is threatening to cause injury to the domestic industry. As part of its analysis, the Tribunal noted that the complainant's financial data for 2012, 2011 and even possibly 2010 may reflect orders made within the POI.⁵ It also found that the allegations of underbidding by the subject goods in relation to specific bid opportunities provides a reasonable indication that the dumping of the subject goods has caused lost sales and/or revenue for the complainants. It went on further to state that, given the considerable amount of time that is required to produce Power Transformers, the domestic industry's financial performance in the near future could be negatively affected by orders that were lost during the POI.

[78] Finally, it should be noted that importers have the option of posting a bond to cover assessments of provisional duty pending the Tribunal's final decision on the question of injury.

[79] For these reasons, the CBSA considers that the imposition of provisional duty is necessary to prevent injury.

IMPOSITION OF PROVISIONAL DUTY

[80] Pursuant to subsection 8(1) of SIMA, provisional duty, payable by the importer in Canada, will be applied to dumped subject goods that are released during the provisional period commencing on the day the preliminary determination is made and ending on the earlier of the day on which the President causes the investigation to be terminated, pursuant to subsection 41(1), or the day on which the Tribunal makes an order or finding.

[81] Provisional duty is based on the estimated margin of dumping, expressed as a percentage of the export price of the goods. **Appendix 1** contains the estimated margin of dumping and the provisional duty payable on the subject goods released from the CBSA on and after July 23, 2012. As previously noted, HHI and Hyosung were the only exporters of the subject goods to Canada during the POI. In the event that subject goods from another exporter are released from customs during the provisional period, provisional duty will be based on the highest amount by which the normal value exceeded the export price on an individual transaction during the POI as estimated for an exporter with a complete submission. The amount of provisional duty payable would be 72.7% of the export price of the goods.

[82] Importers are required to pay provisional duty in cash or by certified cheque. Alternatively, they may post security equal to the amount payable. Importers should contact their CBSA regional customs office if they require further information on the payment of provisional duty or the posting of security. If the importers of such goods do not indicate the

⁵ Tribunal Determination and Reasons at the Preliminary Determination, page 11 (NC).

required SIMA code or do not correctly describe the goods in the import documents, an administrative monetary penalty could be imposed. The imported goods are also subject to the *Customs Act*. As a result, failure to pay duty within the specified time will result in the application of the provisions of the *Customs Act* regarding interest.

TARGETED DUMPING

[83] In the complaint provided to the CBSA, it was suggested that targeted dumping may have occurred, given the nature of the subject goods and the activities of the Korean exporters in the Canadian market.⁶ Accordingly, it was requested that the CBSA gather data to allow for a full examination of this issue.

[84] Targeted dumping is a practice whereby exporters engage in dumping through sales to targeted groups, such as certain purchasers, regions or periods of time. These dumped sales are masked through other sales to non-targeted groups. In these exceptional circumstances, subsection 30.2(2) of SIMA provides that the margin of dumping may be based on a set of export transactions that the President considers relevant.

[85] The CBSA conducted an examination of this issue during the preliminary phase of the investigation. The analysis did not reveal significant variations in prices among purchasers, regions or time periods. Accordingly, for purposes of the preliminary determination, the CBSA is satisfied that targeted dumping did not occur during the POI. This issue will be further reviewed during the final phase of the investigation.

FUTURE ACTION

The Canada Border Services Agency

[86] The CBSA will continue its investigation and the President will make a final decision by October 22, 2012.

[87] If the President is satisfied that the goods were dumped and that the margin of dumping is not insignificant, a final determination will be made. Otherwise, the President will terminate the investigation and any provisional duty paid, or security posted, will be returned to importers.

The Canadian International Trade Tribunal

[88] The Tribunal has begun its full inquiry into the question of injury to the Canadian industry. The Tribunal is expected to issue its finding by November 20, 2012.

[89] If the Tribunal finds that the dumping has not caused injury, retardation, or is not threatening to cause injury, the proceeding will be terminated and all provisional duty collected, or security posted, will be returned.

⁶ CBSA Exhibit 2, NC version of the complaint, pages 39 and 40.

[90] If the Tribunal makes a finding that the dumping has caused injury, retardation or is threatening to cause injury, anti-dumping duty in an amount equal to the margin of dumping will be levied, collected and paid on imports of subject goods.

[91] For purposes of the preliminary determination of dumping, the CBSA has responsibility for determining whether the actual and potential volume of dumped goods is negligible. After the preliminary determination of dumping, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its inquiry in respect of any goods if the Tribunal determines that the volume of dumped goods from a country is negligible.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[92] Under certain circumstances, anti-dumping duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping duty.

UNDERTAKINGS

[93] After a preliminary determination of dumping, exporters may give a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated.

[94] Acceptable undertakings must account for all, or substantially all, of the exports to Canada of the dumped goods. In the event that an undertaking is accepted, the required payment of provisional duty on the goods would be suspended.

[95] In view of the time needed for consideration of undertakings, written undertaking proposals should be made as early as possible and no later than 60 days after the preliminary determination of dumping. Further details regarding undertakings can be found in the CBSA's Memorandum D14-1-9, available online at:
www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-9-eng.html.

[96] SIMA allows all interested parties to make representations concerning any undertaking proposals. The CBSA will maintain a list of interested parties and will notify them should an undertaking proposal be received. Persons wishing to be notified must provide their name, address, telephone, fax, or email address, to one of the officers listed below. Interested parties may also consult the CBSA website noted below for information on undertakings offered in this investigation. A notice will be posted on the CBSA Web site when an undertaking proposal is received. Interested parties have nine days from the date the undertaking offer is received to make representations.

PUBLICATION

[97] A notice of the preliminary determination of dumping will be published in the *Canada Gazette* pursuant to paragraph 38(3)(a) of SIMA.

INFORMATION

[98] This *Statement of Reasons* has been provided to persons directly interested in this proceeding. It is also posted on the CBSA's Web site, in both English and French, at the address below. For further information, please contact the officers identified as follows:

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

Telephone Mary Yarn Donais 613-952-9025
 Ron McTiernan 613-954-7271
 Walid Ben Tamarzizt 613-954-7341

Fax 613-948-4844

Email SIMARegistry@cbsa-asfc.gc.ca

Web site www.cbsa-asfc.gc.ca/sima-lmsi



Caterina Ardito-Toffolo
A/Director General
Anti-dumping and Countervailing Directorate

Attachment

APPENDIX 1

Summary of Estimated Margin of Dumping and Provisional Duty Payable

Exporter	Estimated Margin of Dumping*	Provisional Duty Payable*
Hyundai Heavy Industries Co., Ltd	16.9%	16.9%
Hyosung Corporation	17.4%	17.4%
All Other Exporters of Subject Goods Originating in or Exported from Korea	Not Applicable	72.7%

*As a percentage of export price.