



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Interim Review No. RD-2013-003

Liquid Dielectric Transformers

*Order and reasons issued  
Tuesday, May 31, 2016*

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IN THE MATTER OF an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 20, 2012, in Inquiry No. NQ-2012-001, concerning:

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

**ORDER**

The Canadian International Trade Tribunal, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, conducted an interim review of its finding made on November 20, 2012, in Inquiry No. NQ-2012-001 concerning 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.

Pursuant to paragraph 76.01(5)(a) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the finding without amendment.

Ann Penner

Ann Penner  
Presiding Member

Jason W. Downey

Jason W. Downey  
Member

Daniel Petit

Daniel Petit  
Member

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## STATEMENT OF REASONS

### INTRODUCTION

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 76.01(1) of the *Special Import Measures Act*,<sup>1</sup> conducted an interim review of its finding in Inquiry No. NQ-2012-001 (*Transformers NQ*) concerning 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 (the subject goods).
2. The Tribunal initiated the interim review in order to determine if its finding was impacted by the new final determination of dumping in respect of the subject goods issued by the President of the Canada Border Services Agency (CBSA) on March 6, 2014.
3. The Tribunal has decided, for the reasons that follow, to continue its finding without amendment.

### BACKGROUND

#### CBSA's Original Final Determination of Dumping

4. On October 22, 2012, the CBSA made a final determination of dumping under paragraph 41(1)(a) of *SIMA*. It determined that 100 percent of the subject goods released into Canada from October 1, 2010, to March 31, 2012, had been dumped at a weighted average margin of dumping of 19.5 percent, expressed as a percentage of the export price.<sup>2</sup> The exporter-specific margins of dumping were 15.5 percent and 44.4 percent for Hyundai Heavy Industries Co., Ltd. (HHI) and Hyosung Corporation (Hyosung) respectively.

#### Tribunal's Injury Finding

5. On November 20, 2012, the Tribunal issued its finding under subsection 43(1) of *SIMA* that the dumping of the subject goods had caused injury to the domestic industry.<sup>3</sup> In the paragraphs that follow, the Tribunal will summarize those portions of its finding that are relevant in the context of the current interim review.
6. The Tribunal considered liquid dielectric transformers to be capital goods with special characteristics, as they are purchased relatively infrequently, expensive pieces of equipment with long average service lives and ordered long before they are actually delivered.<sup>4</sup>
7. These special characteristics presented unique challenges for the Tribunal in its injury analysis, particularly in terms of its analysis of the effect of the dumped goods on the price of the like goods under paragraph 37.1(1)(b) of the *Special Import Measures Regulations*.<sup>5</sup> As a result, the Tribunal decided not only to conduct an aggregate analysis of the effects of average prices of the subject goods on the average

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1. R.S.C., 1985, c. S-15 [*SIMA*].

2. Exhibit NQ-2012-001-04, Vol. 1 at 87.15.

3. In *Transformers NQ*, the Tribunal's period of inquiry (POI) covered three full years, from January 1, 2009, to December 31, 2011, and two interim periods, from January 1 to June 30, 2011, and the corresponding period in 2012.

4. *Transformers NQ* at paras. 59, 60.

5. S.O.R./84-927 [*Regulations*].

prices of the like goods but also to consider evidence on the record in relation to specific transactions where domestic producers had competed with Korean suppliers.<sup>6</sup>

8. Therefore, the Tribunal analyzed average prices, as well as specific allegations of injury, using bidding information provided by domestic producers, foreign producers, importers and purchasers to determine if, and the extent to which, the subject goods undercut the prices of like goods on a transactional basis.<sup>7</sup> In making this determination, the Tribunal found that it was unable to compare the transaction-specific evidence of price undercutting (i.e. where the Korean suppliers' bids undercut the domestic bids) to the CBSA's transaction-specific margins of dumping due to a lack of corresponding information between the two datasets.<sup>8</sup>

9. The Tribunal concluded the following:

- Although non-price factors played a significant role in purchasing decisions, price was found to be a dominant factor, especially once bidders had been technically pre-qualified for a contract award.<sup>9</sup> Purchasers based sourcing decisions on price differentials in the range of 2 to 3 percent.<sup>10</sup>
- The volume of imports of the subject goods increased relative to domestic production and domestic consumption in 2011.<sup>11</sup>
- The subject goods significantly undercut, depressed and suppressed the prices of the like goods on the basis of average prices and transaction-specific bids.<sup>12</sup>
- The volumes and price effects of the subject goods caused injury to the domestic industry in the form of lost sales and revenue, the inability to raise capital, and declines in market share, production, capacity utilization, employment, productivity, financial results, and returns on investment. The magnitude of the margin of dumping contributed to the deteriorating state of the domestic industry.<sup>13</sup>
- The impact of various factors other than the subject goods did not negate the conclusion that the dumping itself had caused material injury to the domestic industry during the POI. The other factors considered were (i) decreased market demand, (ii) imports from non-subject countries, (iii) imports of the subject goods by ABB Inc. (ABB), (iv) exports by the domestic industry, (v) CG Power Systems Canada Inc.'s (CG) pricing strategy, (vi) intra-industry competition and (vii) suppliers' ability to deliver goods.<sup>14</sup>

### **CBSA's New Final Determination of Dumping**

10. On March 6, 2014, the Tribunal received notice that the CBSA had made a new final determination of dumping, pursuant to paragraph 41.1(1)(a) of *SIMA*, in respect of the subject goods.<sup>15</sup> The CBSA's new final determination stemmed from a decision of the Federal Court of Appeal made on December 6, 2013,

6. *Transformers NQ* at paras. 62, 65-67.

7. *Transformers NQ* at para. 89, note 59.

8. *Transformers NQ* at para. 68, note 59.

9. *Transformers NQ* at para. 82.

10. *Transformers NQ* at para. 151.

11. *Transformers NQ* at para. 130.

12. *Transformers NQ* at paras. 100, 115, 120. It should be noted that the Tribunal's finding of price suppression was limited to the interim period of 2012.

13. *Transformers NQ* at paras. 133-37, 140, 144, 147, 150-51.

14. *Transformers NQ* at paras. 153-94.

15. Exhibit RD-2013-003-01, Vol. 1.

which set aside the original final determination and referred the matter back to the CBSA for reconsideration.<sup>16</sup>

11. In its new final determination of dumping, the CBSA reduced the country- and exporter-specific margins of dumping. The weighted average margin of dumping (expressed as a percentage of the export price) was now found to be 12.7 percent (down from 19.5 percent) and HHI and Hyosung had dumping margins of 9.1 percent and 34.8 percent (down from 15.5 percent and 44.4 percent) respectively.<sup>17</sup>

### **Tribunal's Interim Review**

#### Initiation

12. On March 14, 2014, the Tribunal decided to conduct an interim review on its own initiative in order to determine if its finding of injury should be continued, with or without amendment, or rescinded in light of the new facts, i.e. the CBSA's new (and reduced) margins of dumping.

13. Notices of participation were filed by the domestic producers ABB and CG, the exporter HHI and the Canadian Steel Producers Association (CSPA).

#### Abeyance

14. The CBSA's new final determination of dumping was subject to two applications for judicial review. The Tribunal therefore held its interim review in abeyance until the Federal Court of Appeal issued its decision of dismissal in respect of both applications on July 2, 2015,<sup>18</sup> and the subsequent time period for an application for leave to appeal that decision to the Supreme Court of Canada expired on August 31, 2015.

15. On September 25, 2015, the Tribunal notified the parties that it was resuming its interim review, as no application was made to the Supreme Court of Canada.<sup>19</sup>

#### Scope of the Interim Review

16. In a letter to parties and counsel of record on September 25, 2015, the Tribunal addressed the scope of the interim review by asking the parties "... to limit their submissions to the impact of the reduced margin of dumping on the injury analysis with all other injury factors being equal."<sup>20</sup> The Tribunal further indicated that it would not consider submissions on threat of injury "... at this stage of the proceedings, if at all."<sup>21</sup>

17. On October 27, 2015, HHI sought further clarification from the Tribunal regarding the scope of the interim review.<sup>22</sup> HHI submitted that all elements of the Tribunal's injury analysis under subsections 37.1(1) and (3) of the *Regulations* affected by the reduced margins of dumping ought to be within the scope of these proceedings, not just the magnitude of the margin of dumping factor under subparagraph 37.1(1)(c)(ii.1). In addition, HHI asked whether the Tribunal intended to conduct a bifurcated interim review by first

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16. *Hyundai Heavy Industries Co., Ltd. v. ABB Inc.*, 2013 FCA 284 (CanLII).

17. Exhibit RD-2013-003-01, Vol. 1 at 18.

18. *ABB Inc. v. Hyundai Heavy Industries Co., Ltd.*, 2015 FCA 157 (CanLII).

19. Exhibit RD-2013-003-11, Vol. 1A at 71.

20. Exhibit RD-2013-003-11, Vol. 1A at 71.

21. Exhibit RD-2013-003-11, Vol. 1A at 71.

22. Exhibit RD-2013-003-19, Vol. 1A at 109.

determining whether the reduced margins of dumping warranted a reversal of the injury finding and, if so, make a subsequent determination on the issue of threat of injury.

18. On October 28, 2015, ABB and CG submitted that parties should be limited to making submissions respecting the magnitude of the dumping in these proceedings and should not be permitted to re-argue other injury or causation factors for which the underlying facts had not changed.<sup>23</sup>

19. On October 30, 2015, the Tribunal provided further clarification regarding the scope of the interim review as follows:

In the statement of reasons in NQ-2012-001, the Tribunal indicated that it had considered the margin of dumping in and of itself as well as part of its price effects analysis (see paragraphs 60-68, 89-90, 96-98, 151). Accordingly, this interim review is limited to addressing these interrelated factors (i.e. the magnitude of the margin of dumping itself and any corresponding effects on the prices of like goods) in light of the new dumping margins and how they affect the overall injury analysis, with all other injury factors being equal to NQ-2012-001.

As implied in its letter of September 25, 2015, the Tribunal has bifurcated this interim review. It will review its injury finding in light of the reduced dumping margins. In the event of a no injury finding, the Tribunal will then consider the matter of threat of injury and the parties will have an opportunity to make submissions on that issue.<sup>24</sup>

#### Submissions of the Parties and Documents Placed on the Tribunal's Record

20. The Tribunal's record from *Transformers NQ* was added to the record of the interim review and distributed to parties (public record only) and counsel of record (public and protected records).

21. On October 27, 2015, the Tribunal requested that the CBSA provide additional information that it had obtained during the course of its reconsideration of the final determination of dumping.<sup>25</sup> In response, the CBSA provided confidential and non-confidential information that was placed on the Tribunal's record.<sup>26</sup>

22. On October 28, 2015, ABB and CG requested that the Tribunal require HHI, Hyosung and HICO America Inc. (Hyosung/HICO) to file updated versions of certain protected exhibits from *Transformers NQ*.<sup>27</sup> The exhibits in question (i.e. NQ-2012-001-C-5 and NQ-2012-001-E-14) consisted of transaction-specific listings of the confidential margins of dumping calculated by the CBSA for these particular exporters.

23. HHI and Hyosung/HICO, further to the Tribunal's requests of October 30 and November 10, 2015,<sup>28</sup> provided their respective updated margins of dumping to the Tribunal and parties.<sup>29</sup>

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23. Exhibit RD-2013-003-20, Vol. 1A at 114.

24. Exhibit RD-2013-003-21, Vol. 1A at 119.

25. Exhibit RD-2013-003-01A, Vol. 1 at 29, 36-37.

26. Exhibit RD-2013-003-22, Vol. 1A; Exhibit RD-2013-003-22B (protected), Vol. 2.

27. Exhibit RD-2013-003-20, Vol. 1A at 114.

28. The Tribunal requested that Hyosung/HICO, non-parties in this interim review, provide their transaction-specific margins of dumping as determined by the CBSA, including any updates to the information previously filed by Hyosung/HICO in *Transformers NQ*. Exhibit RD-2013-003-25, Vol. 1D at 8.

29. Exhibit RD-2013-003-24, Vol. 1D at 5; Exhibit RD-2013-003-26, Vol. 1D at 11; Exhibit RD-2013-003-24A (protected), Vol. 2E at 2-7; Exhibit RD-2013-003-26A (protected), Vol. 2E at 9-40.



24. In accordance with paragraph 25(c) of the *Canadian International Trade Tribunal Rules*,<sup>30</sup> the Tribunal decided to conduct the interim review by way of written submissions. The Tribunal therefore received written submissions in support of a continuation of the finding, without amendment, from ABB and CG on November 23, 2015, and from the CSPA on November 24, 2015. On November 24, 2015, HHI informed the Tribunal that, without prejudice to its position that the reduced margins of dumping warranted a reversal of the injury finding, it had decided not to file submissions.<sup>31</sup>

## POSITIONS OF THE PARTIES

25. ABB and CG submitted that the finding should be continued, without amendment, because the CBSA's revised margins of dumping had no material impact on the Tribunal's injury analysis in *Transformers NQ*. In their view, the magnitude of the revised average weighted margin of dumping of 12.7 percent, as well as that of the company-specific margins of dumping, remained very significant and a clear cause of material injury to the domestic industry during the Tribunal's POI. Furthermore, ABB and CG submitted that the magnitude of the margin of dumping had no impact on a number of other factors under section 37.1 of the *Regulations* on which the Tribunal based its injury finding.

26. ABB and CG noted that, in *Transformers NQ*, the Tribunal did not conduct an analysis in relation to the CBSA's transaction-specific margins of dumping, as it was unable to match them to the bid data on its own record that showed that price undercutting occurred on specific bids/transactions.<sup>32</sup> In this respect, ABB and CG submitted that a transaction-level analysis of margins of dumping and injury would be at odds with the provisions of *SIMA* and problematic from both a practical and evidentiary perspective. For example, they referred to differences in the time periods and types of data used in the investigations by the CBSA and the Tribunal. ABB and CG thus argued that the Tribunal's injury analysis should be based on the CBSA's weighted average margin of dumping and not on its calculations or determinations at the specific transaction level.

27. The CSPA submitted that it would not be appropriate for the Tribunal to engage in a causation analysis solely on the basis of the margins of dumping or to attach heightened significance to this factor at the expense of other prescribed factors. Like ABB and CG, the CSPA cautioned the Tribunal against engaging in a transaction-by-transaction analysis in light of the reduced margins of dumping, since those margins were determined by the CBSA's analysis of various factors within a particular dataset (which differed from the data used in the Tribunal's investigation). According to the CSPA, the margins of dumping should not be considered an objective measure that could be transposed from one context to another so as to yield reliable conclusions. Moreover, it argued that prices of like goods were not affected by the CBSA's revised margins of dumping, but rather by actual prices offered or accepted by vendors of the subject goods.

28. As stated above, HHI submitted that the CBSA's new (and reduced) margins of dumping warranted a reversal of the Tribunal's injury finding.

## TRIBUNAL ANALYSIS

29. The issue in this interim review is whether the CBSA's new margins of dumping impact the Tribunal's injury analysis in *Transformers NQ*, with all other injury factors being equal.

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30. S.O.R./91-499.

31. Exhibit RD-2013-003-27.03, Vol. 1D.

32. *Transformers NQ* at para. 68, note 59.

30. As such, the Tribunal will proceed in its analysis by examining the impact of the revised margins of dumping on its original analysis of the effects of the dumped imports on (1) prices of like goods and (2) the state of the domestic industry.

### **Effects of Dumped Imports on Prices of Like Goods**

31. The Tribunal is mindful of its finding that liquid dielectric transformers are capital goods with special characteristics. As noted above, they are expensive pieces of equipment with long, average useful service lives. The Tribunal is also mindful that ABB, CG and the CSPA raised concerns regarding the applicability of transaction-specific margins of dumping not only in its original injury analysis but also in its current interim review.

32. However, the Tribunal has no intention of giving any different weight to the CBSA's transaction-specific margins of dumping than it did in its original finding. To the extent that the Tribunal considered the CBSA's transaction-specific margins of dumping as being consistent with its original finding of price undercutting (that was based primarily on its analysis of average prices and transaction-specific bid data), there is nothing in the updated data on the record in relation to the CBSA's new final determination that warrants a departure from the Tribunal's previous comments with respect to the margins of dumping.<sup>33</sup>

33. Likewise, the Tribunal still cannot match bid-specific data on price undercutting to the CBSA's transaction-specific margins of dumping. As noted in the statement of reasons for the Tribunal's original finding, "... the Tribunal was not able to compare the margins at which Korean bids undercut the domestic bids to the CBSA's transaction-specific margins of dumping due to inability to match specific transactions across the datasets."<sup>34</sup> This statement remains accurate to this day. The new information available on the record in this interim review does not allow the Tribunal to meaningfully compare the bid-specific data showing price undercutting and the CBSA's transaction-specific margins of dumping.<sup>35</sup>

34. Therefore, the Tribunal finds that there is nothing in the CBSA's new final determination of dumping that warrants it to depart from its finding of price undercutting, price depression or price suppression in *Transformers NQ*.

### **Impact of the Dumped Imports on the Domestic Industry**

35. Having found that its original finding about the negative price effects of the subject goods remains valid, the Tribunal will now consider the impact that the revised magnitude of the margin of dumping might have had on the state of the domestic industry in keeping with subparagraph 37.1(1)(c)(ii.1) of the *Regulations*.

36. As noted above, evidence in the original inquiry demonstrated that purchasers based sourcing decisions on the basis of price; indeed, evidence indicated that price differentials in the range of 2 to 3 percent could make the difference in whether the domestic industry secured or lost a sale.<sup>36</sup>

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33. Exhibit RD-2013-003-24A (protected), Vol. 2E at 7; Exhibit RD-2013-003-26A (protected), Vol. 2E at 30-40; *Transformers NQ* at paras. 96-99.

34. *Transformers NQ* at note 59.

35. Exhibit RD-2013-003-26A, Vol. 2E (protected) at 9-40.

36. *Transformers NQ* at para. 151.

37. Consequently, the Tribunal found that dumping at the original weighted average margin of dumping (19.5 percent) contributed to the deterioration of the state of the domestic industry.<sup>37</sup> The same remains true today. Even though the CBSA reduced the weighted average margin of dumping from 19.5 percent to 12.7 percent, it remains well above the 2 to 3 percent price sensitivity threshold cited by purchasers and accepted by the Tribunal in its original inquiry.<sup>38</sup>

38. Moreover, the CBSA's conclusion that 100 percent of the subject goods imported into Canada were dumped remained unchanged in its new final determination.

39. Therefore, the Tribunal finds that dumping, even at the reduced margin, remains substantial enough to have contributed to the domestic industry's declining performance during the POI. As there are no other significant changes in the CBSA's new final determination that could affect the Tribunal's analysis of the other causation factors under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal's conclusions with respect to impact remain the same.

### Summary

40. In sum, having considered all the new information available to it and all the relevant factors applicable within the scope of its interim review, the Tribunal finds that there is no reason to depart from its original finding that the dumping of the subject goods caused material injury to the domestic industry. As the original finding remains in place, there is no need for the Tribunal to consider the matter of threat of injury.

### CONCLUSION

41. For the foregoing reasons, pursuant to paragraph 76.01(5)(a) of *SIMA*, the Tribunal hereby continues the finding without amendment.

Ann Penner  
Ann Penner  
Presiding Member

Jason W. Downey  
Jason W. Downey  
Member

Daniel Petit  
Daniel Petit  
Member

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37. *Transformers NQ* at para. 151.

38. Exhibit NQ-2012-001-A-01 at para. 68, Vol. 11.