

March 1, 2024

**BY SECURE E-TRANSFER**

**NON-CONFIDENTIAL**

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

**ATTN:** Valerie Ngai, Manager

**RE: Comments Regarding Reply Comments by ILJIN Electric Co., Ltd. Concerning Large Power Transformers from Korea**

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1. On behalf of PTI Transformers LP. (“**PTI**”) and Hitachi Energy Canada Inc. (“**Hitachi**”),<sup>1</sup> we respectfully submit the following reply to ILJIN Electric Co., Ltd.’s (“**Iljin**”) comments<sup>2</sup> on PTI and Hitachi’s submission dated February 6, 2024<sup>3</sup> opposing a normal value review (“**NVR**”) or a re-investigation (“**RI**”) of large power transformers (“**LPTs**”) from Korea requested by Iljin.<sup>4</sup> As elaborated below, Iljin’s non-response regarding the company’s imminent and significant operational changes, as well as the normal value determination in the small power transformers (“**SPTs**”) case, confirm the inappropriateness of a pre-mature NVR/RI requested by Iljin. Iljin’s comments confirm that it seeks to establish the normal values and export price based on estimates and speculations, and Iljin’s request should therefore be rejected.

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<sup>1</sup> PTI and Hitachi are domestic producers of like goods, namely LPTs, as the CBSA recently found in the expiry review of LPTs in TR 2023 ER at paras 25 and 28. According to the CBSA’s Memorandum D14-1-8, *Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)* (October 21, 2022) at paras 6-5, PTI and Hitachi are therefore interested parties with respect to Iljin’s request for an NVR or a RI.

<sup>2</sup> Iljin, Non-Confidential Comments in Reply to the Representations Made on Behalf of PTI Transformers LP. and Hitachi Energy Canada Inc. Regarding the Request for a Normal Value Review of a Re-investigation Submitted by ILJIN Electric Co., Ltd. (February 19, 2024). (“**Iljin NVR/RI Reply**”).

<sup>3</sup> PTI and Hitachi, Comments Regarding a Request for a Normal Value Review or a Re-investigation by ILJIN Electric Co., Ltd. Concerning Large Power Transformers from Korea (February 6, 2024). (“**PTI/Hitachi Comments**”).

<sup>4</sup> See Iljin, Non-Confidential Request for Initiation of a Normal Value Review or a Re-investigation for the Purposes of Establishing Normal Values and Export Prices for Subject Goods Exported by ILJIN Electric Co, Ltd. (December 21, 2023). (“**Iljin NVR/RI Request Letter**”).

**I. CHANGES TO ILJIN'S COSTS AND PROFITABILITY**

2. In PTI/Hitachi's Comments, we set out the evidence showing that:
- Iljin is currently in the process of making a massive investment of nearly \$100 million, aimed at expanding its Korean transformers production facility in the next 12 months and beyond;<sup>5</sup> and
  - key costs for the production and sales of LPTs, including the cost of copper, grain-oriented electrical steel ("GOES"), and freight, have fluctuated significantly, even since the time when Iljin submitted its request, contradicting Iljin's projection that these costs will remain stable.<sup>6</sup>
3. This evidence, which is not disputed by Iljin, shows that Iljin's operations—from production to sales—will change significantly in the next 12 months and beyond, when the production and exportation of the LPTs at issue is likely to take place. If an NVR/RI were to initiate prematurely, these significant changes will not be reflected in the new normal values, which will immediately become outdated and stale. This is because the CBSA's review/re-investigation is retrospective, and the period of investigation ("POI") and the profitability analysis period ("PAP") will necessarily be in the past, *i.e.*, period before the investment is made and before the LPTs at issue are actually produced/shipped.
4. Importantly, the effects of such significant changes to Iljin's operations are not limited to Iljin's variable costs of production. In this regard, Iljin appears to rely on the CBSA's normal value methodology, which allows for changes in the variable costs of production.<sup>7</sup> On this basis, Iljin seems to suggest that an NVR/RI could be used for limited purposes, to determine "a reasonable

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<sup>5</sup> PTI/Hitachi Comments at para 7 and Non-Confidential Attachment 5, Iljin, "Revised Investment Prospectus" (January 18, 2024).

<sup>6</sup> PTI/Hitachi Comments at para 6.

<sup>7</sup> Iljin NVR/RI Reply at 3-5, footnote 7.

amount for administrative, selling, and all other costs ('GS&A') and "a reasonable amount for profits",<sup>8</sup> which can then be applied going forward.

5. However, this ignores the fact that significant investments such as Iljin's \$100 million investment will impact the company's overall financials, GS&A and profitability. For example, addition of depreciable assets will increase the company's depreciation expenses; non-amortized portions of the investment will be expensed during the period, which will increase the expenses and decrease the profitability in the period; and where parts of the investment are financed through lending or lease, such arrangements will also increase the financial expenses. Such investments also typically influence the company's sales and pricing expectations, which in turn affect the company's profitability. Similarly, significant fluctuations in raw materials cost will also affect Iljin's profitability depending its ability/inability to pass on the cost increases to its customers.

6. For this reason alone, Iljin's request to lock-in normal values (including the amount for GS&A and profits) on the eve of a \$100 million investment should be rejected. This is also consistent with the CBSA's well-established practice of not determining normal values for goods that were not either produced and/or sold by an exporter during the POI/PAP,<sup>9</sup> which Iljin does not dispute.

## **II. NORMAL VALUES IN SMALL POWER TRANSFORMERS**

7. Iljin refers to the CBSA's explanations concerning the normal values for Iljin's future shipments of SPTs in support for an NVR/RI.<sup>10</sup> On the contrary, normal values in SPTs demonstrate why Iljin's request should be rejected.

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<sup>8</sup> Iljin NVR/RI Reply at 4-5. In addition, in *ibid.* at footnote 30, Iljin asserts that "there is no difference between units that meet the product definition of {LPTs}... and units that meet the product definition of {SPTs}" in terms of "marketing, sales, contracting, design, materials, manufacturing, shipment, importation, delivery, installation, payment terms, and all other relevant considerations". The CBSA should not rely on this assertion because it is not substantiated. The only support provided for this statement is Iljin's own statement, and there is nothing else on the record that would validate this assertion.

<sup>9</sup> CBSA, *Notice of Conclusion of Re-investigation* (September 6, 2022), OCTG 2022 RI at Appendix 2, comment "Normal values for goods not produced and/or sold during the POI/PAP". (Emphasis added).

<sup>10</sup> Iljin NVR/RI Reply at 3-5.

8. In the SPT investigation, the CBSA assessed and verified Iljin's cost of production of the subject goods, based on subject SPTs that were *actually* produced and exported during the POI. For the amount for profits, the CBSA used domestic sales of goods of the same general category that were *actually* produced and sold during the PAP. On the export price side, the CBSA conducted a reliability test based on the *actual* export price and the *actual* Canadian sales and costs. In so doing, the CBSA also identified different credit terms and lump-sum, inter-company payments based on *actual* data and applied appropriate adjustments.<sup>11</sup> It is only after having assessed and verified all such *actual* production and sales data that the CBSA was able to put in a methodology for Iljin's future shipments of SPTs.<sup>12</sup>

9. The same is true for LPTs for other cooperating exporters *i.e.*, Hyundai and Hyosung. As noted in our comments, both Hyundai and Hyosung have cooperated in an investigation based on the *actual* production and sales in a prior POI and the CBSA has verified their systems and submissions, just as Iljin has in the SPT context. It is based on those verified systems that Hyundai and Hyosung can calculate future normal values, which can be trued up in subsequent re-investigations or normal value reviews.

10. In Iljin's current request, it is clear that no production and shipment of the LPTs at issue has happened. As such, the CBSA cannot verify Iljin's cost of production of subject goods as it did in SPT, because none exists. Since LPTs at issue have not been produced or exported, there are no comparable domestic sales of goods or goods of general category. With respect to s. 24 export price, Iljin states that the "agreed purchase price" is known,<sup>13</sup> but the SPT investigation shows that the CBSA may make adjustments based on *actual* data, such as differences in credit

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<sup>11</sup> CBSA, *Statement of Reasons – Final Decisions on Certain Small Power Transformers* (December 10, 2021), SPT 2021 IN at paras 125-133.

<sup>12</sup> Iljin NVR/RI Reply at 3.

<sup>13</sup> Iljin NVR/RI Reply at 3. *See ibid.* at 7, stating that "like the... export prices for {SPTs}, it would {be} based on the actual final price recorded in the relevant purchase order—*subject to the applicable adjustments* determined on the basis of the actual costs, expenses, and other amounts—for each unit exported to Canada". (Emphasis added). Here, Iljin admits that the price recorded in the relevant purchase order, which is all Iljin has currently, is subject to adjustments.

terms between export and domestic sales, and inter-company payments at the year-end. None of these are available, because they do not exist and because the export has not happened. Same is true regarding the s. 25 export price, because no cost (*e.g.*, freight, unloading, insurance, installation, after-services, etc) has been incurred for the Canadian sales that has not happened yet

11. While it is true that at the conclusion of the investigation Iljin would have been provided a methodology for estimating normal values and export prices for future sales that would involve some estimations, other important aspects of that methodology was based on those actual transactions that occurred during the investigation.

12. The CBSA's determination in SPTs thus show a clear distinction between the circumstances under which a methodology for Iljin's normal values for future shipments were provided for SPTs, and the circumstances presented in the current request.

### **III. ILJIN'S REQUEST IS SPECULATIVE OR HYPOTHETICAL**

13. Iljin's comments once again confirm that it seeks to establish normal values and export prices for "future shipments of {LPTs} to Canada".<sup>14</sup> As discussed, this by definition is a speculative or hypothetical exercise, because the production, sales and the shipment that the CBSA needs to assess and verify have not happened and do not exist. Iljin argues that normal values and export prices could be determined based on the "actual costs {and} pricing", but this is simply a rhetoric. What Iljin means is that it seeks to establish normal values and export prices based on "actual costs {and} pricing" of some products *other than* subject LPTs at issue that it seeks to export. This is not analogous to how normal values are determined for future shipments of cooperating exporters in LPTs and SPTs, which, as discussed above, is based on assessments and verification of subject goods that were *actually* produced and exported to Canada.

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<sup>14</sup> Iljin NVR/RI Reply at 2.

14. As a final matter, Iljin argues that its ability to pay anti-dumping duty “does not constitute a cogent reason to deny an exporter’s request for {an NVR/RI}”.<sup>15</sup> In fact, under D-Memo, one of the considerations for initiating a re-investigation or normal value review is “the number of requests for re-determination.”<sup>16</sup> So whether the importer can file a re-determination is indeed a factor in determining whether to initiate a normal value review or re-investigation.

#### **IV. CONCLUSION**

15. Given the foregoing, PTI and Hitachi submits that Iljin’s request should be rejected.<sup>17</sup>

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16. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely yours,



**Hugh Seongseok Lee**

Cassidy Levy Kent (Canada) LLP

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<sup>15</sup> Iljin NVR/RI Reply at 8.

<sup>16</sup> See CBSA D-Memorandum D14-1-8, “Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA) at para 12. In addition, PTI and Hitachi pointed out Iljin’s ability to pay to disprove Iljin unsubstantiated assertion that the pay and appeal process under s. 56 of *SIMA* would be “impracticable due to the extremely heavy financial burden” (Iljin NVR/RI Request Letter).

<sup>17</sup> As a final matter that Iljin argues that its ability to pay anti-dumping duty “does not constitute a cogent reason to deny an exporter’s request for {an NVR/RI}”. Iljin NVR/RI Reply at 8.