

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.**

**In the Matter of**

**CERTAIN REPLACEMENT  
AUTOMOTIVE LAMPS**

**Investigation No. 337-TA-1291**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL  
DETERMINATION FINDING SATISFACTION OF THE ECONOMIC PRONG  
OF THE DOMESTIC INDUSTRY REQUIREMENT; SCHEDULE FOR FILING  
WRITTEN SUBMISSIONS ON ISSUES UNDER REVIEW**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review an interim initial determination (“IID”) of the presiding administrative law judge (“ALJ”) finding satisfaction of the economic prong of the domestic industry requirement. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On January 24, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended (“section 337”) based on a complaint filed on behalf of complainants Kia Corporation of Seoul, Korea and Kia America, Inc. of Irvine, California (collectively, “Kia”). 87 Fed. Reg. 3584-85 (Jan. 24, 2022). The complaint, as supplemented and amended, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale after importation within the United States after importation of certain replacement automotive lamps by reason of infringement of U.S. Design Patent Nos. D592,773; D635,701; D636,506; D650,931; D695,933; D705,963; D709,218; D714,975; D720,871; D749,757; D749,764; D774,222; D774,223; D776,311; D781,471; D785,833;

D785,836; and D792,989. *Id.* at 3584. The notice of investigation names as respondents TYC Brother Industrial Co., Ltd. of Tainan, Taiwan; Genera Corporation (dba TYC Genera) of Brea, California; LKQ Corporation of Chicago, Illinois; and Keystone Automotive Industries, Inc. of Exeter, Pennsylvania (together, “Respondents”). OUII is not participating in this investigation.

On April 20, 2022, the ALJ held an evidentiary hearing for both Inv. Nos. 337-1291 and 337-1292 regarding satisfaction of the economic prong pursuant to the Commission’s pilot program for interim initial determinations. *See* [https://www.usitc.gov/press\\_room/featured\\_news/337pilotprogram.htm](https://www.usitc.gov/press_room/featured_news/337pilotprogram.htm).

On July 1, 2022, the ALJ issued the subject IID finding that Kia has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B). 19 USC 1337(a)(3)(A), (B). Specifically, the IID finds that Kia has satisfied the economic prong based on investments in plant and equipment directed to warehousing, distribution, and coordinating warranty service, and the employment of labor directed to providing warranty service with respect to certain foreign-manufactured automotive lamps. The IID also finds that Kia satisfied the economic prong based on investments in plant and equipment directed to warehousing, distribution, and manufacturing with respect to certain domestic-manufactured automotive lamps for the 2016-2018 Kia Optima and the 2016-2018 Kia Sorrento.

On July 12, 2022, Respondents petitioned for review of the IID’s finding that Kia has satisfied the economic prong of the domestic industry requirement. On July 19, 2022, Kia responded to Respondents’ petition for review.

The parties are asked to provide additional briefing on the following issues:

1. Identify and discuss the proper legal standard for assessing whether the asserted investments in plant and equipment and employment of labor or capital relating to domestic operations (including for warehousing and distribution) should be considered as investments under section 337(a)(3)(A) and (B) when evaluating whether complainants have established a domestic industry based on the facts in this investigation. Please address the statutory text as well as relevant legislative history and judicial and Commission precedents.
2. Identify and discuss whether the asserted investments with respect to articles protected by each patent are quantitatively and qualitatively significant. *See, e.g., Lelo Inc. v. ITC*, 786 F.3d 879, 883 (Fed. Cir. 2015); *Certain Carburetors and Products Containing Such Carburetors*, Inv. No. 337-1123, Comm’n Op. at 18 (Oct. 28, 2019). The discussion should be done separately for investments under subsection 337(a)(3)(A) and (B) and with respect to each patent.
3. How should the realities of the marketplace relevant to this investigation inform the Commission’s analysis of whether

Complainant has satisfied the domestic industry requirement?

4. Is the value added by Mobis Parts America, Inc.'s ("MPA") investments in plant and equipment and its employment of labor and capital relating to its warehousing and distribution operations relevant or useful in this investigation to determining whether the asserted investments qualify as investments in plant and equipment and labor or capital under subsections 337(a)(3)(A)-(B) or alternatively to determining whether the investments are significant? Please address whether and how the value added by these investments to the domestic industry products is relevant to either determination in this investigation.
5. To the extent a value-added analysis is relevant to either determination in this investigation, please discuss whether such added value must be quantified on a per-product and/or per-patent basis and please identify and discuss evidence in the record relating to whether MPA's investments in plant and equipment and its U.S. employment of labor and capital relating to its operations relating to the protected articles add value to the asserted domestic industry products and, if so, how that added value should be quantified.
6. Please explain how Kia America, Inc.'s alleged domestic industry investments in plant and equipment are allocated to warranty coordination and customer service.
7. Please explain whether the record supports allocating Kia America's alleged domestic investments in plant and equipment and its employment of labor or capital relating to the protected articles on a patent-by-patent basis. If yes, please allocate the investments on a patent-by-patent basis and explain why each is significant.
8. What criteria should the Commission apply to determine whether Kia or MPA engages in "ongoing, qualifying activities" after domestic production ceases for domestically manufactured domestic industry products? Does the nature of the earlier investments (*e.g.*, domestic manufacturing versus other domestic activities) affect the analysis of whether Kia or MPA engages in "ongoing, qualifying activities"? Must those continuing investments in plant and equipment or employment of labor or capital be independently significant?
9. Please explain whether the record permits allocating Kia America's alleged domestic industry investment in warranty labor on a per patent basis. If yes, please allocate the investments on a patent-by-patent basis and explain why each is significant under subsection 337(a)(3)(B).
10. Please explain whether it is necessary or instructive to consider the asserted domestic investments in warehousing, distribution, and warranty services

separately with respect to domestically produced and foreign produced articles protected by the patents. If the warehousing, distribution, and warranty service activities concern domestically produced rather than foreign produced domestic industry products, does this affect whether investments in such activities qualify as investments in plant and equipment or labor or capital under subsections 337(a)(3)(A)-(B)? Does it affect whether investments in such activities are significant? If so, why?

11. Please explain whether and to what extent the statute, legislative history, and judicial and Commission precedents authorize the Commission to credit administrative costs towards satisfaction of the domestic industry requirement under the facts and circumstances of this investigation. Please set forth, and explain, under these authorities, how the particular administrative costs in this investigation should be considered and whether the record permits separately quantifying and considering particular administrative costs associated with the domestic industry products, for example, if some are creditable and some are not.

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

**WRITTEN SUBMISSIONS:** The Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. The written submissions, exclusive of any exhibits, must not exceed 50 pages, and must be filed no later than close of business on September 7, 2022. Reply submissions must not exceed 30 pages and must be filed no later than the close of business on September 14, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1291) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is

properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on August 24, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Katherine M. Hiner". The signature is fluid and cursive, with the first name being the most prominent.

Katherine M. Hiner  
Acting Secretary to the Commission

Issued: August 24, 2022