

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN REPLACEMENT
AUTOMOTIVE LAMPS II**

Investigation No. 337-TA-1292

**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 has determined to review an interim initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding that complainants have satisfied 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: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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. General information concerning the Commission may also be obtained by accessing its Internet server at <https://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, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Hyundai Motor Company of Seoul, Republic of Korea and Hyundai Motor America, Inc. of Fountain Valley, CA (“HMA”) (collectively, “Hyundai”). See 87 FR 3583-84 (Jan. 24, 2022). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain replacement automotive lamps by reason of infringement of certain claims of U.S. Design Patent Nos. D617,478; D618,835; D618,836; D631,583; D637,319; D640,812; D655,835; D664,690; D709,217; D736,436; D738,003; D739,057; D739,574; D740,980; D759,864; D759,865; D771,292; D780,351;

D818,163; D829,947; and D834,225 (collectively, “Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names four respondents: 1) TYC Brother Industrial Co., Ltd. of Tainan, Taiwan; 2) Genera Corporation (dba. TYC Genera) of Brea, California; 3) LKQ Corporation of Chicago, Illinois; and 4) Keystone Automotive Industries, Inc. of Exeter, Pennsylvania (collectively, “Respondents”). *Id.* OUII is not participating in this investigation

On April 20, 2022, the presiding ALJ held an evidentiary hearing to hear evidence on the economic prong of the domestic industry requirement pursuant to the Commission’s pilot program for interim IDs. *See* Order No. 8 (Feb. 18, 2022); https://www.usitc.gov/press_room/featured_news/337pilotprogram.htm.

On July 1, 2022, the ALJ issued the subject interim ID finding that complainants have satisfied the economic prong of the domestic industry requirement.

On July 12, 2022, Respondents petitioned for review of the subject ID. On July 19, 2022, Hyundai filed its response to Respondents’ petition.

Having examined the record of the investigation, including the ID, Respondents’ petition for review, and Hyundai’s response thereto, the Commission has determined to review the subject ID.

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

1. Identify and discuss the proper legal standard for assessing whether Hyundai’s and Mobis Parts America, Inc.’s (“MPA”) investments in plant and equipment and employment of labor or capital relating to warehousing and distribution operations should be considered as investments under section 337(a)(3)(A) and (B) when evaluating whether Hyundai has established a domestic industry based on the facts in this investigation. Please address the statutory text as well as the 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 Hyundai's and MPA's investments in plant and equipment and employment of labor and capital relating to 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 analysis above 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 Hyundai's and MPA's investments in plant and equipment and employment of labor or capital relating to warehousing and distribution operations asserted in this investigation add value to Hyundai's domestic industry products and, if so, how that added value should be quantified.
6. Please explain whether it is necessary or instructive to consider asserted investments in warehousing and distribution separately with respect to domestically produced and foreign produced articles protected by the patents. If the warehousing and distribution 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?
7. What criteria should the Commission apply to determine whether Hyundai or MPA engages in "ongoing, qualifying activities"? Does the nature of the earlier investments (*e.g.*, domestic manufacturing verses other domestic activities) affect the analysis of whether Hyundai engages in "ongoing, qualifying activities"? Must those continuing investments in plant and equipment or employment of labor and capital be independently significant?
8. For Hyundai's labor and capital investments under subsection 337(a)(3)(B), please allocate the total warranty expenditures for the employment of labor and capital on a per patent basis, taking into consideration the evidence in the record. Please also analyze whether the allocated amounts are significant both quantitatively and qualitatively

under subsection 337(a)(3)(B) for each Asserted Patent that protects a domestic industry product.

9. 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 others 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 parties to the investigation are requested to file written submissions on the issues identified in this notice. The initial written submissions must be filed no later than close of business on **September 9, 2022**. Reply submissions must be filed no later than the close of business on **September 16, 2022**. Opening submissions are limited to 50 pages. Reply submissions are limited to 30 pages. 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-1292) 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). 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 Rules 201.6 and 210.5(e)(2) (19 CFR 201.6 & 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 written in a cursive, flowing style.

Katherine M. Hiner
Acting Secretary to the Commission

Issued: August 24, 2022