

By order of the Commission.

Donna R. Koehnke,  
Secretary.

[FR Doc. 96-18795 Filed 7-23-96; 8:45 am]

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**[Investigations Nos. 701-TA-365-366 (Final) and 731-TA-734-735 (Final)]**

**Certain Pasta From Italy and Turkey**

**Determinations**

On the basis of the record<sup>1</sup> developed in the subject investigations, the Commission determines,<sup>2</sup> pursuant to section 705(b) of the Tariff Act of 1930 (the Act),<sup>3</sup> that an industry in the United States is materially injured by reason of imports from Italy and Turkey of certain pasta<sup>4</sup> that have been found by the Department of Commerce to be subsidized by the Governments of Italy and Turkey.

On the basis of the record developed in the subject investigations, the Commission also determines,<sup>5</sup> pursuant to section 735(b) of the Act,<sup>6</sup> that an industry in the United States is materially injured by reason of imports from Italy and Turkey of certain pasta that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

**Background**

The Commission instituted these investigations effective October 17, 1995, and January 17, 1996, following preliminary determinations by the Department of Commerce that imports of certain pasta from Italy and Turkey

<sup>1</sup> The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Watson dissenting.

<sup>3</sup> 19 USC § 1671d(b).

<sup>4</sup> The imported product subject to these investigations, "certain pasta," as defined by the U.S. Department of Commerce ("Commerce"), consists of dry non-egg pasta in packages of 5 pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to 2 percent egg white. The pasta is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags of varying dimensions. Certain pasta is described by Commerce as being classified in subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTS). Excluded from the scope of these investigations are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to 2 percent egg white. Also excluded from the scope of the investigations concerning Italy are imports of dry organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricoltura Biologica (AMAB).

<sup>5</sup> Commissioner Watson dissenting.

<sup>6</sup> 19 USC § 1673d(b).

were being subsidized within the meaning of section 703(b) of the Act,<sup>7</sup> and were being sold at LTFV within the meaning of section 733(b) of the Act.<sup>8</sup>

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the Federal Register of November 28, 1995, and February 7, 1996.<sup>9</sup> The hearing was held in Washington, DC, on June 5, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 17, 1996. The views of the Commission are contained in USITC Publication 2977 (July 1996), entitled "Certain Pasta from Italy and Turkey: Investigations Nos. 701-TA-365-366 (Final) and 731-TA-734-735 (Final)."

Issued: July 19, 1996.

By order of the Commission.

Donna R. Koehnke,  
Secretary.

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**[Investigation No. 337-TA-376]**

**Certain Variable Speed Wind Turbines and Components Thereof; Notice of Commission Decision To Review Portions of an Initial Determination; and Schedule for the Filing of Written Submissions on the Issues Under Review, and on Remedy, the Public Interest, and Bonding**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) issued by the presiding administrative law judge (ALJ) on May 30, 1996, in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3106.

**SUPPLEMENTARY INFORMATION:** This patent-based section 337 investigation

<sup>7</sup> 19 USC. § 1671b(b).

<sup>8</sup> 19 USC § 1673b(b).

<sup>9</sup> 60 FR 58638 and 61 FR 4681.

was instituted by the Commission on May 30, 1995 (60 F.R. 28167 (May 30, 1995)) based on a complaint filed by Kenetech Windpower, Inc., of Livermore, CA. Complainant alleged a violation of section 337 in the importation, sale for importation, and/or the sale within the United States after importation of certain variable speed wind turbines and components thereof, by reason of infringement of claim 131 of U.S. Letters Patent 5,083,039 ("the '039 patent"), and claim 51 of U.S. Letters Patent 5,225,712 ("the '712 patent"), both patents owned by complainant. The Commission's notice of investigation named Enercon GmbH of Aurich, Germany and The New World Power Corporation of Lime Rock, Connecticut, as respondents.

The ALJ held an evidentiary hearing on the merits which concluded on February 6, 1996, and issued his final ID finding a violation of section 337 on May 30, 1996. He found that there had been a sale for importation of the accused products; that claim 131 of the '039 patent has been literally infringed; that claim 51 of the '712 patent was not infringed, either literally or under the doctrine of equivalents; and that complainant's activities with respect to the '039 and '712 patents satisfy the domestic industry requirements of section 337.

Having examined the record in this investigation, including the ID, the Commission has determined to review the issue of interpretation of claim 131 of the '039 patent and the issue of infringement of that claim in light of that interpretation. The Commission has determined not to review the remainder of the ID. On review, the Commission is particularly interested in answers to the following questions:

The U.S. Court of Appeals for the Federal Circuit stated in *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995) (en banc) aff'd \_\_\_ U.S. \_\_\_, 116 S.Ct. 1384, 64 U.S.L.W. 4263 (April 23, 1996):

"Extrinsic evidence may demonstrate the state of the prior art at the time of the invention. It is useful 'to show what was then old, to distinguish what was new, and to aid the court in the construction of the patent.'"

*Markman*, supra at 34 USPQ2d 1330 (citation omitted).

Relying only upon the excerpts of record from the Mohan et al. reference (X-182C):

1. Explain with regard to claim 131, how, if at all, the Mohan et al. reference may be used to demonstrate the state of the prior art at the time of the claimed invention; i.e., how, if at all, the Mohan et al. reference may be used to show