

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-965, 971-972, 979, and 981 (Final)]

Certain Cold-Rolled Steel Products from Australia, India, Japan, Sweden, and Thailand

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (the Act),³ that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Australia, India, Japan, Sweden, and Thailand of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, 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 September 28, 2001, following receipt of petitions filed with the Commission and Commerce by Bethlehem Steel Corporation, Bethlehem, PA; LTV Steel Co., Inc., Cleveland, OH; National Steel Corporation, Mishawaka, IN;⁴ Nucor Corporation, Charlotte, NC; Steel Dynamics Inc., Butler, IN; United States Steel LLC, Pittsburgh, PA; WCI Steel, Inc., Warren, OH; and Weirton Steel Corporation, Weirton, WV.

The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain cold-rolled steel products from Australia, India, Japan, Sweden, and Thailand were being sold at LTFV within the meaning of section 733(b) of the Act.⁵ Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by

publishing the notice in the **Federal Register** of June 3, 2002 (67 FR 38291). The hearing was held in Washington, DC, on July 18, 2002, 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 September 5, 2002. The views of the Commission are contained in USITC Publication 3536 (September 2002), entitled Certain Cold-Rolled Steel Products from Australia, India, Japan, Sweden, and Thailand: Investigations Nos. 731-TA-965, 971-972, 979, and 981 (Final).

Issued: September 9, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-23347 Filed 9-12-02; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-456]

In the Matter of Certain Gel-Filled Wrist Rests and Products Containing Same; Notice of Commission Decision to Review Portions of an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of a final initial determination (ID) of the presiding administrative law judge (ALJ) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT:

Mary Elizabeth Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436, telephone (202) 205-3106. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m.

to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436, telephone (202) 205-2000.

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on May 17, 2001, based on a complaint filed on behalf of 3M Innovative Properties Company and Minnesota Mining & Manufacturing Company (now called 3M Company), both of St. Paul, Minnesota (collectively "complainants"). 66 FR 27535 (May 17, 2001). The complaint alleged violations of section 337 in the importation, sale for importation, and sale within the United States after importation of certain gel-filled wrist rests by reason of infringement of claims 1, 3, 6, 7, or 8 of U.S. Letters Patent 5,713,544 ("the '544 patent"). The complaint named eight respondents: Velo Enterprise Co., Taiwan; Aidma Enterprise Co. Ltd., Taiwan; Good Raise Chemical Industry Co., Ltd., Taiwan; ACCO Brands, Inc., Lincolnshire, Illinois; Curtis Computer Products Inc., Provo, Utah; Alsop, Inc., Bellingham, Washington; American Covers Inc., Draper, Utah; and Gemini Industries, Inc., Clifton, New Jersey. Id. The complaint and notice of investigation were later amended to add Crown Vast Development Ltd., Taiwan, and Hornleon Company, Ltd., Taiwan, as respondents.

On January 7, 2002, complainants and respondents filed their "Stipulation Concerning Domestic Industry," stipulating and agreeing to certain facts relating to the establishment of the economic prong of the domestic industry. An evidentiary hearing was held from January 14, 2002, through January 18, 2002. On October 22, 2001, the ALJ issued an ID (ALJ Order No. 6) granting complainants' unopposed motion to terminate the investigation with respect to Gemini Industries, Inc., on the basis of a consent order. On January 9, 2002, the ALJ issued an ID (ALJ Order No. 12) finding respondents Good Raise and Aidma in default. On May 15, 2002, the ALJ issued an ID (ALJ Order No. 15) granting complainants' unopposed motion to terminate the investigation with respect to Curtis Computer Products Inc., on the basis of a consent order. On May 21, 2002, the ALJ issued an ID (ALJ Order No. 16) granting complainants' unopposed motion to terminate the investigation with respect to Allsop, Inc., on the basis of a consent order. None of these IDs were reviewed by the Commission.

On July 24, 2002, the ALJ issued his final ID, concluding that there was no violation of section 337, based on the

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner Lynn M. Bragg dissenting.

³ 19 U.S.C. 1673d(b).

⁴ National Steel Corporation is not a petitioner with respect to Japan.

⁵ 19 U.S.C. 1673b(b).

following findings: (a) complainants have not established that any accused product infringes any asserted claim of the '544 patent; (b) invalidity of the '544 patent due to obviousness has been established by clear and convincing evidence; (c) invalidity of the '544 patent due to a failure to disclose the best mode has been established by clear and convincing evidence; and (d) it has been established that complainants do not practice the '544 patent and that therefore the domestic industry requirement of section 337 is not met. The ALJ also found that: (a) Respondents have failed to establish by clear and convincing evidence that the '544 patent is invalid due to anticipation; (b) invalidity of the '544 patent due to the lack of a written description or the lack of enablement has not been established by clear and convincing evidence; (c) invalidity of the '544 patent due to indefiniteness has not been established by clear and convincing evidence; (d) invalidity of the '544 patent due to improper joinder or non-joinder of inventors has not been established by clear and convincing evidence; (e) unenforceability of the '544 patent due to inequitable conduct before the U.S. Patent and Trademark Office has not been established by clear and convincing evidence; and (f) it has not been established by clear and convincing evidence that complainants are barred from asserting the '544 patent due to equitable estoppel. ID at 217-18.

On August 5, 2002, respondents ACCO, American Covers, Inc., Crown Vast Development, Ltd., and Velo Enterprise Co., Ltd. (hereinafter "respondents") filed a petition for review. On August 7, 2002, the Commission investigative attorney ("IA") filed a petition for review. On August 8, 2002, complainants filed a petition for review. On August 12, 2002, complainants filed a response to petitions for review. On August 15, 2002, respondents and the IA filed responses to petitions for review.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review:

- (1) The ID's construction of the asserted claims of the '544 patent;
- (2) The ID's infringement conclusions;
- (3) The ID's validity conclusions with regard to obviousness and failure to disclose best mode of practice; and
- (4) The ID's conclusion with respect to the technical prong of the domestic industry requirement.

The Commission has determined not to review the remainder of the ID.

The Commission determined to deny complainants' request for oral argument.

On review, the Commission requests briefing based on the evidentiary record on all issues under review and is particularly interested in receiving answers to the following questions, with all answers cited to the evidentiary record:

1. Assuming that the ALJ correctly construed the claim 1 term "pad," is it an error to conclude that infringement of the '544 patent can only be proven by testing the pads as they are intended to be used, i.e., with any outer coverings still on the gel? If infringement can be proven by testing the pads without any coverings, please identify the relevant record evidence supporting a finding of infringement or non-infringement.

2. Assuming that the ALJ correctly construed the claim 1 term "stable elastomeric block polymer gel," is it an error to find that col. 1:55-col. 2:9 are not limitations on claim 1, but col. 2:10-65 do represent limitations on claim 1?

3. Assuming that the ALJ correctly construed the claim 1 term "stable elastomeric block polymer gel" is it an error to require that, in order to satisfy the technical prong of the domestic industry requirement, domestically-made products be made without naphthenic oils?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive

conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's July 31, 2002, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on September 23, 2002, Reply submissions must be filed no later than the close of business on September 30, 2002. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission

will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–45)

Issued: September 9, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

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INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1014–1018 (Preliminary)]

Polyvinyl Alcohol From China, Germany, Japan, Korea, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731-TA-1014-1018 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Germany, Japan, Korea, and Singapore of polyvinyl alcohol, provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by October 21, 2002. The Commission's views are due at Commerce within five business days thereafter, or by October 28, 2002.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 5, 2002, by Celanese Chemicals, Ltd. of Dallas, TX and E.I. DuPont de Nemours & Co. of Wilmington, DE.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are

parties to the investigation under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 26, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than September 23, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 1, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 9, 2002.