

By order of the Commission.
 Donna R. Koehnke,
Secretary.
 [FR Doc. 96-18795 Filed 7-23-96; 8:45 am]
 BILLING CODE 7020-02-P

**[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 record¹ developed in the subject investigations, the Commission determines,² pursuant to section 705(b) of the Tariff Act of 1930 (the Act),³ that an industry in the United States is materially injured by reason of imports from Italy and Turkey of certain pasta⁴ 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,⁵ pursuant to section 735(b) of the Act,⁶ 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

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

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, 1996.⁹ 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.
 [FR Doc. 96-18794 Filed 7-23-96; 8:45 am]
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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

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

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

² Commissioner Watson dissenting.

³ 19 USC § 1671d(b).

⁴ 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).

⁵ Commissioner Watson dissenting.

⁶ 19 USC § 1673d(b).

⁷ 19 USC. § 1671b(b).

⁸ 19 USC § 1673b(b).

⁹ 60 FR 58638 and 61 FR 4681.

what was old at the time of the '039 invention, in order to distinguish what was new. Explain in detail how, if at all, the Mohan et al. reference should be used to aid in interpreting claim 131.

2. What are the differences, if any, between what the Mohan et al. reference discloses to one of ordinary skill in the art at the time of the claimed invention and the invention of claim 131, as interpreted by the ALJ?

3. What are the differences, if any, between what the Mohan et al. reference discloses to one of ordinary skill in the art at the time of the claimed invention and the invention of claim 131, as interpreted by respondents?

In connection with 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 and sale 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 either are adversely affecting it or are likely to do so. For background, 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 orders 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. The Commission notes the pending bankruptcy petition of complainant and asks the parties to address its relevance, if any, to the question of remedy.

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 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 specific 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 June 12, 1996, recommended determination by the ALJ 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 July 31, 1996. Reply submissions must be filed no later than the close of business on August 7, 1996. 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 document 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 (19 U.S.C. § 1337) and sections 210.45-.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45-.51).

Copies of the public version of the 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 Street S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: July 17, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-18796 Filed 7-23-96; 8:45 am]

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 17, 1996.

TIME AND DATE: 10:00 a.m., Thursday, July 25, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Jim Walter Resources, Inc., Docket Nos. SE 94-74, SE 94-84, and SE 94-115. (Issues include whether violations of 30 CFR §§ 75.400 & 75.1725(a) were the result of the operator's unwarrantable failure to comply with the standards.)

2. Consolidation Coal Co., Docket No. WEVA 94-19. (Issues include whether the operator qualified for the exemptions contained in 30 CFR § 75.340(b) (4) & (6) to the underground water pump standard set forth in 30 CFR § 75.340(a); whether the alleged violation resulted from the operator's unwarrantable failure; and whether the alleged violation was "serious".)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96-18886 Filed 7-22-96; 9:45 am]

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