

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PHOTOVOLTAIC CELLS
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-1151

**NOTICE OF COMMISSION DECISION TO REVIEW AN INITIAL DETERMINATION
GRANTING COMPLAINANTS' UNOPPOSED MOTION FOR SUMMARY
DETERMINATION THAT THEY SATISFY THE ECONOMIC PRONG OF THE
DOMESTIC INDUSTRY REQUIREMENT; ON REVIEW, TO AFFIRM THE INITIAL
DETERMINATION WITH MODIFICATION**

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 initial determination ("ID") (Order No. 35) of the presiding administrative law judge ("ALJ") granting complainants' unopposed motion for summary determination that they satisfy the economic prong of the domestic industry requirement. On review, the Commission supplements the ID's analysis and affirms the ID's finding that complainants satisfy the economic prong of the domestic industry requirement.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential 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, SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.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: The Commission instituted this investigation on April 9, 2019, based on a complaint filed on behalf of Hanwha Q CELLS USA, Inc. of Dalton, Georgia and Hanwha Q CELLS & Advanced Materials Corporation of Seoul, Republic of Korea (collectively, "Hanwha"). 84 *Fed. Reg.* 14134-35 (April 9, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States

after importation of certain photovoltaic cells and products containing same by reason of infringement of certain claims of U.S. Patent No. 9,893,215 (“the ’215 patent”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named several respondents. The Office of Unfair Import Investigations (“OUII”) is participating in the investigation.

On September 20, 2019, Hanwha filed an unopposed motion for summary determination that it satisfies the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(A)-(B). OUII filed a response in support of the motion.

On October 30, 2019, the ALJ issued the subject ID (Order No. 35) granting Hanwha’s unopposed motion for summary determination that it satisfies the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(A)-(B) with respect to articles protected by the ’215 patent. No party petitioned for review.

Having examined the record of this investigation, including the subject ID, the Commission has determined to review the ID. On review, the Commission supplements the ID’s analysis with a contextual analysis required by our precedent to determine if Hanwha’s investments are significant. *See, e.g., Certain Carburetors and Products Containing Such Carburetors*, Inv. No. 337-TA-1123, Comm’n Op. at 18 (Oct. 28, 2019). We determine that the record evidence supports a finding that Hanwha’s domestic activities: (1) add significant value to its domestic industry products; and (2) are significant in the context of its worldwide operations. *See* Hanwha’s Mem. at 15-16 (and exhibits cited therein); *see also* ID at 7-10. With this additional analysis, the Commission affirms the ID’s finding that Hanwha satisfies the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(A) and (B) for the ’215 patent. (Commissioner Schmidlein concurs with the outcome of finding that Hanwha has satisfied the economic prong of the domestic industry requirement.)

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.



Lisa R. Barton
Secretary to the Commission

Issued: December 6, 2019