

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN AUTOMATED MECHANICAL
TRANSMISSION SYSTEMS FOR MEDIUM-
DUTY AND HEAVY-DUTY TRUCKS AND
COMPONENTS THEREOF**

)
)
) **Inv. No. 337-TA-503**
)
)
)
)
)
)

**NOTICE OF COMMISSION DECISION NOT TO REVIEW A FINAL INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337 OF THE TARIFF ACT
OF 1930; REQUEST FOR WRITTEN SUBMISSIONS 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 not to review the presiding administrative law judge's (ALJ) initial determination ("ID") in the above-captioned investigation finding a violation of section 337 of the Tariff Act of 1930. Notice is also hereby given that the Commission is requesting briefing on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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, S.W., Washington, D.C. 20436, telephone (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 this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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: This patent-based section 337 investigation was instituted by the Commission on January 7, 2004, based on a complaint filed by Eaton Corporation ("Eaton") of Cleveland, Ohio. 69 *Fed. Reg.* 937 (January 7, 2004). The complainant, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States

after importation of certain automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof, by reason of infringement of claim 15 of U.S. Patent No. 4,899,279 (“the ‘279 patent”); claims 1-20 of U.S. Patent No. 5,335,566 (“the ‘566 patent”); claims 2-4 and 6-16 of U.S. Patent No. 5,272,939 (“the ‘939 patent”); claims 1-13 of U.S. Patent No. 5,624,350 (“the ‘350 patent”); claims 1, 3, 4, 6-9, 11, 13, 14, 16 and 17 of U.S. Patent No. 6,149,545 (“the ‘545 patent”); and claims 1-16 of U.S. Patent No. 6,066,071 (“the ‘071 patent”).

The complaint and notice of investigation named three respondents ZF Meritor, LLC (“ZF Meritor) of Maxton, North Carolina, ZF Friedrichshafen AG (“ZFAG”) of Freidrichshafen, Germany, and ArvinMeritor, Inc. of Troy, Michigan.

On July 21, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ’s initial determination (“ID”) (Order No. 20) terminating the investigation as to the ‘071 patent and as to claims 2, 3, and 5-20 of the ‘566 patent, claims 4, 7, and 12 of the ‘350 patent, and claims 4, 8-9, and 14 of the ‘545 patent.

On August 11, 2004, the Commission issued a notice (indicating that it had determined not to review the ALJ’s ID (Order No. 31) terminating the investigation as to the ‘939 patent and as to claims 10, 11, and 13 of the ‘350 patent.

On August 16, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ’s ID (Order No. 28) that Eaton has satisfied the economic prong of the domestic industry requirement as to certain articles it alleges practice the patents at issue in this investigation.

On August 23, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ’s ID (Order No. 30) that Eaton did not meet the technical prong of the domestic industry requirement as to the remaining claims, claims 1-3, 5, 6, 8, and 9, of the ‘350 patent, thus terminating the investigation as to that patent.

On September 17, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ’s ID (Order No. 38) granting Eaton’s partial summary determination that the importation requirement has been met.

On September 23, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ’s ID (Order No. 45) granting Eaton’s motion for summary determination that it satisfies the economic prong of the domestic industry requirement of section 337 as to its medium-duty automated transmissions. The Commission also issued a notice on September 23, 2004, indicating that it had determined not to review ALJ’s ID (Order No. 55) granting Eaton’s motion for partial termination of the investigation as to claim 1 of the ‘566 patent.

On January 7, 2005, the ALJ issued his final ID on violation and his recommended determination on remedy. The ALJ found a violation of section 337 by reason of infringement of claim 15 of the ‘279 patent by respondents. He found no violation of section 337 regarding

the '566 and the '545 patents. Petitions for review were filed by Eaton, the respondents, and the Commission investigative attorney on January 21, 2005. All parties filed responses to the petitions on January 28, 2005.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the ID, thereby finding a violation of section 337.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of respondents' FreedomLine transmissions from entry into the United States, and/or issue one or more cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of FreedomLine transmissions. 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 *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When 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.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. 19 U.S.C. § 1337(j). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. *Id.* 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, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the January 7, 2005, recommended determinations by the ALJ on the issuance of remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration and to state the date on which the '279 patent will expire. The written submissions and proposed remedial orders must be filed no later than close of business on March 7, 2005. Reply submissions must be filed no later than the close of business on March 14, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. 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* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42, 210.43, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.43, and 210.50).

By order of the Commission.

/S/

Marilyn R. Abbott
Secretary to the Commission

Issued: February 24, 2005