

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN CHEMICAL MECHANICAL
PLANARIZATION SLURRIES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1204

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER
AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 in the above-captioned investigation. The Commission has further determined to issue a limited exclusion order and cease and desist orders and to set a bond rate on the entered value of covered products imported or sold during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On July 7, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Cabot Microelectronics Corporation ("CMC") of Aurora, Illinois. 85 FR 40685-86 (July 7, 2020). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain chemical mechanical planarization ("CMP") slurries and components thereof by reason of infringement of one or more of claims 1, 3-6, 10, 11, 13, 14, 18-20, 24, 26-29, 31, 35-37, and 39- 44 of U.S. Patent No. 9,499,721 ("the '721 patent"). *Id.* at 40685. The Commission's notice of investigation named as respondents DuPont de Nemours, Inc. of Wilmington, Delaware; Rohm and Haas Electronic Materials CMP, LLC of Newark, Delaware; Rohm and Haas Electronic Materials CMP Asia Inc. (d/b/a Rohm and Haas Electronic Materials CMP Asia Inc., Taiwan Branch (U.S.A.)) of Taoyuan City, Taiwan; Rohm and Haas

Electronic Materials Asia-Pacific Co., Ltd. of Miaoli, Taiwan; Rohm and Haas Electronic Materials K.K. of Tokyo, Japan; and Rohm and Haas Electronic Materials LLC of Marlborough, Massachusetts (collectively, “Respondents” or “DuPont”). *Id.* at 40686. The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.*

On October 1, 2020, the administrative law judge (“ALJ”) issued an initial determination granting CMC’s unopposed motion to amend the complaint and notice of investigation to assert infringement of claims 17 and 46 of the ’721 patent. Order No. 7 (Oct. 1, 2020), *unreviewed by* Notice (Oct. 16, 2020).

On November 10, 2020, the ALJ issued an initial determination granting CMC’s unopposed motion to amend the complaint and notice of investigation to change the name of Complainant from Cabot Microelectronics Corporation to CMC Materials, Inc. Order No. 8 (Nov. 10, 2020), *unreviewed by* Notice (Nov. 24, 2020).

On January 26, 2021, the ALJ issued an initial determination granting CMC’s unopposed motion to amend the complaint and notice of investigation to reflect the conversion of Rohm and Haas Electronic Materials, Inc. to Rohm and Haas Electronic Materials CMP, LLC. Order No. 13 (Jan. 26, 2021), *unreviewed by* Notice (Feb. 11, 2021).

On January 26, 2021, the ALJ issued an initial determination granting CMC’s unopposed motion to terminate the investigation as to claim 5 of the ’721 patent. Order No. 12 (Jan. 26, 2021), *unreviewed by* Notice (Feb. 16, 2021).

On July 8, 2021, the ALJ issued the subject final initial determination (“ID”) finding a violation of section 337. The ID found that the parties do not contest personal jurisdiction, and that the Commission has *in rem* jurisdiction over the accused products. ID at 11. The ID further found that the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied. ID at 11-30. The ID also found that CMC established the existence of a domestic industry that practices the ’721 patent. ID at 144-169, 297-314. The ID concluded that CMC proved that Respondent’s accused products infringe the asserted claims of the ’721 patent and that Respondents failed to show that the asserted claims are invalid. ID at 87-144. The ID included the ALJ’s recommended determination on remedy and bonding (“RD”). The RD recommended that, should the Commission find a violation, issuance of a limited exclusion order and cease and desist orders would be appropriate. ID/RD at 316-331. The RD also recommended imposing a bond in the amount of one hundred percent of the entered value for covered products imported during the period of Presidential review. ID at 331.

On July 15, 2021, OUII filed a motion to extend the time for the parties to file petitions for review from July 20, 2021 (with responses due July 28, 2021) to July 29, 2021 (with responses due August 12, 2021). On July 16, 2021, the Chair granted the motion.

On July 29, 2021, Respondents and OUII filed separate petitions for review of the ID. On August 12, 2021, CMC submitted responses to the petitions filed by DuPont and OUII, and OUII submitted a response to DuPont’s petition.

On August 30, 2021, the Commission extended the due date for determining whether to review the final ID from September 8, 2021, to September 22, 2021.

On September 22, 2021, the Commission determined to review the ID in part. 86 FR 53674-76 (Sept. 28, 2021). Specifically, the Commission determined to review the ID's findings on importation, infringement, and domestic industry and requested briefing on the latter issue. *Id.* The Commission also requested briefing from the parties, interested government agencies, and interested persons on the issues of on remedy, the public interest, and bonding. On October 6, 2021, the parties submitted their opening briefs. On October 13, 2021, the parties filed their reply briefs.

On October 6, 2021, non-Party, Intel Corporation ("Intel") filed a statement on the public interest in response to the Commission's notice. On October 8, 2021, Intel sent a letter to the Chair stating that it is in possession of a document that bears directly on the public interest impact of CMC's requested remedy ("PI Document") and that it would be in a position to provide the document if ordered to do so. On October 20, 2021, DuPont filed a response requesting that the Commission order Intel to produce the PI document. On October 21, 2021, CMC filed a response in opposition.

On November 2, 2021, the Commission issued a notice requesting additional public interest information from Intel and directing Intel to produce the PI Document. On November 9, 2021, Intel submitted a response to the Commission notice. On November 15, 2021, the parties filed replies to Intel's Submission.

Upon review of the parties' submissions, the ID, the RD, evidence of record, and public interest filings, the Commission has determined that Respondents violated section 337 by reason of importation and sale of articles that infringe asserted claims 1, 3-6, 10, 11, 13, 14, 18-20, 24, 26-29, 31, 35-37, and 39-44 of the '721 patent. The Commission has further determined to issue a limited exclusion order prohibiting further importation of infringing products and cease and desist orders against the domestic respondents. The Commission, however, has determined that the public interest factors warrant an exemption from the remedial orders for up to one year for entities currently using the infringing products in an ongoing semiconductor chip fabrication development project pursuant to terms stated in the concurrently issued opinion and orders. The Commission has determined to set a bond in the amount of one hundred percent (100%) of entered value for covered products imported or sold during the period of Presidential review.

The Commission's vote on this determination took place on December 16, 2021.

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 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with the first name "Lisa" being the most prominent part.

Lisa R. Barton
Secretary to the Commission

Issued: December 16, 2021