

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

In the Matter of

**CERTAIN VARIABLE SPEED WIND
TURBINE GENERATORS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1218

**NOTICE OF COMMISSION DETERMINATION TO
REVIEW IN PART A FINAL INITIAL DETERMINATION FINDING A
VIOLATION OF SECTION 337 AS TO ONE PATENT AND NO VIOLATION AS
TO ANOTHER PATENT; SCHEDULE FOR FILING 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 to review in part a final initial determination (“Final ID”) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding based on the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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 (<http://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 September 8, 2020, the Commission instituted this investigation based on a complaint filed on behalf of General Electric Company of Boston, Massachusetts (“GE”). 85 FR 55492-93 (Sept. 8, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as supplemented and 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 variable speed wind turbine generators and components thereof by reason of infringement of one or more of claims 1, 3, 6, 7, 12, 15-16, 21-24, 29, 30, and 33-38 of U.S. Patent No.

6,921,985 (“the ’985 patent”) and claims 1 and 2 of the U.S. Patent No. 7,629,705 (“the ’705 patent”). *Id.* at 55493; Order No. 10 (Dec. 2, 2020), *unreviewed by* Comm’n Notice (Dec. 22, 2020). *Id.* The Commission’s notice of investigation named as respondents Siemens Gamesa Renewable Energy Inc. of Orlando, Florida; Siemens Gamesa Renewable Energy A/S of Brande, Denmark; and Gamesa Electric, S.A.U. of Zamudio, Spain (collectively, “SGRE”). *Id.* at 26493; 85 FR 55493. The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission subsequently terminated the investigation with respect to claims 3, 7, 15, 16, 21-24, 36, and 38 of the ’985 patent and claim 2 of the ’705 patent based on GE’s partial withdrawal of the complaint. Order No. 20 (Mar. 30, 2021), *unreviewed by* Comm’n Notice (Apr. 15, 2021) (terminating the investigation with respect to claims 3, 7, 36, and 38 of the ’985 patent and claim 2 of the ’705 patent); Order No. 24 (Apr. 26, 2021), *unreviewed by* Comm’n Notice (May 17, 2021) (terminating the investigation with respect to claims 15, 16, and 21-24 of the ’985 patent). Accordingly, at the time of the Final ID, the remaining asserted claims were claims 1, 6, 12, 29, 30, 33-35, and 37 of the ’985 patent and claim 1 of the ’705 patent.

The Commission also issued a summary determination that GE satisfied the economic prong of the domestic industry requirement with respect to both asserted patents. Order No. 23 (Apr. 26, 2021), *unreviewed by* Comm’n Notice (May 26, 2021)

On September 10, 2021, the ALJ issued the Final ID finding a violation of section 337 with respect to claims 1, 6, 12, 29, 30, 33-35, and 37 of the ’985 patent and finding no violation with respect to claim 1 of the ’705 patent. Final ID at 147. The Final ID found that GE showed that SGRE induced infringement of claims 1, 6, 12, 29, 30, 33-35, and 37 of the ’985 patent and claim 1 of the ’705 patent, and that GE showed that it satisfied the technical prong of the domestic industry requirement with respect to both patents. The Final ID also found that SGRE showed that claim 1 of the ’705 patent is directed to ineligible subject matter but failed to show that any asserted claim of the ’985 patent is invalid or ineligible.

On September 22, 2021, GE filed a petition for review of several issues, including the Final ID’s finding that claim 1 of the ’705 patent is directed to ineligible subject matter and is not infringed by SGRE’s full-converter turbines, as well as the Final ID’s finding that GE failed to demonstrate contributory infringement. On September 24, 2021, SGRE filed a petition for review of several issues, including the Final ID’s findings that SGRE’s products satisfied several limitations of claims 1, 6, and 12 of the ’985 patent, its findings that all of SGRE’s accused products satisfied claims 29, 30, 33-35, and 37 of the ’985 patent, its reliance on licensed activity, and its refusal to adjudicate infringement by products named in the complaint but for which no infringement evidence was presented. SGRE also contingently petitioned for review of the Final ID’s finding that SGRE’s products practice a limitation of claim 1 of the ’705 patent and that claim 1 is not invalid as anticipated. SGRE did not petition for review any issue regarding the Final ID’s finding that SGRE violated section 337 via its full-converter turbines with earlier software with respect to claims 29, 30, 33-35, and 37 of the ’985 patent. GE and

SGRE opposed each other's petitions on September 30, 2021, and October 4, 2021, respectively.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined to review the Final ID in part. Specifically, the Commission has determined to review the following issues: (1) the Final ID's finding that the accused products satisfy the limitation "a second mode of operation comprising the low voltage event" of claims 1, 6, and 12 of the '985 patent; (2) the Final ID's finding that the accused turbines having a doubly-fed induction generator ("DFIG") satisfy the limitation "turbine controller causes the blade pitch control system to vary the pitch of the one or more blades" of claims 1, 6, and 12 of the '985 patent; (3) the Final ID's finding that certain full-converter turbines with later software and DFIG Products infringe claims 29, 30, 33-35, and 37 of the '985 patent; and (4) the Final ID's finding that the accused products satisfy the limitation "during the entire duration of and subsequent to a zero voltage fault that lasts for an undetermined period of time" of claim 1 of the '705 patent. The Commission declines to review the remainder of the ID, including the Final ID's finding that SGRE violated section 337 via its full-converter turbines with earlier software with respect to claims 29, 30, 33-35, and 37 of the '985 patent, its findings that GE satisfied the technical prong of the domestic industry requirement with respect to both asserted patents, and its finding that claim 1 of the '705 patent is directed to ineligible matter under 35 U.S.C. 101. The Commission has determined to take no position on whether GE showed that the accused products satisfy the limitation "during the entire duration of and subsequent to a zero voltage fault that lasts for an undetermined period of time," and therefore affirms the Final ID's finding of no violation as to claim 1 of the '705 patent based on 35 U.S.C. 101.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent 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 likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

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 a 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.

The Commission requests full briefing on remedy and the public interest, including in particular briefing on the following remedy and public interest issues:

1. If the Commission were to issue a remedy only with respect to articles that infringe claims 29, 30, 33-35, and 37 of the '985 patent, please provide the identity and volume of the products that would be impacted. Please address the extent to which the software version and licensed activity affect which products are covered by the remedy. Please discuss whether and to what extent remedial order(s) directed to the affected products you have identified in response to this question would affect each of the four public interest considerations. Please also address whether and to what extent SGRE's requested remedy exemptions would be necessary or appropriate in order to mitigate the identified adverse impacts on each public interest consideration.
2. Please explain the feasibility, including in terms of costs and time commitments or delays, of developing alternative contracts for the supply of wind turbine generators in the United States if SGRE is unable to fulfill its existing contract volumes due to remedial orders issued in this investigation.
3. Please describe whether and to what extent it is possible to switch providers for components and service. Please elaborate on the extent to which non-accused or non-infringing components can be used to build or service existing SGRE wind towers.
4. Please describe what, if any, additional costs a wind turbine operator would incur if the proposed remedy requires switching providers for wind turbine components and service. Please address the extent to which wind turbine operators have already paid for components potentially covered by a remedy, and related service, through warranty and other contractual provisions. Please also address whether switching providers would cause delays or compatibility issues. Please explain how such additional costs, if any, would affect one or more of the four public interest considerations.
5. Please explain what products, if any, are still subject to the license agreement between the parties or whether SGRE otherwise retains the right under patent exhaustion principles to import components for the purpose of repairing products sold under the license. Please explain how the Commission or Customs and Border Protection could ascertain whether imported products are covered by the license or are otherwise authorized.
6. Please address whether SGRE's proven domestic inventories of products and components that are accused of infringing (a) claims 1, 6, and 12 of the '985 patent and (b) claims 29, 30, 33-35, and 37 of the '985 patent are commercially significant within an appropriate context and whether SGRE

has other significant business operations in the United States. Please address the various product categories separately: full-converter turbines using the earlier software, full-converter turbines using the later software, and DFIG turbines.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no position on the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). 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. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The Commission requests that the parties to the investigation file written submissions on the remedy and public interest issues identified in this notice. The Commission encourages parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding, which issued on September 10, 2021. The Commission further requests that GE submit proposed remedial orders, state the date when the '985 patent expires, provide the HTSUS subheadings under which the subject articles are imported, and supply a list of known importers of the subject article. The written submissions, exclusive of any exhibits, must not exceed 40 pages, and must be filed no later than close of business on December 7, 2021. Reply submissions must not exceed 20 pages, and must be filed no later than the close of business on December 14, 2021. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1218) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract

personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on November 12, 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 part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: November 12, 2021