INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1185 (Review)]

Steel Nails From the United Arab Emirates

Determination

On the basis of the record developed in the subject five-year review, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping duty order on steel nails from the United Arab Emirates would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on April 3, 2017 (82 FR 16229) and determined on July 7, 2017 that it would conduct an expedited review (82 FR 37112, August 8, 2017).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on September 29, 2017. The views of the Commission are contained in USITC Publication 4729 (September 2017), entitled Steel Nails from the United Arab Emirates: Investigation No. 731–TA–1185 (Review).

By order of the Commission.


Lisa R. Barton,
Secretary to the Commission.

[FR Doc. 2017–21486 Filed 10–4–17; 8:45 am]
BILLING CODE 9110–04–P

1 The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).
claim 18, but that for all of the asserted claims (claims 13, 16, and 18), the claims are invalid, and a domestic industry was not shown. Id. at 263.

On July 17, 2017, Tessera and the respondents each filed a petition for Commission review of the ID. On July 25, 2017, each responded to the other’s petition. In addition, Tessera, Broadcom, Comcast, Arista, ARRIS, ASUS, HTC, Netgear, and Technicolor each filed statements on the public interest. A number of public interest submissions were submitted by the public. In particular, the Commission received submissions from: Rep. Susan Brooks (R–IN); Rep. Tony Cardenas (D–CA); Rep. Darrell Issa (R–CA); Rep. Doug Lamborn (R–CO); Rep. Edward Royce (R–CA); Rep. Mimi Walters (R–CA); Rep. Rod Woodall (R–GA); Under Armour, Inc.; Sprint Spectrum LLC; Cable Television Laboratories, Inc.; Public Knowledge and the Open Technology Institute at New America; the Multimedia over Coax Alliance; the WiFi Alliance; and the Innovation Alliance.

On August 1, 2017, the respondents moved to modify the administrative protective order (“APO”) issued in this investigation (Order No. 1 as modified by Order Nos. 38 and 42). The Commission has determined to deny that motion, and to deny the respondents’ motion to file a reply. As the Commission recently reiterated, a supplier of confidential business information “may consent to the disclosure of their confidential business information to persons other than those qualified under the protective order to receive confidential business information.” Certain Digital Video Receivers & Hardware & Software Components Thereof, Inv. No. 337–TA–1001, Comm’n Order at 2 (June 30, 2017); accord Certain Doxorubicin & Preparations Containing Same, Inv. No. 337–TA–300, Comm’n Mem. Op., 1991 WL 788724, at * 6 (June 3, 1991).

However, neither the supplier of information (here, International Business Machines Corporation), nor a party (here, the respondents) may seek to amend the APO to allow only carefully circumscribed usage of information in certain specified European patent proceedings. To modify the APO in this manner would require the Commission to police the use of information outside the scope of Commission proceedings, which would be unduly burdensome for the Commission and unfair to other tribunals whose proceedings may be governed by different laws and rules.

In the record of the investigation, including the ALJ’s orders and the final ID, as well as the parties’ petitions and responses thereto, the Commission has determined to review the final ID in part.

As to the ‘007 patent, the Commission has determined as follows. The Commission has determined to review, and on review, to take no position on the economic prong of the domestic industry requirement, and infringement of claim 18. The Commission has determined not to review the remainder of the ID as to the ‘007 patent, including the ID’s findings concerning anticipation by, or obviousness over, the prior art.

As to the ‘946 patent and ‘136 patent, the Commission has determined not to review the ID’s findings concerning the level of skill in the art. The Commission has determined to review all other issues for the ‘946 patent and the ‘136 patent.

In connection with the Commission’s review, the Commission will rely upon the issues and arguments presented in the parties’ petitions and responses thereto. The Commission notes that “[a]ny issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination.” 19 CFR 210.43(b)(2).

The parties are asked to provide additional briefing on the following issues, with reference to the applicable law and the existing evidentiary record. For each argument presented, the parties’ submissions should set forth whether and/or how that argument was presented and preserved in the proceedings before the ALJ, in conformity with the ALJ’s Ground Rules (Order No. 2), with citations to the record.

a. For the ‘946 patent, with regard to the construction of “trench(es)”:

i. Please explain the meaning of the claim term “trench(es)” to persons skilled in the art in view of the intrinsic evidence of the ‘946 patent. In the context of the ‘946 patent, does the claim term “trench(es)” describe a specific shape-related property, such as elongated? Please discuss the relevance, if any, of Lexington Luminance LLC v. Amazon.com Inc., 601 Fed. App’x 963, 970–71 (Fed. Cir. 2015), and any other cases believed to be relevant to understanding the meaning of “trench(es)” to a skilled artisan for the ‘946 patent.

ii. Please explain the relevance, if any, of the definition of “trench” in the Applied Materials Glossary as a “groove etched in a wafer to be used as part of a device structure.” Applied Materials Glossary, http://www.appliedmaterials.com/resources/glossary (last visited Sept. 26, 2017). Is this meaning consistent with the ‘946 patent claims, specification, and prosecution history as understood by skilled artisans?

b. With regard to the ALJ’s decision to construe “trench” as “a long, narrow ditch,” or as a “groove etched in a wafer to be used as part of a device structure,” please explain whether any accused products or domestic industry products (and if so, specifically identify which) literally infringe or practice the asserted claims, and why. Under those same constructions, please explain whether any accused products or domestic industry products (and if so, specifically identify which), infringe or practice the asserted claims under the doctrine of equivalents, and why.

c. For the ‘946 patent, in connection with the IBM PowerPC 750, please explain:

i. The relevance, if any, of the die markings on the chips examined in the ICE report (RX–668) and the SI Report (RX–0499C).

ii. Whether the IBM PowerPC 750 anticipates the asserted dependent claims under the ID’s construction of “trench.”

d. With regard to the exhaustion issue for the ‘946 patent:

i. Please explain whether the accused features (including dummy trenches and dummy conductors) were part of a design supplied by Broadcom to [CBI REDACTED] or were added by [CBI REDACTED] itself, and the resulting implications for the Commission’s analysis of [CBI REDACTED] in ¶ 14 of JX–501C. If the accused features (including dummy trenches and dummy conductors) were part of a design supplied by Broadcom to [CBI REDACTED], please also explain whether such features were inserted into the design with [CBI REDACTED] in ¶ 14 of JX–501C.

ii. Please discuss the relevant law of exhaustion and first sale as it applies to the relationship between a fabless semiconductor company (Broadcom) and a fabricator [CBI REDACTED] who manufactures the fabless company’s own chips. Please address the specific provisions of the pertinent agreement, and the relationship between those provisions and the law of exhaustion.
and first sale. Please also discuss the relevance, if any, the Federal Circuit decision in *Medicines Company v. Hospira, Inc.*, 627 F.3d 1363, 1373–74 (Fed. Cir. 2016) (en banc) concerning commercial sales, and any related cases. Please address the specific provisions of the pertinent agreement or agreements alleged to give rise to exhaustion, and the relationship between those provisions and the law of exhaustion and first sale.

ii. With regard to infringement of the '136 patent, please explain whether Broadcom or its fabricators produced documentary evidence that demonstrates the cross-sectional structure of the accused interconnect structures in all of the accused products, including the locations of the layer of copper, barrier layer, layer of AlCu, and pad-limiting layer of claim 1 and the layer of copper, layer of isolation, barrier layer, layer of AlCu, and pad limiting layer of claim 11. To the extent that such evidence does not exist in this field of technology, please explain. To the extent that it does exist and was not produced, please explain. To the extent that it does exist and is part of the record of this investigation, please explain its pertinence, if any, to the ID’s findings concerning infringement.

iii. For the '136 patent, please explain whether each of the asserted claims is obvious over Crostini claim 1, under the relevant law for double patenting, if the Commission finds that “the claimed structure solder 38 is formed directly atop the AI contact” statement constitutes clear prosecution disavowal.

iv. With regard to the exhaustion issue for the '136 patent:

i. Please explain whether, on or before May 23, 2016 (the date the complaint was filed in the instant Commission investigation), the party alleged to be licensed to the '136 patent was an [CBI REDACTED] as defined in section 5 of CX--943C (TSRA1010--00004931).

ii. Please discuss the relevant law of exhaustion and first sale as it applies to the relationship between a fabless semiconductor company (Broadcom) and a company [CBI REDACTED] who provides outsourced semiconductor assembly and testing for the fabless company’s own chips. Please also discuss the relevance, if any, the Federal Circuit decision in *Medicines Company v. Hospira, Inc.*, 627 F.3d 1363, 1373–74 (Fed. Cir. 2016) (en banc) concerning commercial sales, and any related cases. Please address the specific provisions of the pertinent agreement or agreements alleged to give rise to exhaustion, and the relationship between those provisions and the law of exhaustion and first sale.

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 one or more cease and desist orders that could result in the Respondent(s) 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. (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 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. Public interest submissions should be mindful of the ALJ’s statement that the “parties have made no effort in their briefing to classify the 2,800 accused products in a way that would rationalize different treatment for different categories of products.” ID at 258. The Commission wishes to develop the record, as to, *inter alia*, the following issues:

(1) Which specific products of the respondents most directly implicate the Commission’s public interest factors? *See* 19 U.S.C. 1337(d)(1), (f)(1) (“the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers”).

(2) How are the Commission’s public interest factors implicated on a patent-claim-by-patent-claim basis for the asserted claims of the '946 patent and the '136 patent?

(3) How, if at all, may public interest concerns be accommodated by the tailoring of any remedial orders, including delaying the implementation of any Commission remedial orders as to specific products for a specific period of time?

Any person asserting that the public interest should be accommodated by tailoring any Commission remedial order as to a subset of the accused products (e.g., to delay implementation of a Commission remedial order as to specific accused products) shall append to its submission one or more declarations in support of those facts in compliance with 28 U.S.C. 1746. Each declaration shall be made on personal knowledge, and shall show affirmatively that the declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in a declaration shall be attached thereto or served therewith.

In the event that the Commission determines some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove 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. 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 parties to the investigation are requested to file written submissions on the issues under review. 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 recommended determination by the ALJ on remedy and bonding.

The parties’ submissions on the issues under review should not exceed 60 pages per side. Reply submissions on the issues under review should not exceed 40 pages per side. The respondents may allocate the page limits for the issues under review amongst themselves as they see fit. The page limits above are exclusive to exhibits, but parties are not to circumvent the page limits by incorporating material by reference from the exhibits or from the record.

The parties’ reply submissions on the issues of remedy, the public interest and bonding are to be submitted.
filed separately from the submissions on the issues under review and are not
governed by the page limitations recited
above. The complainants’ opening
submission on the issues of remedy, the
public interest and bonding is to
include proposed remedial orders for the
Commission’s consideration; the
date that the asserted patents expire; the
HTSUS numbers under which the
accused products are imported; and the
names of known importers of the
products at issue in this investigation.
Written submissions by the parties and
the public must be filed no later than
close of business on Friday, October
13, 2017. Reply submissions by the
parties and the public must be filed
no later than the close of business on
Monday, October 23, 2017. No further
submissions 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 and submit 8 true paper
copies to the Office of the Secretary to the
Commission by noon the next day pursuant to section
210.4(f) of the Commission’s Rules of Practice and Procedure (19 CFR
210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337–TA–1010”) in a prominent place on the
cover page and/or the first page. (See
Handbook for Electronic Filing
Procedures, https://www.usitc.gov/
secretary/fed_reg_notices/rules/
handbook_on_electronic_filing.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. All such requests should be
directed to the Secretary to 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 by the Commission is properly sought will be
treated accordingly. 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 nonconfidential written
submissions will be available for public
inspection at the Office of the Secretary
and on EDIS.
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.
[FR Doc. 2017–21426 Filed 10–4–17; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION
[Investigation Nos. 701–TA–576–577 and
731–TA–1362–1367 (Final)]
Cold-Drawn Mechanical Tubing From
China, Germany, Italy, Korea, and
Switzerland; Scheduling of the
Final Phase of Countervailing Duty and
Antidumping Duty Investigations


ACTION: Notice.

SUMMARY: The Commission hereby gives
notice of the scheduling of the final
phase of antidumping and
countervailing duty investigation Nos.
1367 (Final) pursuant to the Tariff Act
of 1930 (“the Act”) to determine
whether an industry in the United
States is materially injured or
threatened with material injury, or the
establishment of an industry in the
United States is materially retarded, by
reason of imports of cold-drawn
mechanical tubing from China,
Germany, Italy, Korea, and
Switzerland, provided for in
7304.51.10, 7304.51.50, 7306.30.50, and
7306.50.50 of the Harmonized Tariff
Schedule of the United States,
preliminarily determined by the
Department of Commerce to be
subsidized by the Governments of China
and India. Determinations with respect
to imports of cold-drawn mechanical
tubing alleged to be sold at less than fair
value are pending.


FOR FURTHER INFORMATION CONTACT:
Keysa Martinez (202–205–2136), Office
of Investigations, U.S. International
Trade Commission, 500 E Street SW.,
Washington, DC 20436. Hearing-
impared persons can obtain
information on this matter by contacting
the Commission’s TDD terminal on 202–
205–1810. Persons with mobility
impairments who will need special
assistance in gaining access to the
Commission should contact the Office

General information concerning the
Commission may also be obtained by
accessing its internet server (https://
www.usitc.gov). The public record for
these investigations may be viewed on the
Commission’s electronic docket
(EDIS) at https://edis.usitc.gov.

SUPPLEMENTARY INFORMATION:
Scope.—For purposes of these
investigations, the Department of
Commerce has defined the subject
merchandise as cold-drawn mechanical
tubing of carbon and alloy steel (cold-
drawn mechanical tubing) of circular
cross-section, in actual outside
diameters less than 331 mm, and
regardless of wall thickness, surface
finish, end finish or industry
specification. The subject cold-drawn
mechanical tubing is a tubular product
with a circular cross-sectional shape
that has been cold-drawn or otherwise
cold-finished after the initial tube
formation in a manner that involves a
change in the diameter or wall thickness
of the tubing, or both. The subject cold-
drawn mechanical tubing may be
produced from either welded (e.g.,
electric resistance welded, continuous
welded, etc.) or seamless (e.g., pierced,
pielpiered or extruded, etc.) carbon
or alloy steel tubular products. It may also be
heat treated after cold working. Such
heat treatments may include, but are not
limited to, annealing, normalizing,
quenching and tempering, stress
relieving or finish annealing. Typical
cold-drawing methods for subject
merchandise include, but are not
limited to, drawing over mandrel, rod
drawing, plug drawing, sink drawing and
similar processes that involve
reducing the outside diameter of the
tubing with a die or similar device,
whether or not controlling the inside
diameter of the tubing with an internal
support device such as a mandrel, rod,
plug or similar device.

Subject cold-drawn mechanical
tubing is typically certified to meet
industry specifications for cold-drawn
tubing including but not limited to:
(1) American Society for Testing and
Materials (ASTM) or American Society
of Mechanical Engineers (ASME)
specifications ASTM A–512, ASTM
A–513 Type 3 (ASME SA513 Type 3),
ASTM A–513 Type 4 (ASME SA513
Type 4), ASTM A–513 Type 5 (ASME
SA513 Type 5), ASTM A–513 Type 6