

respondent Tom Yarbrough Equipment Rental and Sales, Inc.

On August 21, 1996, the Commission determined not to review an initial determination (ID) (Order No. 40) granting complainants' motion for summary determination that complainants' four trademarks are valid and that the "KUBOTA" (block letters) and Gear Design marks are incontestable. On September 6, 1996, the Commission determined not to review an ID (Order No. 47) granting complainants' motion for summary determination that a domestic industry exists with respect to the "KUBOTA" (block letters) and "KUBOTA" (stylized) trademarks.

The presiding administrative law judge (ALJ) held an evidentiary hearing on the merits between August 29 and September 7, 1996, and heard closing arguments on October 24, 1996. The ALJ issued his final ID finding a violation of section 337 on November 22, 1996. He found that there had been imports of the accused products; that 24 specific models of the accused tractors infringed the "KUBOTA" (block letters) trademark (U.S. Reg. No. 922,330); that one model of the accused tractors, the KBT L200, did not infringe the "KUBOTA" (block letters) trademark; that none of the 25 accused KBT models considered infringed the "KUBOTA" (stylized) trademark (U.S. Reg. No. 1,775,620); and that complainants were no longer asserting violations of section 337 based on infringement of the stylized "K" and "Gear Design" trademarks.

On January 9, 1997, the Commission determined to review (1) the finding of no infringement and no violation with respect to the KBT model L200 tractor; and (2) the decision to limit infringement analysis to 25 models of accused tractors rather than all models of KBT tractors as to which there is evidence of importation and sale in the United States.

The Commission determined not to review the ID in all other respects. On review, the Commission requested that the parties address the following issues:

(1) Whether the fact that gray market KBT model L200 tractors are imported and sold bearing Japanese-language labels constitutes a "material difference" from the authorized KTC model L200 tractors sufficient to establish a likelihood of consumer confusion;

(2) Whether evidence on the record in this investigation demonstrates that specific KBT models other than the 25 identified on (Staff Exhibit) SX-1 have been imported and sold in the United States; and, if so,

(3) Whether evidence on the record in this investigation demonstrates that any specific KBT model identified in number (2) above was imported and sold in the United States

bearing Japanese-language labels or is otherwise materially different than the closest corresponding KTC model with respect to any of the differences found to be "material" in the ID.

In addition, the Commission requested written submissions on the issues of remedy, the public interest, and bonding. 62 FR 2179 (Jan. 15, 1997).

Submissions and reply submissions on remedy, the public interest, and bonding and on the issues under review were received from complainants, respondents, and the Commission investigative attorney (IA). In addition, complainants filed a request for oral hearing pursuant to Commission rule 210.45, complainants filed a request to strike pages 4–20 of respondents' brief on review, respondents filed a request to strike certain consumer survey information submitted by complainants and to sanction complainants for submitting that information, complainants filed a motion for leave to file a surreply brief in response to the reply brief filed by the IA, and respondents filed an objection to complainants' surreply brief.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has determined (1) to reverse the ALJ's finding of no infringement and no violation by the KBT model L200 tractor; (2) to find a violation of section 337 with respect to 20 models of KBT tractors in addition to the 25 models considered by the ALJ; and (3) to deny complainants' request for oral hearing, both requests to strike, respondents' request for sanctions, and complainants' motion for leave to file a surreply brief. The Commission has further determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the federally-registered U.S. trademark "KUBOTA" (Reg. No. 922,330) and eleven cease and desist orders directed to respondents Bay Implement Company, Casteel World Group, Inc. (and related entities), Gamut Trading Co. (and related entities), Lost Creek Tractor Sales, MGA, Inc. Auctioneers, The Tractor Shop, Tractor Company, and Wallace International Trading Co. prohibiting the importation, sale for importation, or sale in the United States after importation of agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the federally-registered U.S. trademark "KUBOTA" (Reg. No. 922,330).

The Commission has also determined that the public interest factors enumerated in subsections 1337(d) and (f) do not preclude the issuance of the general exclusion order and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 90 percent of the entered value of the articles in question.

Copies of the Commission's order, the public version of the Commission's opinion in support thereof, and all other nonconfidential 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. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: February 25, 1997.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 97–5408 Filed 3–4–97; 8:45 am]

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[Investigation No. 731–TA–746 (Final)]

Beryllium Metal and High-Beryllium Alloys From Kazakhstan

Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Kazakhstan of beryllium metal and high-beryllium alloys,³ that

¹ The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

² Chairman Miller dissenting.

³ The imported products subject to this investigation, as defined by the U.S. Department of Commerce, are beryllium metal and high-beryllium alloys with a beryllium content equal to or greater than 30 percent by weight, whether in ingot, billet, powder, block, lump, chunk, blank, or other semifinished form. These are intermediate or semifinished products that require further machining, casting, and/or fabricating into sheet, extrusions, forgings, or other shapes in order to meet the specifications of the end user. Beryllium metal and high-beryllium alloys in which beryllium predominates over all other metals are provided for in subheadings 8112.11.30 and 8112.11.60 of the Harmonized Tariff Schedules of the United States

have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 14, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Brush Wellman, Cleveland, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of beryllium metal and high-beryllium alloys from Kazakstan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 19, 1996 (61 FR 49341). The hearing was held in Washington, DC, on January 22, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 24, 1997. The views of the Commission are contained in USITC Publication 3019 (February 1997), entitled "Beryllium Metal and High-Beryllium Alloys from Kazakstan: Investigation No. 731-TA-746 (Final)."

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 97-5413 Filed 3-4-97; 8:45 am]

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[Inv. No. 337-TA-381]

Certain Electronic Products, Including Semiconductor Products, Manufactured by Certain Processes; Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

(HTS). High-beryllium alloys in which beryllium does not predominate are provided for elsewhere in the HTS; e.g., high-beryllium alloys in which aluminum predominates are provided for in HTS subheading 7601.20.90. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

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's) initial determination (ID) (Order No. 24) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3106.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on February 22, 1996, on behalf of Texas Instruments Incorporated, Dallas, Texas. 61 FR 6863. The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic products, including semiconductor products, that are manufactured, produced, and assembled using processes that are covered by claims 1-8 or 9 of U.S. Letters Patent 4,884,674; claims 1-6 or 7 of U.S. Letters Patent 5,216,613; or claims 1-14 or 15 of U.S. Letters Patent 4,490,209; and that there existed an industry in the United States as required by subsection (a)(2) of section 337. The notice of investigation named Samsung Electronics Company, Ltd., Seoul, Korea and Samsung America, Inc., Ridgefield Park, New Jersey as respondents.

On December 23, 1996, the parties to the investigation, pursuant to Commission rule 210.21(a)(1) and (b)(1), filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. On January 30, 1997, the presiding ALJ granted the joint motion and issued an ID (Order No. 24) terminating the investigation on the basis of the settlement agreement. The ALJ found that there is no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential 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, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

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By order of the Commission.

Donna R. Koehnke,
Secretary.

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[Inv. No. 337-TA-385]

Certain Random Access Memories, Processes for the Manufacture of Same, and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: 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's) initial determination (ID) (Order No. 10) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3106.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on March 19, 1996, on behalf of Samsung Electronics Company, Ltd., Seoul, Korea. 61 FR 11222. The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain random access memories and products containing same that infringe claims 1-3 of U. S. Letters Patent 4,947,059, claims 1-7 of U. S. Letters Patent 5,444,026, and claims 1 and 5 of U. S. Letters Patent 5,072,134. The complaint also alleged that a domestic industry existed or was in the process of being established as required by subsection (a)(2) of section 337. The notice of investigation named Texas Instruments Incorporated of Dallas, Texas, Texas Instruments Singapore (PTE), Ltd., and Texas Instruments Japan, Ltd. as respondents.