

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

**In the Matter of**

**CERTAIN NAND FLASH MEMORY  
DEVICES AND PRODUCTS  
CONTAINING SAME**

**Investigation No. 337-TA-553**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL  
DETERMINATION OF NO VIOLATION OF SECTION 337; SCHEDULE FOR FILING  
WRITTEN SUBMISSIONS ON REMEDY, 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 the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on November 20, 2006, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Michelle Walters, Esq., 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 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 at <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:** The Commission instituted this investigation on November 25, 2005, based on a complaint filed by Hynix Semiconductor Inc. of Korea; Hynix Semiconductor America Inc. of San Jose, California; and Hynix Semiconductor Manufacturing America Inc. of Eugene, Oregon (collectively, “Hynix”). The complaint, as supplemented and amended, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain NAND flash memory devices and products containing the same by reason of infringement of various claims of United States Patent Nos. 5,509,995 and 5,869,404.

On November 20, 2006, the presiding ALJ issued his final ID, finding no violation of section 337 by respondents Toshiba Corporation of Japan; Toshiba America Electronic Components, Inc. of Irvine, California; Toshiba America Information Systems, Inc. of Irvine, California; and Toshiba America Consumer Products, L.L.C. of Wayne, New Jersey (collectively, "Toshiba"). On December 4, 2006, the ALJ issued his recommended determination on remedy and bonding.

On December 6, 2006, Hynix filed a petition for review, challenging the ALJ's ID. On the same day, Toshiba filed a conditional petition for review of the ALJ's ID. On December 14, 2006, Toshiba and the Commission investigative attorney each filed responses to Hynix's petition for review, and Hynix filed a response to Toshiba's conditional petition for review.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review the final ID in its entirety.

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 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 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).

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.

If the Commission orders 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 *Fed. Reg.* 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 does not wish to receive further written submissions on the issue of violation. However, 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 be no more than twenty-five (25) pages and should address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on January 25, 2007. Reply submissions must be filed no later than the close of business on February 1, 2007. 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 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* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential 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 section 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46).

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: January 11, 2007