

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

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Investigation No. 337-TA-588

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE GRANTING
COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION OF VIOLATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination ("ID") of the presiding administrative law judge ("ALJ") granting complainant's motion for summary determination of violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), as to four defaulting respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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 (<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 13, 2006, based on a complaint filed on October 6, 2006, and supplemented on October 27 and 30, 2006, by Fluke Corp. of Everett, Washington, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital multimeters and products with multimeter functionality by reason of infringement of United States Trademark Registration No. 2,796,480 and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. 71 *Fed. Reg.* 661940 (November 13, 2006). Complainant requested that the Commission issue a general exclusion

order and cease and desist orders. The complaint named eighteen respondents in China, Hong Kong, and the United States. Fourteen respondents were terminated from the investigation by settlement agreement, consent order, or both. The four remaining respondents have been found in default.

On July 3, 2007, complainant filed a motion seeking summary determination of violation of section 337. Complainant also requested that the ALJ recommend a general exclusion order, cease and desist orders against respondents HandsOnTools and Electronix Express, and a 100 percent bond for entry the Presidential review period. On July 13, 2007, the Commission investigative attorney filed a response in support of the motion, supplemented on July 18. No other responses were received.

On January 14, 2008, the ALJ issued the subject ID (Order No. 22) granting complainant's motion for summary determination of a violation of section 337 as to the four defaulting respondents. He recommended issuance of a general exclusion order, issuance of cease and desist orders against Electronix Express and HandsOnTools, and that the amount of bond for temporary importation during the Presidential review period be set at 100 percent of the entered value of the articles concerned. No petitions for review were filed and the Commission has determined not to review the ID.

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 respondents 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: 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. The complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state 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 February 28, 2008. Reply submissions must be filed no later than the close of business on March 6, 2008. 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. § 201.6. 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 sections 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: February 12, 2008