

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

In the Matter of

**CERTAIN AUTOMATED MECHANICAL
TRANSMISSION SYSTEMS FOR MEDIUM-
DUTY AND HEAVY-DUTY TRUCKS AND
COMPONENTS THEREOF**

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) **Inv. No. 337-TA-503**
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**TERMINATION OF INVESTIGATION; ISSUANCE OF A LIMITED EXCLUSION
ORDER AND A CEASE AND DESIST ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation in which it has found a violation of section 337 of the Tariff Act of 1930 and has issued a limited exclusion order and a cease and desist order.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., 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: This patent-based section 337 investigation was instituted by the Commission on January 7, 2004, based on a complaint filed by Eaton Corporation ("Eaton") of Cleveland, Ohio. 69 *Fed. Reg.* 937 (January 7, 2004). The complaint, as supplemented, alleged 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 automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof, by reason of infringement of claim 15 of U.S. Patent No.

4,899,279 (“the ‘279 patent”); claims 1-20 of U.S. Patent No. 5,335,566 (“the ‘566 patent”); claims 2-4 and 6-16 of U.S. Patent No. 5,272,939 (“the ‘939 patent”); claims 1-13 of U.S. Patent No. 5,624,350 (“the ‘350 patent”); claims 1, 3, 4, 6-9, 11, 13, 14, 16 and 17 of U.S. Patent No. 6,149,545 (“the ‘545 patent”); and claims 1-16 of U.S. Patent No. 6,066,071 (“the ‘071 patent”).

The complaint and notice of investigation named three respondents ZF Meritor, LLC of Maxton, North Carolina, ZF Friedrichshafen AG of Freidrichshafen, Germany, and ArvinMeritor, Inc. (“ArvinMeritor”) of Troy, Michigan.

On July 21, 2004, the Commission issued a notice that it had determined not to review the ALJ’s initial determination (“ID”) (Order No. 20) terminating the investigation as to the ‘071 patent and as to claims 2, 3, and 5-20 of the ‘566 patent, claims 4, 7, and 12 of the ‘350 patent, and claims 4, 8-9, and 14 of the ‘545 patent.

On August 11, 2004, the Commission issued a notice that it had determined not to review the ALJ’s ID (Order No. 31) terminating the investigation as to the ‘939 patent and as to claims 10, 11, and 13 of the ‘350 patent.

On August 16, 2004, the Commission issued a notice that it had determined not to review the ALJ’s ID (Order No. 28) that Eaton has satisfied the economic prong of the domestic industry requirement as to certain articles it alleges practice the patents at issue in this investigation.

On August 23, 2004, the Commission issued a notice that it had determined not to review the ALJ’s ID (Order No. 30) that Eaton did not meet the technical prong of the domestic industry requirement as to the remaining claims, claims 1-3, 5, 6, 8, and 9, of the ‘350 patent, thus terminating the investigation as to that patent.

On September 17, 2004, the Commission issued a notice that it had determined not to review the ALJ’s ID (Order No. 38) granting Eaton’s partial summary determination that the importation requirement has been met.

On September 23, 2004, the Commission issued a notice that it had determined not to review the ALJ’s ID (Order No. 45) granting Eaton’s motion for summary determination that it satisfies the economic prong of the domestic industry requirement of section 337 as to its medium-duty automated transmissions. The Commission also issued a notice on September 23, 2004, that it had determined not to review ALJ’s ID (Order No. 55) granting Eaton’s motion for partial termination of the investigation as to claim 1 of the ‘566 patent.

On January 7, 2005, the ALJ issued his final ID on violation and his recommended determination on remedy and bonding. The ALJ found a violation of section 337 by reason of infringement of claim 15 of the ‘279 patent by respondents. He found no violation of section 337 regarding the ‘566 and the ‘545 patents. Petitions for review were filed by Eaton, the respondents, and the Commission investigative attorney on January 21, 2005. All parties filed

responses to the petitions on January 28, 2005.

On February 24, 2005, the Commission issued a notice indicating that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of section 337. The Commission also invited the parties to file written submissions regarding the issues of remedy, the public interest and bonding, and provided a schedule for filing such submissions.

Having reviewed the record in this investigation, including the parties' written submissions and responses thereto, the Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof covered by claim 15 of the '279 patent. The order covers automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof that are manufactured abroad by or on behalf of, or imported by or on behalf of the respondents, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The limited exclusion order does not cover parts necessary to service infringing automated mechanical transmission systems installed on trucks prior to the issuance of the order.

The Commission also determined to issue a cease and desist order prohibiting ArvinMeritor from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof covered by claim 15 of the '279 patent.

The Commission further determined that the public interest factors enumerated in sections 337(d)(1) and (f)(1), 19 U.S.C. §§ 1337(d)(1) and (f)(1), do not preclude issuance of either the limited exclusion order or the cease and desist order. In addition, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. Finally, the Commission determined to deny both the complainant's motion to strike and the respondents' motion for leave to file a surreply. The Commission's orders and opinion in support thereof were delivered to the President on the day of their issuance.

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 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: April 7, 2005