

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN CRAWLER CRANES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-887

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART AN INITIAL
DETERMINATION GRANTING SUMMARY DETERMINATION THAT
COMPLAINANT HAS SATISFIED THE ECONOMIC PRONG OF THE DOMESTIC
INDUSTRY REQUIREMENT AS TO ITS PATENT INFRINGEMENT ALLEGATIONS
AND THAT IT HAS SATISFIED THE REQUIREMENT OF INJURY TO THE
DOMESTIC INDUSTRY FOR ITS TRADE SECRET MISAPPROPRIATION
ALLEGATIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (“ID”) (Order No. 17) granting Complainant’s motion that it has satisfied the economic prong of the domestic industry requirement as to its patent infringement allegations and that it has satisfied the requirement for injury to a domestic industry for its trade secret misappropriation allegations. Specifically, the Commission has determined to review the ID’s findings as to the economic prong of the domestic industry requirement.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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 July 17, 2013, based on a complaint filed by Manitowoc Cranes, LLC (“Manitowoc”) of Manitowoc, Wisconsin. 78 *Fed. Reg.* 42800-01 (July 17, 2013). The complaint alleges violations of section

337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of U.S. Patent Nos. 7,546,928 and 7,967,158, and that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337. The complaint further alleges violations of section 337 by reason of trade secret misappropriation, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry under section 337(a)(1)(A). The Commission's notice of investigation named Sany Heavy Industry Co., Ltd. of Changsha, China, and Sany America, Inc. of Peachtree City, Georgia as respondents (collectively, Sany).

On January 13, 2014, Manitowoc filed a motion for summary determination that it had satisfied the economic prong of the domestic industry requirement as to its patent infringement allegations and had satisfied the requirement for injury to a domestic industry as to its trade secret misappropriation allegations. On January 23, 2014, the Office of Unfair Import Investigations replied supporting Manitowoc's motion. Also on January 23, 2014, Sany filed a response, even though it had represented that it would not oppose the motion.

On February 12, 2014, the ALJ granted Manitowoc's motion. For the asserted patents, the ALJ found that Manitowoc made significant investments in plant and equipment and in the employment of labor and capital. The ALJ found that Manitowoc had satisfied the economic prong of the domestic industry requirement under section 337(a)(3) generally. For the trade secret misappropriation claims, the ALJ found that a domestic industry exists and that Sany has injured or threatened to injure the domestic industry for the Manitowoc 400-600 ton crawler cranes especially in view of the small market. He found that Sany's response did not concern the economic and injury issues and that Sany did not dispute that its sales damaged Manitowoc's ability to make sales of competing crawler cranes. No petitions for review were filed.

The Commission has determined to review this ID in part with respect to the ALJ's findings regarding subsection 337(a)(3). Specifically, such domestic industry economic prong findings must identify subsection(s) of 337(a)(3) that is/are satisfied by particular evidentiary support. *See Certain Mobile Devices*, Inv. No. 337-TA-744, Commission Opinion at 8-10, (June 5, 2012). Accordingly, the Commission affirms the ALJ's findings in ID No. 17 with the following modifications. We find that Manitowoc has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A). *See* ID No. 17 at 4 under the heading "Plant and Equipment." We also find that Manitowoc has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(B). *See* ID No. 17 at 4-5 under the heading "Labor and Capital." The Commission takes no position on whether Manitowoc has satisfied the economic prong of the domestic injury requirement under section 337(a)(3)(C).

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 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 19, 2014