

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN CARBON AND ALLOY STEEL
PRODUCTS**

Investigation No. 337-TA-1002

**NOTICE OF COMMISSION DETERMINATION
TO SEEK FURTHER WRITTEN SUBMISSIONS FROM THE PUBLIC
AND TO RESCHEDULE THE DATE FOR AN ORAL ARGUMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to seek further written submissions from the public in response to the December 19, 2016, Notice, *see* 81 FR 94416-17 (Dec. 23, 2016), and to reschedule the date for an oral argument to April 20, 2017, in connection with the Commission’s review of the initial determination (“ID”) (Order No. 38) of the presiding administrative law judge (“ALJ”) granting Respondents’ motion to terminate Complainant’s antitrust claim under 19 CFR 210.21 and, in the alternative, 19 CFR 210.18.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. 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 SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 Investigation No. 337-TA-1002 on June 2, 2016, based on a complaint filed by Complainant United States Steel Corporation of Pittsburgh, Pennsylvania (“U.S. Steel”), alleging a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. *See* 81 FR 35381 (June 2, 2016). The complaint alleges violations of Section 337 based upon the importation into the United States, or in the sale of certain carbon and alloy steel products by reason of: (1) a conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The notice of investigation identified forty (40) respondents that are Chinese steel manufacturers or distributors, as well as some of their Hong Kong and United States affiliates. *Id.* In addition, the Office of Unfair Import Investigations is a party in this investigation. *Id.*

On August 26, 2016, Respondents filed a motion to terminate U.S. Steel's antitrust claim under 19 CFR 210.21. On September 6, 2016, U.S. Steel filed a response in opposition to Respondents' motion to terminate. On September 9, 2016, the Commission Investigative Attorney ("IA") filed a response in opposition to Respondents' motion to terminate. On November 14, 2016, the ALJ issued the subject ID, granting Respondents' motion to terminate Complainant's antitrust claim under 19 CFR 210.21 and, in the alternative, under 19 CFR 210.18. On November 23, 2016, Complainant and the IA filed petitions for review of the ID. Complainant also requested oral argument before the Commission. On December 1, 2016, Respondents filed a response to the petitions for review. Also on December 1, 2016, Complainant filed a response to the IA's petition for review.

On December 19, 2016, the Commission issued a Notice determining to review the ID (Order No. 38). *See* 81 FR 94416-17 (Dec. 23, 2016). In the Notice, the Commission requested written submissions from "[t]he parties to the investigation, including the Office of Unfair Import Investigations, and interested government agencies" in connection with its review and set a date of March 14, 2017, for possible oral argument. *Id.*

On February 24, 2017, the Commission issued a notice indicating that, pursuant to Commission Rule 210.45 (19 C.F.R. § 210.45), an oral argument would be held on March 14, 2017, in connection with the Commission's review of Order No. 38.

The Commission has determined to issue today's request for written submissions from any member of the public (not including the parties to this investigation) and any interested government agencies with respect to questions 1-4 of the December 19, 2016, Notice (*see* 81 FR 94416-17), as reproduced below:

1. Please explain the policies that underlie the injury requirement under Section 337(a)(1)(A)(iii), including an analysis of any relevant statutory language, legislative history, Commission determinations, case law, or other authority. In discussing this question, please also explain how the injury requirement under Section 337(a)(1)(A)(iii) is different from, or relates to, the injury requirement that applies under Section 337(a)(1)(A)(i).
2. Please explain what Complainant must prove to satisfy the injury requirement under Section 337(a)(1)(A)(iii), where the alleged unfair act in violation of Section 337 is based on a claim alleging a conspiracy to fix prices and control output and export volumes ("antitrust claim"). Please include an analysis of any relevant

statutory language, legislative history, Commission determinations, case law, or other authority.

3. Please explain how “antitrust injury” standing, as required for private litigants in federal district courts asserting antitrust claims, *see, e.g., Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 335 (1990), compares to, or differs from, the injury requirement under Section 337(a)(1)(A). Please include an analysis of any relevant statutory language, legislative history, Commission determinations, case law, or other authority. In discussing this question, please explain the chronology of the adoption of the “antitrust injury” standing requirement in relation to the injury requirement under Section 337(a)(1)(A).
4. Please explain whether “antitrust injury” standing is, or should be, required for establishing a Section 337 violation based on a claim alleging a conspiracy to fix prices and control output and export volumes as a matter of law and/or policy. Please include an analysis of any relevant statutory language, legislative history, Commission determinations, case law, or other authority.

The parties to this investigation, including the Office of Unfair Import Investigations, may file submissions in response to any written submission(s) that are submitted by the public or any interested government agencies. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

WRITTEN SUBMISSIONS: Written submissions from entities other than the parties and/or government agencies shall include a Statement of Interest including: (1) a concise statement of the identity of the entity filing the written submission, its interest in the case, and the reasons why the written submission is relevant to the disposition of the issues in dispute; and (2) a statement indicating whether: (i) a party’s counsel authored the written submission in whole or in part; (ii) a party or party’s counsel contributed money that was intended to fund preparing or submitting the written submission; and (iii) a person—other than the entity, its members, or its counsel—contributed money that was specifically intended to fund preparing or submitting the written submission and, if so, each such person shall be identified. Written submissions from individuals shall also include a curriculum vitae (“CV”). Written submissions must be filed no later than close of business on March 27, 2017, may not exceed 20 pages in length, exclusive of any exhibits, Statement of Interest, and CV, and shall be double-spaced. Responsive submissions from the parties must be filed no later than the close of business on April 3, 2017, may not exceed 20 pages in length, exclusive of any exhibits, and shall be double-spaced. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission’s Rules of

Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-1002”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf . Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on [EDIS](#).

COMMISSION ORAL ARGUMENT: The Commission has also determined to reschedule the oral argument to April 20, 2017, in order to provide sufficient time for the Commission to receive and review any written submissions and any responses thereto. The Commission will hold the public oral argument in the Commission’s Main Hearing Room (Room 101), 500 E Street, SW., Washington DC 20436, beginning at 9:30 a.m. While any member of the public may attend the oral argument, only counsel for the parties to the investigation, including the Office of Unfair Import Investigations, and representatives of interested government agencies may participate and/or argue at the oral argument.

At the oral argument, counsel for each party and representatives of interested government agencies will be given an opportunity to comment in opening remarks for no more than 10 minutes, and the Commissioners may ask questions of those appearing. Details as to the format of the hearing will be provided at a later date. This is a public proceeding; confidential business information (“CBI”) shall not be discussed. A party, however, can draw the Commission’s attention to CBI, if necessary, by pointing to where in the record the information can be found.

The oral argument will be limited in scope to the issues identified in the ID (Order No. 38); the Commission’s December 19, 2016, Notice; the present Notice; and any related petition, written submissions, and responses thereto.

After the conclusion of the oral argument, no additional written submissions or arguments will be permitted.

^[1] All contract personnel will sign appropriate nondisclosure agreements.

NOTICE OF APPEARANCE: Counsel for the parties to the investigation or any representatives of interested government agencies who wish to participate in the oral argument must file a written request to appear at the Commission oral argument by April 6, 2017 and must provide their email addresses as part of their contact information.

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 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: March 3, 2017