

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-652 and 731-TA-1524-1525 (Final)]

### Silicon Metal From Bosnia and Herzegovina, Iceland, and Kazakhstan; Determinations

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that an industry in the United States is materially injured by reason of imports of silicon metal, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, from Bosnia and Herzegovina and from Iceland, that have been found by the U.S. Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”), and from Kazakhstan, that have been found by Commerce to be subsidized by the Government of Kazakhstan.<sup>2</sup>

#### Background

The Commission instituted these investigations effective June 30, 2020, following receipt of petitions filed with the Commission and Commerce by Globe Specialty Metal, Inc., Beverly, Ohio and Mississippi Silicon, LLC, Burnsville, Mississippi. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of silicon metal from Kazakhstan were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of silicon metal from Bosnia and Herzegovina and Iceland were being sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission’s investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 30, 2020 (85 FR 86578). In light of the restrictions on access to the Commission building due to the COVID-19 pandemic, the Commission

conducted its hearing through written testimony and video conference on February 22, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on April 12, 2021. The views of the Commission are contained in USITC Publication 5180 (April 2021), entitled *Silicon Metal from Bosnia and Herzegovina, Iceland, and Kazakhstan: Investigation Nos. 701-TA-652 and 731-TA-1524-1525 (Final)*.

By order of the Commission.

Issued: April 12, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-07796 Filed 4-15-21; 8:45 am]

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## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-660-661 and 731-TA-1543-1545 (Final)]

### Utility Scale Wind Towers From India, Malaysia, and Spain; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701-TA-660-661 and 731-TA-1543-1545 (Final) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of utility scale wind towers from India, Malaysia, and Spain, provided for in subheadings 7308.20.00 and 8502.31.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (“Commerce”) to be sold at less-than-fair-value and subsidized by the Governments of India and Malaysia.

**DATES:** March 19, 2021.

**FOR FURTHER INFORMATION CONTACT:** Julie Duffy ((202) 708-2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

#### **SUPPLEMENTARY INFORMATION: Scope.—**

For purposes of these investigations, Commerce has defined the subject merchandise as certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by these orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS

<sup>1</sup> The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> The Commission also finds that imports subject to Commerce’s affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on silicon metal from Iceland.

7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (i.e., accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

**Background.**—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that imports of utility scale wind towers from India, Malaysia, and Spain are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b) and that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India and Malaysia. The investigations were requested in petitions filed on September 30, 2020, by the Wind Tower Trade Coalition (Arcosa Wind Towers Inc., Dallas, Texas; and Broadwind Towers, Inc., Manitowoc, Wisconsin).

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Participation in the investigations and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-

based filings or paper copies of any electronic filings will be accepted until further notice.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 27, 2021, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 10, 2021.

Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>. Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 4, 2021. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 9, 2021. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the

provisions of § 207.23 of the Commission's rules; the deadline for filing is June 4, 2021. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 17, 2021. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 17, 2021. On June 29, 2021, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 1, 2021, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 13, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-07900 Filed 4-15-21; 8:45 am]

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1190]

### Certain Wearable Monitoring Devices, Systems, and Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Affirmance of a Finding of No Violation of Section 337; Termination of Investigation

**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 a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337. On review, the Commission has determined to affirm the final ID’s finding of no violation of section 337. The investigation is terminated.

#### FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 15, 2020, based on a complaint filed on behalf of Philips North America, LLC of Andover, Massachusetts and Koninklijke Philips N.V. of Eindhoven, Netherlands (collectively, “Complainants”). 85 FR 2440-41 (Jan. 15, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States,

the sale for importation, and the sale within the United States after importation of certain wearable monitoring devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,845,228 (“the ‘228 patent”); 9,820,698 (“the ‘698 patent”); 9,717,464 (“the ‘464 patent”); and 9,961,186 (“the ‘186 patent”). The Commission’s notice of investigation named the following Respondents: Fitbit, Inc. (“Fitbit”) of San Francisco, California; Garmin International, Inc. and Garmin USA, Inc., both of Olathe, Kansas (“the domestic Garmin Respondents”); Garmin Ltd. d/b/a Garmin Switzerland GmbH of Schaffhausen, Switzerland; Ingram Micro Inc. of Irvine, California; Maintek Computer (Suzhou) Co., Ltd. of Jiangsu Province, China; and Inventec Appliances (Pudong) of Shanghai, China (collectively, “Respondents”). The Office of Unfair Import Investigations (“OUII”) is participating in the investigation. The ‘186 patent was previously terminated from the investigation. Order No. 25 (July 17, 2020), *unreviewed by Comm’n Notice* (Aug. 4, 2020).

On February 4, 2021, the ALJ issued the final ID finding no violation of section 337 as to the two patents involved in the evidentiary hearing, the ‘228 and ‘464 patents. (Regarding the ‘698 patent, see Order. No. 35 (discussed below)). With respect to the ‘228 patent, the ID finds that: (1) None of Respondents’ accused products infringe asserted claim 2 of the ‘228 patent; (2) claim 2 of the ‘228 patent is invalid as anticipated under 35 U.S.C. 102 by the asserted prior art (U.S. Patent No. 6,077,236); (3) claim 2 of the ‘228 patent is directed to patent-ineligible subject matter under 35 U.S.C. 101; (4) claim 2 of the ‘228 patent is not anticipated under 35 U.S.C. 102, or rendered obvious under 35 U.S.C. 103, by any other asserted prior art; (5) claim 2 of the ‘228 patent is not unenforceable based on patent exhaustion; and (6) Philips has satisfied the domestic industry requirement with respect to the ‘228 patent.

With respect to the ‘464 patent, the ID finds that: (1) None of Respondents’ accused products infringe asserted claims 1 and 6 of the ‘464 patent; (2) claims 1 and 6 of the ‘464 patent are directed to patent-ineligible subject matter under 35 U.S.C. 101; (3) claims 1 and 6 of the ‘464 patent are not anticipated under 35 U.S.C. 102 and they are not rendered obvious under 35 U.S.C. 103; and (4) claims 1 and 6 of the ‘464 patent are not invalid based on improper inventorship under 35 U.S.C.

115(a) or 116(a); (5) Philips has not satisfied the technical prong of the domestic industry requirement with respect to the ‘464 patent; and (6) Philips has satisfied the economic prong of the domestic industry requirement by showing that a domestic industry is in the process of being established.

In the Recommended Determination, the ALJ recommends that if the Commission finds a violation it should issue a limited exclusion order directed to Respondents’ infringing products and a cease and desist order directed to the domestic Garmin respondents and Fitbit.

On February 16, 2021, Philips petitioned, OUII petitioned and contingently petitioned, and Respondents contingently petitioned for review of certain aspects of the final ID. On February 24, 2021, Philips, OUII, and Respondents each responded to the other parties’ petitions for review.

The Commission received no public interest comments from the public in response to the **Federal Register** notice seeking comment on the public interest. 86 FR 9085-86 (Feb. 11, 2021). On March 8, 2021, Respondents submitted public interest comments pursuant to Commission Rule 210.50(a)(4). No other party submitted public interest comments.

The Commission has determined to review the final ID in part. Specifically, the Commission has determined to review: (1) The ID’s construction of the term “monitor” recited in claim 2 of the ‘228 patent; (2) the ID’s finding of non-infringement for claim 2 of the ‘228 patent; (3) the ID’s finding that Philips has satisfied the domestic industry requirement with respect to the ‘228 patent; (4) the ID’s finding that claim 2 of the ‘228 patent is not unenforceable based on patent exhaustion; and (5) the ID’s finding, with respect to the ‘464 patent, that Philips has satisfied the economic prong of the domestic industry requirement by showing that a domestic industry is in the process of being established. The Commission has determined not to review the remainder of the final ID.

On review, the Commission has determined to: (1) Construe the term “monitor” recited in claim 2 of the ‘228 patent to mean “receive and track”; (2) affirm, with modified reasoning, the ID’s finding that the accused products practice the “monitor [ ] the sensor signals discontinuously in time” limitation recited in claim 2; and (3) reverse the ID’s finding that the accused products do not practice the “monitor the sensor signals in turn” limitation recited in claim 2. Accordingly, the Commission finds that the accused