**PUBLIC VERSION**

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

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| **In the Matter of**<br>**CERTAIN FOODSERVICE EQUIPMENT AND COMPONENTS THEREOF** | **Investigation No. 337-TA-1166** |

# COMMISSION OPINION

## I. INTRODUCTION

On August 5, 2021, the Commission determined to review in part the final initial determination ("final ID") issued by the presiding Chief Administrative Law Judge ("CALJ") ("CALJ") on June 4, 2021. Notice at 2–3 (Aug. 5, 2021) ("Notice of Review"), published at 86 Fed. Reg. 44054 (Aug. 11, 2021). On review, the Commission has determined to affirm, with modifications, the final ID's finding that there has been no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. As explained below, the Commission has determined that Complainants did not establish that they have an "industry in the United States" as required by section 337(a)(1)(A)(i). Therefore, there can be no substantial injury to an industry in the United States within the meaning of the statute. This opinion sets forth the Commission's reasoning in support of that determination. The Commission has further determined to take no position as to the trade secret issues under review.

## II. BACKGROUND

The Commission instituted this investigation on July 3, 2019, based on a complaint filed on behalf of Illinois Tool Works, Inc. ("ITW") of Glenview, Illinois; Vesta Global Limited of Hong Kong; Vesta (Guangzhou) Catering Equipment Co., Ltd. ("Vesta") of China; and Admiral Craft Equipment Corp. ("Adcraft") of Westbury, New York (collectively, "Complainants"). 84

Fed. Reg. 31911 (Jul. 3, 2019). The complaint, as supplemented, alleged violations of section 337 based upon the importation of articles into the United States, or in the sale of such articles by the owner, importer, or consignee of certain foodservice equipment and components thereof by reason of misappropriation of trade secrets and unfair competition through tortious interference with contractual relationships, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id*. at 31911–12. The notice of investigation named as respondents Guangzhou Rebenet Catering Equipment Manufacturing Co., Ltd.; Zhou Hao; Aceplus International Limited (aka Ace Plus International Ltd.); Guangzhou Liangsheng Trading Co., Ltd.; and Zeng Zhaoliang, all of China (collectively, "Respondents"). *Id*. at 31912. The Office of Unfair Import Investigations ("OUII") was also named as a party in this investigation. *Id*. The products at issue are commercial gas-burning foodservice equipment products, including fryers, convection ovens, griddles, charbroilers, hot plates, stock pots, ranges, and cheese melters.

On July 9, 2020, the CALJ granted a motion for summary determination of no substantial injury to a domestic industry. Order No. 52. The Commission determined to review Order No. 52, and on December 14, 2020, reversed the grant of summary determination, and remanded to the CALJ for further proceedings consistent with the Commission's opinion. Notice (Dec. 14, 2020).

On June 4, 2021, the CALJ issued the final ID, which found that Respondents did not violate section 337, primarily based on the finding that Complainants failed to establish the existence of a domestic industry.[1] The final ID found that Respondents imported and sold the

[1] The CALJ's recommended determination on remedy and bonding ("RD") issued on June 10, 2021.

accused articles in the United States. ID at 99. The final ID also found that Respondents misappropriated certain of Complainants' trade secrets, but that Complainants have not shown that Respondents tortiously interfered with contractual relationships. *Id.* The final ID further found that Complainants have not shown that the importation and sale of accused products made with and/or using the misappropriated trade secrets has the threat or effect of destroying or substantially injuring a domestic industry.

On June 21, 2021, the parties filed petitions for review,[2] and on June 29, 2021, the parties filed responses to those petitions.[3]

On August 4, 2021, the Commission determined to review the final ID in part. Notice of Review at 2–3, 86 Fed. Reg. at 44054. Specifically, the Commission determined to review the following issues:

> (1) the final ID's findings and conclusions as to the existence of a domestic industry and injury to a domestic industry; and
>
> (2) the final ID's findings and conclusions regarding the wrongful taking and use of the Bills of Materials Trade Secrets and the Custom Components and Mold Trade Secrets.

[2] Complainants' Petition for Review of the Final Initial Determination, EDIS Doc ID 745184 (June 21, 2021); Summary of Complainants' Petition for Review of the Final Initial Determination on Violation of Section 337, EDIS Doc ID 745122 (June 21, 2021); Respondents' Petition for Review of the Initial Determination on Violation of Section 337, EDIS Doc ID 745153 (June 21, 2021); Office of Unfair Import Investigation's Contingent Petition for Review, EDIS Doc ID 745096 (June 21, 2021).

[3] Complainants' Response to Petitions for Review of the Final Initial Determination, EDIS Doc ID 745724 (June 29, 2021); Summary of Complainants' Response to Petitions for Review of the Final Initial Determination, EDIS Doc ID 745722 (June 29, 2021); Respondents' Response to Complainants' Petition for Review of Initial Determination, EDIS Doc ID 745718 (June 29, 2021); Summary of Respondents' Response to Complainants' Petition for Review of Initial Determination, EDIS Doc ID 745718 (June 29, 2021); Office of Unfair Import Investigation's Response to Complainants' Petitions for Review, EDIS Doc ID 745667 (June 29, 2021); Office of Unfair Import Investigation's Response to Complainants' Petitions for Review, EDIS Doc ID 745677 (June 29, 2021).

*Id*. at 44054–55. The Commission requested briefing on the above issues and on remedy, public interest, and bonding. *Id.* at 44055.

On August 19, 2021, the parties filed their written submissions on the issues under review and on remedy, public interest, and bonding,[4] and on August 26, 2021, the parties filed their reply submissions.[5]

## III. COMMISSION REVIEW OF THE FINAL ID

When the Commission decides to review an initial determination, it reviews the determination *de novo*. *Certain Polyethylene Terephthalate Yarn & Prods. Containing Same*, Inv. No. 337-TA-457, Comm'n Op. at 9 (June 18, 2002). Upon review, the "Commission has 'all the powers which it would have in making the initial determination,' except where the issues are limited on notice or by rule." *Certain Flash Memory Circuits & Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 9–10 (July 1997) (quoting *Certain Acid-Washed Denim Garments & Accessories*, Inv. No. 337-TA-324, Comm'n Op. at 5 (Nov. 1992)). Commission practice in this regard is consistent with the Administrative Procedure Act. *Certain EPROM, EEPROM, Flash Memory, & Flash Microcontroller Semiconductor Devices &*

[4] Complainants' Opening Submission on the Issues Under Review, EDIS Doc ID 749977 (Aug. 19, 2021); Respondents' Initial Written Submission in Response to Commission's Notice of Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337, EDIS Doc ID 749975 (Aug. 19, 2021) ("RBr."); Response of the Office of Unfair Import Investigations to the Commission's Request for Written Submissions Regarding Remedy, Bonding, and the Public Interest, EDIS Doc ID 749981 (Aug. 19, 2021) ("OUIIBr.").

[5] Complainants' Reply Submission on Review, EDIS Doc ID 750373 (Aug. 26, 2021); Respondents' Responsive Written Submission Regarding the Issues Under Review, EDIS Doc ID 750366 (Aug. 26, 2021); Office of Unfair Import Investigations' Reply to the Private Parties' Responses to the Commission's Request for Written Submissions Regarding Remedy, Bonding, and the Public Interest, EDIS Doc ID 750367 (Aug. 26, 2021).

*Prods. Containing Same*, Inv. No. 337-TA-395 (Reconsideration), Comm'n Op. at 6 (Dec. 11, 2000); *see also* 5 U.S.C. § 557(b).

Upon review, "the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge." 19 C.F.R. § 210.45. "The Commission may also make any findings or conclusions that in its judgment are proper based on the record in the proceeding." *Id*. This rule reflects the fact that the Commission is not an appellate court but is the body responsible for making the final agency decision. On appeal, only the Commission's final decision is at issue. *See Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1349 (Fed. Cir. 2010).

## IV. ANALYSIS

The Commission's findings, conclusions, and supporting analysis follow.

### A. Failure to Establish an "Industry in the United States"

The Commission must determine whether Complainants have proven that they have an "industry in the United States" under section 337(a)(1)(A)(i). The Commission affirms the final ID's conclusion that Complainants have not shown that they have a domestic industry based on the reasoning below, and further adopts the ID's findings, conclusions, and supporting analysis that are not inconsistent with that reasoning.

#### 1. Legal Standard

This investigation is governed by 19 U.S.C. § 1337(a)(1)(A), which declares unlawful—

> Unfair methods of competition and unfair acts in the importation of articles . . ., into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is—
>
> (i) to destroy or substantially injure an industry in the United States;
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> (ii) to prevent the establishment of such an industry; or
>
> (iii) to restrain or monopolize trade and commerce in the United States.

19 U.S.C. § 1337(a)(1)(A). Thus, complainants must show that they have an "industry in the United States," and that the industry has suffered an "actual substantial injury, or threat of substantial injury." *See*, *e.g.*, *Certain Rubber Resins & Processes for Mfg. Same*, Inv. No. 337-TA-849, Comm'n Op. at 10 (Feb. 26, 2014).

While there is no bright-line rule for determining whether a domestic industry exists under section 337(a)(1)(A), the statute does not protect mere importers. The Commission examines the nature and significance of the complainant's domestic activities with respect to complainant's domestic industry products in order to determine if they are sufficient to constitute an industry in the United States. *Certain Bone Cements, Components Thereof & Products Containing the Same*, 337-TA-1153, Comm'n Op. at 22 (Jan. 25, 2021) ("*Bone Cements*") ("Thus, the statute, legislative history, Federal Circuit precedent, and Commission precedent support the Commission's continued assessment of the nature and significance of complainants' business activities in the United States that relate to complainants' domestic industry products to determine whether there are sufficient qualifying activities to constitute an industry in the United States or whether complainants' activities are those of a mere importer."); *Schaper Mfg. Co. v. U.S. Int'l. Trade Comm'n*, 717 F.2d 1368, 1372 (Fed. Cir. 1983) (stating that the "nature and extent" of complainant's activities were insufficient to constitute an industry in the United States and that complainant's activities were not "substantially different from the random sampling and testing that a normal importer would perform"). In assessing the existence of a domestic industry, the Commission first considers the nature of the alleged activities in the United States to determine whether they "are of the nature of activities that contribute to an 'industry in the United States' under section 337(a)(1)(A)(i)." *Bone Cements*, Comm'n Op. at 35. Then, the Commission considers the extent of the investments in the context of the investigation to

determine whether they are sufficient to establish "an industry in the United States." *Id.*; *see also id.* at 17 ("[T]he Commission will continue to follow Commission precedent, affirmed by the Federal Circuit, by analyzing the nature and significance of the complainant's domestic activities to determine if they are sufficient to constitute a domestic industry."); *Certain Miniature, Battery-Operated, All Terrain, Wheeled Vehicles*, Inv. No. 337-TA-122, USTIC Pub. No. 1300, Comm'n Op. at 6 (Oct. 1982) ("The threshold question of the existence of an 'industry . . . in the United States' . . . requires an inquiry into the nature and significance of complainants' business activities in the United States which relate to the STOMPER toy vehicles."), *aff'd*, *Schaper*, 717 F.2d at 1368.

**2. Alleged Activities and Amount of the Investments**

By way of background, Complainant ITW is the owner of the trade secrets at issue. CX-5646C (Schlitz WS) at Q/A 18, 117; Final ID at 3, 14. Vulcan is the name of a division of ITW's Food Equipment Group LLC, which is a business segment of ITW, and it designs foodservice equipment. CX-5646C (Schlitz WS) at Q/A 11 & 14. In 2010, Vulcan began working with Complainant Vesta, a Chinese manufacturer, to make certain Vulcan products. ID at 3. In 2013, ITW acquired Vesta, which originated the trade secrets at issue in this investigation. CX-5646C (Schlitz WS) at Q/A 18, 117; ID at 3, 14.

The asserted trade secrets fall into four categories: (1) product designs; (2) supplier information; (3) tooling and molds for components; and (4) customer and pricing information. ID at 14–15. The ID found that Rebenet misappropriated and used certain Vesta trade secrets in the design of thirteen categories of accused products: RGR-series ranges, GF-series gas fryers, GCO-series gas convection ovens, RCM-series gas salamanders, ECB-series gas char broilers, GCB-series gas char broilers, CB-series gas char broilers, EGG-series gas griddles, GG-series

gas griddles, CG-series gas griddles, SP-series gas stock pots, EHP-series gas hot plates, and GHP-series gas hot plates. ID at 46; *see id.* at 47–60. Vesta's gas-burning foodservice equipment products, including fryers, convection ovens, griddles, char broilers, hot plates, stock pots, ranges, and cheese melters, directly compete with the accused products. ID at 75, 91; *see TianRui Grp. Co. v. Int'l Trade Comm'n*, 661 F.3d 1322, 1337 (Fed. Cir. 2011) (affirming that direct competition between the accused, imported wheels and the complainant's domestically manufactured wheels was sufficient).[6]

Complainant Adcraft imports and sells foodservice equipment that is manufactured by complainant Vesta abroad. CX-5645C (Powers WS) at Q/A 11; CX-5646C (Schlitz WS) at Q/A at 24. Adcraft does not have a formal corporate relationship with ITW. CIB at 18. Entrée LLC ("Entrée") is a third-party located in El Paso, Texas. CX-5647C (Sucheki WS) at Q/A 12, 17, 20; *see* CIB at 18. Entrée also relies on Vesta to manufacture its commercial food equipment. CX-5647C (Sucheki WS) at Q/A 15–18.[7] In support of their position that a domestic industry exists, Complainants rely on activities by Adcraft, Entrée, and Vulcan, which they collectively call the "DI Participants." *E.g.*, CIB at 1.

A summary of the activities credited by the final ID is provided in the table below.

| **Complainants' Claimed Expenditures Credited by the ID** | | |
|---|---|---|
| **DI Participant Entity** | **Type of Expenditure** | **Amount between January 2017–May 2019** |
| **Adcraft** | | |

[6] It is not necessary for the domestic industry products to use the asserted trade secret in section 337(a)(1)(A) investigations involving trade secret misappropriation; it is sufficient that the accused products directly compete with the domestic industry products. *See TianRui*, 661 F.3d at 1337.

[7] Respondents did not object to the inclusion of Entrée's expenditures on the basis of Entrée being a non-party.

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| | Adcraft's own employees' labor costs for working on warranty service activities. ID at 77. | [ ][8] |
| | Adcraft's own lease costs attributable to warranty services. ID at 77. | [ ] |
| | Adcraft's own software costs attributable to warranty services. ID at 77. | [ ] |
| Adcraft's own activities total | | [ ] |
| | Adcraft's payments to third parties for warranty services. ID at 77. | [ ] |
| Adcraft's own activities plus payments to third parties | | [ ] |
| **Entrée** | | |
| | Entrée's own employees' labor costs relating to servicing. ID at 79. | [ ] |
| Entrée's own activities total | | [ ] |
| | Entrée's payments to third parties for warranty services. ID at 79. | [ ] |
| Entrée's own activities plus payments to third parties | | [ ] |
| **Vulcan** | | |
| | Vulcan's own employees' labor costs related to design, research, and development activities. ID at 82. | [ ] |
| | Vulcan's own plant and equipment related to design, research, and development activities. ID at 82. | [ ] |
| Vulcan's own activities total | | [ ] |
| | Vulcan's payments to third parties for warranty services. ID at 82. | [ bb ] |

[8] The ID found that both Respondents' and Complainants' experts alleged that the amount of labor expenditures allocated to servicing the domestic industry product are between [ ]. ID at 77. The ID relied on Respondents' expert, Dr. Vander Veen (whose allocation is approximately [ ] and whose allocations the ID found to be more reliable). *Id* at 77, 79.

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| Vulcan's own activities plus payments to third parties | | [ ] |
| **All activities credited by the ID** | | [ ] |

The ID rejected expenditures related to domestic employees who were engaged in activities that the ID found to be non-qualifying, or that Complainants had not reliably quantified or properly allocated. ID at 77, 79, 82. For example, the ID declined to find certain expenditures asserted by Complainants, such as inventory and warehousing expenditures, to be part of a domestic industry. ID at 75 (citing CIB at 200–02, 205–12); *id.* at 77 (characterizing complainant Adcraft's claimed expenditures for "investments in acquiring inventory" and "warehouse facilities" as "marketing and sales or distribution and shipping" expenditures and that such activities are those of a "mere importer").[9] The Commission agrees with the ID's decision to exclude certain of Complainants' alleged investments. CIB at 197 (alleging at least [ ] in qualifying expenditures); ID at 77–82, 87 (crediting only approximately [ ] of qualifying expenditures relating to warranty service expenditures with respect to Adcraft, Entrée, and Vulcan and to design, research, and development activities with respect to Vulcan).

The Commission further finds, consistent with the prior precedent and under the facts of this case, that Complainants' and Entrée's investments in warranty service activities that they perform themselves in the United States may be credited toward the existence of a domestic

[9] Commissioners Karpel and Schmidtlein disagree with the ID to the extent it suggests that sales and marketing expenses *per se* are not investments in activities that can contribute to the existence of a domestic industry but agree in the context of this investigation that the nature and extent of Complainants' activities are not sufficient to constitute an industry in the United States. As discussed below, they find that Complainants failed to show that their investments are sufficient to constitute an industry in the United States even if the sales and marketing expenditures are considered.

industry.[10] *See Bone Cements*, Comm'n Op. at 25 (recognizing that, depending on the facts and circumstances of a particular investigation, the "installation of the domestic industry's product, education and training regarding that product, and corresponding warranty, service, repair, quality control, and packaging activities may be considered"); *see also Certain Elec. Nicotine Delivery Sys. & Components Thereof*, 337-TA-1139, Comm'n Op. at 9 (May 5, 2020) (observing that, with respect to Complainants' "warranty and customer support" activities, the "Commission in the past has recognized similar types of investments in the United States"); *Certain Endoscopic Probes For Use in Argon Plasma Coagulation Sys.*, Inv. No. 337-TA-569, Final ID at 91, *unreviewed in relevant part by* Notice (Jan. 28, 2008) ("[A]ctivities such as quality control, repair and packaging of imported products, domestic repair and installation activities and domestic product servicing have served as the basis for a domestic industry."); *Certain Airtight Cast-Iron Stoves*, Inv. No. 337-TA-69, USITC Pub. 1126, Comm'n Op. at 10 (Jan. 1998) (finding that a domestic industry existed based, in part, on the fact that a "major part of [Complainant's] function is to repair and test stoves," including by instructing its network of dealers and distributors regarding the installation of the domestic industry products). Accordingly, the Commission affirms the ID's decision to include the investments related to the

[10] Chair Kearns notes that while it may be appropriate to include warranty service and repair activities depending on the facts of an investigation, it is unclear to him whether the claimed activities here are distinguishable from those of mere importers. *See Bone Cements* at 9, n.4 (Chair Kearns noting that warranty and customer support activities may not be distinguishable from the activities of an importer). However, he need not decide that issue at this point because, even if he includes these activities by the companies themselves, they are not sufficient to show the existence of a domestic industry, as discussed below in Section IV.A.3.

warranty service activities carried out by Adcraft, Vulcan, and Entrée for purposes of this investigation. ID at 77, 79, 82.[11]

Turing to the payments made by Adcraft, Vulcan, and Entrée to third parties for warranty services provided in the United States, Respondents and OUII argue that the ID erred by including these expenditures for two reasons: (1) because Complainants did not show that such activities are distinguishable from the activities of a mere importer, *see* RBr. at 4; OUIIBr. at 9; and (2) because Complainants did not show what portions of the payments to third parties went to qualifying activities by the third parties, *see* RBr. at 8–9; OUIIBr. at 10. The Commission has permitted qualifying payments to third parties (such as contractor payments) for warranty services in some prior investigations. *See*, *e.g.*, *Certain Devices for Improving Uniformity Used in a Backlight Module & Components Thereof*, Inv. No. 337-TA-805, Final ID at 57 (Oct. 22, 2012), *unreviewed by* Notice (Apr. 29, 2013) (finding the economic prong met based on the complainant's licensee's payments to reimburse costs incurred by independent providers for the service and repair of the domestic industry LCD TVs). However, the Commission takes no position as to either argument here because, as discussed below, the Commission finds that even if the payments to third parties in this investigation are included in their entirety, Complainants have not established the existence of a domestic industry.[12]

[11] The Commission also affirms the ID's decision to credit Vulcan's investments in design, research, and development activities. ID at 82, 87.

[12] Commissioner Schmidtlein takes no position as to the second argument but does not join in taking no position as to the first argument. She finds that payments made by Adcraft, Vulcan, and Entrée to third parties for warranty services provided in the United States are activities that contribute to the existence of a domestic industry. In addition, in her view, Complainants do not have to show that such activities, or any individual activity, they assert are distinguishable from the activities of a mere importer. Rather, in her view, assessing whether a complainant is a mere

### 3. Sufficiency of the Domestic Investments in Qualifying Activities

The Commission now turns to the question of whether the domestic investments are sufficient to establish "an industry in the United States" and finds that Complainants have failed to establish that their investments credited by the ID are sufficient to establish the existence of a domestic industry.

The ID found that, even when the third-party expenditures were included in their entirety, Complainants failed to present a reliable context for evaluating the "significance" of the domestic industry investments. ID at 88–89. The ID found, however, that Respondents' expert, Dr. Vander Veen, had presented such an analysis. *See id.* at 89. Dr. Vander Veen compared each of Adcraft's, Entrée's, and Vulcan's expenditures (including third-party payments) to their sales revenue for the domestic industry products, corresponding to [ ] respectively. *Id.* at 89–90. The ID concluded that the domestic industry expenditures were not quantitatively significant, and Complainant's qualitative significance arguments were unpersuasive. *Id.* at 90–91. The ID concluded that "[t]he record evidence confirms that in the years leading up to the filing of the complaint, Adcraft, Entrée, and Vulcan were primarily engaged in the importation, sale, and distribution of the DI Products. Complainants have not shown that the minimal investments in the domestic industry by these entities are quantitatively or qualitatively significant." *Id.* at 90.

The Commission finds no reason to disturb the final ID's findings that Complainants' estimation of the size of the relevant marketplace is unreliable, and that the only reliable contextual analysis offered in the record was offered by Respondents' expert, Dr. Vander Veen.

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importer must take into account the complainant's domestic activities as a whole. *See Certain In Vitro Fertilization Products, Components Thereof, and Products Containing the Same*, Inv. 337-TA-1196, Dissenting Views of Commissioners Schmidtlein and Karpel (Oct. 6, 2021).

Based on that analysis, the Commission finds that, even if the expenditures for warranty services activities carried out by a third party on behalf of Adcraft, Entrée, and Vulcan are considered part of the alleged domestic industry, Complainants have not shown that their investments in qualifying activities are sufficient to constitute the existence of a domestic industry.[13]

### B. Failure to Demonstrate Substantial Injury to the Claimed Domestic Industry

To establish a violation under section 337(a)(1)(A)(i), the Complainant must show "substantial injury," or threat thereof, to that domestic industry. The final ID found that there was no actual substantial injury or threat thereof to a domestic industry because (i) Complainants failed to establish the existence of a domestic industry, and because (ii) while there was injury, the injury to the domestic industry was not substantial given that there was not a significant domestic industry. ID at 91–99. The Commission affirms the final ID's finding of no substantial injury on the grounds that Complainants failed to show the existence of a domestic industry. The Commission otherwise takes no position as to the injury analysis in the final ID.

### C. The Trade Secret Issues Under Review

The Commission determined to review certain trade secrets findings and conclusions of the final ID. Notice of Review, 86 Fed. Reg. at 44054–55. Because, as discussed above, the Commission affirms, with modifications, the final ID's conclusion that Complainants failed to show a section 337 violation because they failed to show the existence of a domestic industry,

[13] In addition, Commissioners Karpel and Schmidtlein find that even if Complainants' asserted sales and marketing expenditures are considered together with their investments in warranty services, design, research, and development, it is not sufficient to constitute an industry in the United States. Complainants have not provided reliable evidence to counter Respondents' evidence that these domestic investments are not sufficient in the context of this industry. *See* ID at 88–91 (explaining that Complainants' evidence was unreliable and Respondents' expert Dr. Vander Veen offered the only reliable analysis); RX-0004C (Vander Veen WS) at Q/A 129 (testifying that the domestic investments are not sufficient even if sales and marketing expenditure are considered).

the Commission takes no position on the trade secrets issues under review. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984).

## V. CONCLUSION

For the reasons set forth above, the Commission determines that Complainants have not shown the existence of an "industry in the United States" or a substantial injury thereto. Accordingly, the Commission terminates the investigation with a finding of no violation of section 337.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: October 29, 2021