*In the Matter of*

# Certain Hardware Logic Emulation Systems and Components Thereof

Investigation No. 337-TA-383
MODIFICATION OF
TEMPORARY EXCLUSION ORDER

'97 NOV 24 P12:31
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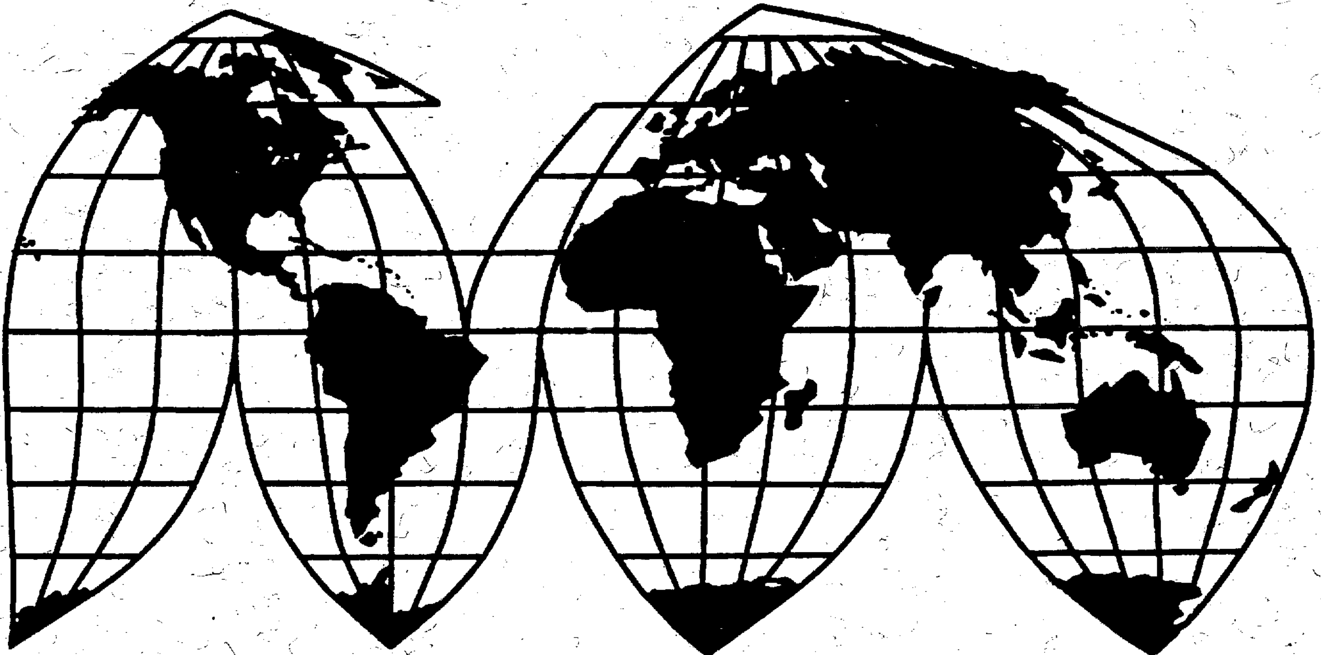
US INT'L TRADE COMM

**Publication 3074** **November 1997**

## U.S. International Trade Commission



Washington, DC 20436

# U.S. International Trade Commission

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**Washington, DC 20436**

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UNITED STATES INTERNATIONAL TRADE COMMISSION
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US INT'L TRADE COMM
'97 SEP 24 P2:16

In the Matter of

CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-383

# NOTICE OF COMMISSION DETERMINATION GRANTING COMPLAINANT'S PETITION TO MODIFY THE AMOUNT OF RESPONDENTS' TEMPORARY RELIEF BOND

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to grant complainant's petition to modify respondents' temporary relief bond in the above-captioned investigation. Respondents' temporary relief bond for all entries made since issuance of temporary relief in this investigation remains at 43 percent of the entered value of the subject imported articles if entered value equals transaction value as defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond for all entries made since issuance of temporary relief in this investigation is increased to 180 percent of the entered value of the subject imported articles if entered value does not equal transaction value as defined in applicable U.S. Customs Service regulations.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3116.

SUPPLEMENTARY INFORMATION: This investigation and temporary relief proceedings were instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation of Wilsonville, Oregon ("Mentor") and Meta Systems of Saclay, France ("Meta") (collectively "respondents"). The products at issue are hardware logic emulation systems that are used in the semiconductor manufacturing industry to test electronic circuit designs for semiconductor devices.

After an eleven-day evidentiary hearing, the presiding administrative law judge ("ALJ") issued an initial determination granting Quickturn's motion for temporary relief and a recommended determination ("TEO RD") regarding the appropriate remedy and bonding during the pendency of the permanent relief phase of the investigation. In his TEO RD, the

ALJ recommended to the Commission that respondents' temporary relief bond ("TEO bond") be determined based on the erosion in sales price that Quickturn was likely to suffer as a result of importations during the investigation. The Commission determined that the appropriate respondents' TEO bond should protect Quickturn against both sales price erosion and other losses of gross revenues that would reduce its research and development budget. *Commission TEO Opinion* at 19-21. The Commission imposed a bond of 43 percent of entered value on respondents' emulation systems, of which 25 percent was to compensate Quickturn for price erosion and 18 percent was to compensate for lost gross revenues that would otherwise be used for research and development. *Commission TEO Opinion* at 19-21.

On June 9, 1997, Quickturn petitioned the Commission pursuant to rule 210.76 for an increase in respondents' TEO bond rate from 43 percent of entered value of the subject emulation systems to 180 percent of entered value in view of the entered values that respondents have declared to the U.S. Customs Service. Quickturn argued that evidence gathered in the permanent relief phase of the investigation revealed that the TEO bond rate established in the temporary relief phase (43 percent of entered value) is inadequate to protect Quickturn from injury, as required by section 337. On June 19, 1997, respondents and the Commission investigative attorneys ("IAs") filed responses to that petition. The IAs supported the petition and respondents opposed it.

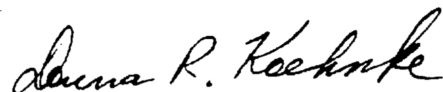
On July 22, 1997, the Commission determined to rule on Quickturn's petition to modify the TEO bond rate after receiving the ALJ's recommended determination on remedy and bonding in the permanent phase of the investigation. On August 1, 1997, the ALJ issued his recommended determination.

A Commission opinion in support of its determination will be issued shortly.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.76, 19 C.F.R. § 210.76.

Copies of all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.



Donna R. Koehnke
Secretary

Issued: **September 24, 1997**

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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'97 SEP 24 P2:16

In the Matter of

CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-383

## ORDER

This investigation and temporary relief proceedings were instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation of Wilsonville, Oregon ("Mentor") and Meta Systems of Saclay, France ("Meta") (collectively "respondents"). The products at issue are hardware logic emulation systems that are used in the semiconductor manufacturing industry to test electronic circuit designs for semiconductor devices.

After an eleven-day evidentiary hearing, the presiding administrative law judge ("ALJ") issued an initial determination granting Quickturn's motion for temporary relief and a recommended determination ("TEO RD") regarding the appropriate remedy and bonding during the pendency of the permanent relief phase of the investigation. In his TEO RD, the ALJ recommended to the Commission that respondents' temporary relief bond ("TEO bond") be determined based on the erosion in sales price that complainant Quickturn was likely to suffer as a result of importations during the investigation. The Commission determined that the appropriate respondents' TEO bond should protect Quickturn against both sales price erosion and other losses of gross revenues that would reduce its research and development

budget. *Commission TEO Opinion* at 19-21. The Commission imposed a bond of 43 percent of entered value on respondents' emulation systems, of which 25 percent was to compensate Quickturn for price erosion, and 18 was to percent to compensate for lost gross revenues that would otherwise be used for research and development. *Commission TEO Opinion* at 19-21.

On June 9, 1997, Quickturn petitioned the Commission pursuant to rule 210.76 for an increase in respondents' temporary relief bond from 43 percent of entered value of the subject emulation systems to 180 percent of entered value in view of the entered values that respondents have declared to the U.S. Customs Service. Quickturn argued that evidence gathered in the permanent relief phase of the investigation revealed that the TEO bond rate established in the temporary relief phase of the investigation (43 percent of entered value) is inadequate to protect Quickturn from injury, as required by section 337. On June 19, 1997, respondents and the Commission investigative attorneys ("IAs") filed responses to that petition. The IAs supported the petition and respondents opposed it.

On July 22, 1997, the Commission determined to rule on Quickturn's petition to modify the TEO bond rate after receiving the ALJ's recommended determination on remedy and bonding in the permanent phase of the investigation. On August 1, 1997, the ALJ issued his recommended determination. The target date for completion of the investigation is December 1, 1997.

Having considered the petition to increase the TEO bond rate, the responses thereto, and the ALJ's recommended determination in the permanent relief phase of the investigation, the Commission hereby ORDERS THAT, in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §210.76, the temporary

limited exclusion order issued on August 5, 1996, in the above-captioned investigation ("TEO"), 61 *Fed. Reg.* 41652 (August 9, 1996), is hereby amended as provided below:

1. The articles identified in paragraph (1) of the TEO are entitled to entry into the United States under bond in the amount of forty-three (43) percent of the entered value of such items pursuant to subsection (j) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(j)) if entered value is transaction value as defined in applicable U.S. Customs Service regulations from the day after the TEO was received by the President until the day after the Commission issues its final determination in Investigation 337-TA-383, unless, pursuant to subsection (j) of section 337, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

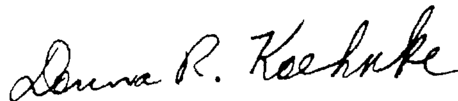
2. The articles identified in paragraph (1) of the TEO are entitled to entry into the United States under bond in the amount of one hundred eighty (180) percent of the entered value of such items pursuant to subsection (j) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(j)) if the entered value is not transaction value as defined in applicable U.S. Customs Service regulations from the day the TEO was received by the President until the day after the Commission issues its final determination in Investigation 337-TA-383, unless, pursuant to subsection (j) of section 337, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

3. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

4. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

5. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.



Donna R. Koehnke
Secretary

Issued: **September 24, 1997**

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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| In the Matter of<br><br>**CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF** | ) ) ) ) ) ) | Investigation No. 337-TA-383 |

## COMMISSION OPINION ON PETITION TO MODIFY TEMPORARY RELIEF BOND

Having considered the petition to modify the amount of the bond set during the temporary relief phase of this investigation submitted by complainant Quickturn Design Systems, Inc. ("Quickturn") and the responses thereto, we have determined, pursuant to rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76, to grant the petition by making the temporary relief bond rate contingent upon the entered value at which the subject imported merchandise is appraised.

## BACKGROUND

This investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn.[1] The respondents are Mentor Graphics Corporation of Wilsonville, Oregon ("Mentor") and Meta Systems of Saclay, France ("Meta") (collectively "respondents").[2] The products at issue are certain hardware logic

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[1] 61 *Fed. Reg.* 9486 (March 8, 1996).

[2] On June 13, 1996, the Commission determined not to review an initial determination adding respondents' customer Bull HN Information Systems, Inc., as an intervenor. *Notice of Commission Determination Not to Review an Initial Determination Granting the Motion of Bull HN Information Systems, Inc. to Intervene in the Permanent Relief Phase of the Investigation*

emulation systems that are used in the semiconductor manufacturing industry to test electronic circuit designs for semiconductor devices.

After an 11-day evidentiary hearing, the presiding administrative law judge ("ALJ") issued an initial determination granting Quickturn's motion for temporary relief and a recommended determination ("RD") regarding the appropriate remedy and bonding during the temporary relief period, *i.e.*, during the pendency of the permanent relief phase of the investigation.[3] In his RD, the ALJ recommended to the Commission that respondents' temporary relief bond ("TEO bond") be based upon the erosion in sales price that Quickturn was likely to suffer as a result of importations during the investigation. The Commission subsequently concluded that the respondents' TEO bond should protect Quickturn against both sales price erosion and other losses of gross revenues that would reduce its research and development budget. The Commission imposed a bond of 43 percent of entered value on respondents' emulation systems, of which 25 percent was to compensate Quickturn for price erosion and 18 percent was to compensate for lost gross revenues that would otherwise be used for research and development.[4]

On June 9, 1997, Quickturn petitioned the Commission pursuant to rule 210.76 for an

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(June 13, 1996).

[3] *Order No. 34: Initial Determination [On Motion for Temporary Relief]* (July 8, 1996). On August 5, 1996, the Commission determined not to modify or vacate the initial determination and issued a temporary limited exclusion order against respondents Mentor and Meta and a temporary cease and desist order against Mentor. *Commission Opinion on Remedy, the Public Interest, and Bonding* at 1-2 (August 12, 1996)("TEO Opinion").

[4] TEO Opinion at 19-21. At the request of the U.S. Customs Service, the Commission has for years expressed bond amounts as a percentage of the entered value, even though the entered value may be less than the importer's U.S. selling price. Using a method that is not tied to entered value evidently causes significant administrative difficulties for the Customs Service.

increase in respondents' temporary relief bond from 43 percent of the entered value of the subject emulation systems to 180 percent of the entered value [

].[5] As discussed below, Quickturn argued that evidence gathered in the permanent relief phase of the investigation reveals that the bond rate established in the temporary relief phase (43 percent of entered value) is inadequate to protect Quickturn from injury, as required by section 337. On June 19, 1997, respondents filed a response in opposition to the petition and the Commission investigative attorneys ("IAs") filed a response in support of the petition.

On July 22, 1997, the Commission notified the parties that it would rule on Quickturn's petition to modify the temporary relief bond rate after it received the ALJ's RD on remedy and bonding in the permanent relief phase of the investigation.[6] The ALJ issued that RD on August 1, 1997.

## DISCUSSION

### I. The Parties' Arguments

Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76, authorizes petitions to modify or rescind a Commission remedial order, in whole or in part, if such relief is warranted by "changed conditions of fact or law." In this case, Quickturn argued that the 43 percent temporary relief bond rate should be increased because that rate does not

[5] Petition Of Complainant Quickturn Design Systems, Inc. To Modify The Amount Of Respondents' Bond Set In The Temporary Exclusion Order And Temporary Cease And Desist Order Issued In This Investigation (June 9, 1997)(Motion Docket No. 383-125) ("Quickturn Bond Petition").

[6] *Notice of Schedule for Commission Decision on Complainant's Petition to Modify the Amount of Respondents' Temporary Relief Bond* (July 22, 1997).

protect it from injury, as required by section 337. Quickturn did not question the Commission's methodology for calculating the bond. Instead, it argued that evidence gathered in connection with the permanent relief phase of the investigation shows that a higher bond rate is warranted [

].[7]

In support of its petition, Quickturn submitted [

] that purportedly shows that [

].[8] With [ ], Quickturn argued, the current 43 percent bond rate is equivalent to [

], an amount that is insufficient to protect Quickturn from injury.[9] Thus, Quickturn urged the Commission to increase the bond rate to 180 percent of entered value in order to [

].[10] According to Quickturn, such a bond rate is justified because Quickturn should not bear the risk of harm [ ].[11]

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[7] Quickturn Bond Petition at 2, n. 1.

[8] Quickturn Bond Petition at 3-5.

[9] *Id.* at 3, 5. Although the temporary cease and desist order did not prohibit marketing of the accused devices, Quickturn pointed to evidence proffered in the permanent relief phase of the investigation which allegedly demonstrates that [
]. *Id.* at 6. Quickturn contended that this evidence shows that [
]. *Id.*

[10] *Id.* Quickturn arrived at the 180 percent rate by [
]. *Id.* at 6.

[11] *Id.* at 7. In connection with the permanent relief phase of the investigation, Quickturn argued that "there is evidence that respondents are [

]" Complainant Quickturn's Post-Hearing Brief on Permanent Relief at 140. Specifically, Quickturn stated that record evidence "indicates that [

Respondents opposed the petition on a number of grounds. They asserted that during the temporary relief phase of the investigation, Quickturn had the opportunity to argue that the bond should be adjusted to account for [

], but failed to do so. Thus, according to respondents, Quickturn has failed to meet its burden of demonstrating the existence of any "changed circumstance of fact or law," which is the only basis for modification of a Commission order under rule 210.76.[12] Respondents also argued that there is no precedent for modification of the temporary relief bond rate and that neither section 337 nor the Commission's rules expressly contemplate that respondents' bond will be adjusted during the temporary relief period.[13]

Respondents further asserted that because Mentor [

], Quickturn's suggestion that the temporary relief [ ] is inaccurate.[14] In

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] *Id.* Accordingly, Quickturn argued that it "should be protected [ ]." *Id.* at 143.

[12] Response of Respondents Mentor Graphics Corporation and Meta Systems to Complainant's Petition to Modify the Commission's Temporary Relief Orders at 2-3 ("Respondents' Bond Response").

[13] *Id.* at 3-4.

[14] *Id.* at 5. We note, however, that respondents' assertion is contradicted by the record, for respondents themselves have provided [

]. For example, while respondents asserted that Mentor [

], the record clearly shows that respondents [

]. *See* CX479 at 33, 73; Transcript of the Proceedings on Permanent Relief ("PEO Transcript") at 2894; Report Pursuant to Paragraph V of the Order to Cease and Desist, July 30, 1997. As for their U.S. sales practices, respondents previously submitted a declaration by a Mentor employee stating that they [

addition, respondents argued that Quickturn's purported "changed circumstance" hinges on factual issues that should not be resolved summarily based upon the allegations in the petition.[15] In particular, respondents claim that Quickturn's allegations regarding [

] rest on comparisons of

[ ].[16] Therefore,

according to respondents, a factual dispute exists concerning [

]. In light of these considerations, respondents urge that, if the Commission decides to consider Quickturn's petition on the merits, it should refer the petition to the ALJ for issuance of an RD, as Quickturn itself has suggested as an alternative course of action.[17]

Finally, respondents argued that if the Commission were to modify the temporary relief bond rate, any new rate should not be applied retroactively to importations and/or sales made prior to the decision to modify the bond.[18] Retroactive imposition of a new bond rate, according to respondents, would be unfair and would violate their due process and other rights. In

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]. Brief of Respondents Mentor Graphics and Meta Systems on Remedy, the Public Interest and Bonding, Attachment E, Declaration of James Kenney at 1. However, at the evidentiary hearing in the permanent relief phase of the investigation, Mr. Frederic Reblewski, a co-founder of Meta, testified that respondents [

]." PEO Transcript at 2882.

[15] Respondents' Reply at 5-7.

[16] *Id.*

[17] *Id.* at 7-8 (citing Petition at 8).

[18] *Id.* at 8-10.

particular, respondents contended that they had the right to rely on the 43 percent bond rate when determining whether to import articles subject to the temporary relief bond.[19] Furthermore, respondents argued that any retroactive change to the bond rate would render the bonding procedure meaningless, as importers will not import if there is uncertainty regarding their potential liability.[20] Finally, respondents asserted that retroactive modification of the bond rate would also conflict with the procedures of other government agencies, particularly with respect to the bond amount and antidumping duty rate set in final antidumping determinations; which are not applied retroactively to imports made during the period of the preliminary determination.[21]

The IAs supported Quickturn's petition for modification of respondents' temporary relief bond. According to the IAs, evidence gathered at the hearing on permanent relief established that [

].[22] Although the submitted documentation does not, for the most part, [ ], the IAs asserted that the documents "do allow for [

]."[23] Specifically, the IAs [

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[19] *Id.* at 8.

[20] *Id.* at 9.

[21] *Id.*

[22] Office of Unfair Import Investigations' Response to Complainant's Petition for Modification of Respondents TEO Bond at 5, citing Complainant's Petition for Modification of Respondents' TEO Bond at 4-5.

[23] *Id.* at 6.

].[24] Accordingly, the IAs argued that the temporary relief bond rate should be increased to 180 percent of entered value [

].[25]

## II. The ALJ's Recommendation

As indicated above, on August 1, 1997, the ALJ issued his RD on permanent relief which included a recommendation as to the appropriate bond amount necessary to protect Quickturn from injury during the 60-day Presidential review period following a Commission determination on violation of section 337. The ALJ applied the Commission's method of calculating the TEO bond. However, he further recommended that the Commission [

].[26]

Specifically, based upon the [ ] proffered by Quickturn, the ALJ found that [

].[27] Such a [

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[24] *Id.*, citing Complainant's Petition for Modification of Respondents' TEO Bond at 3-5.

[25] *Id.*

[26] RD at 182, citing SX21.

[27] *Id.*

].[28] He also found that the [

].[29]

Finally, he found that the [

].[30] According to the ALJ,

"respondents are [

]."[31] Based on what he referred

to as the "current record," the ALJ recommended that a bond in the amount of 180 percent of entered value be imposed during the Presidential review period, which represents the 43 percent rate [ ].

### III. Discussion

We do not believe that the documentation submitted by Quickturn and the IAs permits us to make a [

] (as the ALJ did). Specifically, in support of

his conclusion that information gathered since the Commission set the temporary relief bond rate

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[28] *Id.*, FF 516.

[29] *Id.*, FF 518.

[30] *Id.*, FF 520.

[31] *Id.*, FF 516-520. The ALJ also found that respondents have publicly represented that "the 43 percent bond now in place has no effect on their ability to make products available in the U.S. market." *Id.*, FF 522. In addition, he found that "the record shows that complainant has sustained actual harm during the pendency of this investigation due to lost sales to respondents, in spite of the current 43 percent TEO bond." *Id.* at 182-83, FF 523-527.

indicates that the 43 percent rate is insufficient to protect Quickturn from injury, the ALJ relied principally on [ ].[32] However, with respect to [ ], we are not convinced that the documentation standing alone permits us to [ ].[33] As the IAs noted, these documents permit only [ ]. Respondents also have contended that Quickturn's [ ].[34]

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[32] These documents are [ ]. *See* SX21.

[33] For example, [ ]. In addition, [ ]. However, as stated above, it is not clear [ ]. We also note that while [ ].

[34] We note that the documents upon which the ALJ based his analysis were produced by respondents on April 25, 1997, at the end of the evidentiary hearing on permanent relief. Consequently, although the ALJ addressed this issue in his RD on bonding, there was no witness testimony or further fact finding regarding these documents in this investigation. Indeed, the ALJ indicated that his recommendation was "based on the current record." Thus, while we generally would defer to the ALJ on such matters, the Commission cannot, based on the record developed to date, reasonably determine [ ]. However, as discussed *infra*, we believe that the documentation supports Quickturn's petition without the need for [ ].

Nevertheless, notwithstanding that the documentation does not permit [

], Quickturn has provided documentation that is adequate to demonstrate that [ ].[35] In other words, the documentation shows that respondents [

]. The documentation also shows that [

].[36]

Respondents have not challenged Quickturn's assertion that the [

].[37] Nor do they challenge Quickturn's assertion that those [

].[38] Indeed, while respondents generally stated that Quickturn's analysis involves [

].[39] More important, respondents have not

---

[35] *See e.g.*, SX21; *see also* Report Pursuant to Paragraph V of the Order to Cease and Desist, July 30, 1997.

[36] *Id.*; *see also*, CX450 ([
]).

[37] *See generally*, Respondents Bond Response; Mentor Graphics' and Meta Systems' Rebuttal Findings of Fact at 15-17. In fact, at the evidentiary hearing in the permanent relief phase of the investigation Mentor's then-Vice President of Corporate Development, Mr. Callan Carpenter, indicated that [
]. *See* PEO Transcript at 1026.

[38] *See generally*, Respondents Bond Response; Mentor Graphics' and Meta Systems' Rebuttal Findings of Fact at 15-17.

[39] *Id.* It therefore is reasonable to infer from respondents' failure to directly address the matter that Quickturn's assertions regarding the [ ] are accurate.

challenged the fact that [

].[40]

Specifically, respondents [

].[41]

Transaction value generally approximates the wholesale U.S. selling price.[42] Indeed, [

].[43] Following the issuance of the

temporary limited exclusion order, respondents [

].[44] [

].[45]

We stress that we would not revisit our original TEO bond rate simply based on an

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[40] *Compare* Complainant Quickturn's Proposed Findings of Fact and Conclusions of Law on its Complaint for Permanent Relief at CFF1010, 1011 and CX481 *with* Mentor Graphics' and Meta Systems' Rebuttal Findings of Fact at 15-17.

[41] *See* Complainant Quickturn's Proposed Findings of Fact and Conclusions of Law on its Complaint for Permanent Relief at CFF1010, 1011 and CX481.

[42] Transaction value, the primary method for appraising imported merchandise, is defined in the pertinent Customs regulations as the "price actually paid or payable" for the imported goods in an arm's length transaction. 19 C.F.R. §§ 152.102, 152.103(a) and (j)(2).

[43] *See* Complainant Quickturn's Proposed Findings of Fact and Conclusions of Law on its Complaint for Permanent Relief at CFF1010, 1011 and CX481.

[44] SX21; *see also* Report Pursuant to Paragraph V of the Order to Cease and Desist, July 30, 1997.

[45] *Id.*

assertion that the rate is somehow insufficient. As discussed above, the Commission had a firm basis for determining in this investigation that the amount of respondents' bond during the pendency of temporary relief should be 43 percent of the entered value of any imported hardware logic emulation systems and components thereof.[46] Rather, it is our view that respondents' [

] -- constitutes a changed circumstance warranting a modification of the original TEO bond rate.[47]

Section 337 clearly provides that during the pendency of the permanent relief phase of an investigation, articles subject to temporary exclusion orders and temporary cease and desist orders "shall be entitled to entry under bond . . . in an amount determined by the Commission to be sufficient to protect the complainant from *any injury*."[48] In setting the bond rate at 43 percent, the Commission anticipated that the revenues, if any, generated by such a bond would be sufficient to offset any harm to Quickturn. Because respondents [

], the revenues generated by a 43 percent bond rate also are significantly lower than the Commission had intended. Thus, respondents' [ ] would result in a bond amount far below the amount determined, and announced, by the Commission to be necessary to protect

---

[46] TEO Opinion at 17-20 (August 12, 1996).

[47] Section 337(k) grants the Commission the authority to modify exclusion orders based on changed conditions of fact or law. *See also*, *Allied Corp. v. USITC*, 850 F.2d 1573, 1579 (Fed. Cir. 1988).

[48] 19 U.S.C. 1337(e)(1)(emphasis added); TEO Opinion at 17 (August 12, 1996).

Quickturn from any injury. In light of this fact, we have amended the original TEO bond rate.[49]

Our determination is precisely that anticipated by the temporary relief provisions of section 337. In amending section 337 as part of the Uruguay Round Agreements Act, Congress explained that its intent was to bring section 337 into closer conformity with the rules and practice of the federal district courts, particularly the rules governing issuance of injunctions and temporary restraining orders.[50] As a result, the Commission has viewed the avoidance of "irreparable harm" to the complainant as a central goal of temporary relief, just as it is in the issuance of a preliminary injunction by a federal district court. In our opinion regarding temporary relief, we expressly stated that the loss of even a single sale ([

]) to an infringing device "could have a significant and long-term negative impact" on Quickturn, a relatively small, single-product company.[51] Respondents, however, [

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[49] As stated above, the ALJ found that "the record shows that complainant has sustained actual harm during the pendency of this investigation due to lost sales to respondents, in spite of the current 43 percent TEO bond." Final RD at 182-83, FF 523-527. In addition, respondents [
]. *See* Report Pursuant to Paragraph V of the Order to Cease and Desist, July 30, 1997; PEO Transcript at 2894. Quickturn would be significantly injured [
]. In other words, Quickturn is not protected from injury so long as respondents are allowed to sell their products [
]. In that event, the record shows that Quickturn will be confronted with a substantial amount of unfair import competition even after issuance of a temporary exclusion order that was issued based on the irreparable harm that these imports would cause to Quickturn.

[50] H. Rep. 103-826(I), Pub. L. 103-465, 108 Stat. 4809, 1994 U.S.C.C.A.N. 3773, 3914. The impetus for this and other amendments to section 337 was to ensure that imported goods are accorded "national treatment" under the General Agreement on Tariffs and Trade ("GATT"). *Id.*

[51] TEO Opinion at 20.

]. Modification of the bond rate therefore is warranted to prevent the irreparable harm to Quickturn that would result if respondents were allowed to sell these devices upon payment of a bond rate [ ]. By

[

].[52]

Consequently, we have determined to amend the TEO bond rate to make it contingent upon the methodology used to establish the entered value at which the subject imported goods are appraised by Customs. We have maintained the 43 percent bond rate, as to which respondents had express notice, in the event the goods are appraised by Customs at *transaction value*, as defined in the Customs regulations, but have increased the rate to 180 percent for goods appraised by Customs based upon entered values *other than* transaction value (*e.g.*, a cost-based value). Through the use of this "two-tiered" approach, we intend only to preserve the *status quo* set forth by the original TEO bond rate. In other words, to the extent that respondents [

], the bond would be assessed according to the rate we originally announced, as to which respondents clearly had notice. In this manner, respondents' liability remains unchanged from the level we originally determined would prevent harm to Quickturn, regardless of the method actually used

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[52] We note that the Commission generally has interpreted its statutory mandate as requiring it to afford complete relief to complainants from infringing goods. *See, e.g.*, *Certain Dynamic Random Access Memories,* Inv. No. 337-TA-242, USITC Pub. 2034 at 84 (November 1987)(noting that the Commission traditionally balanced complainant's interest in obtaining complete relief against public interest in avoiding the disruption of legitimate trade that such relief may cause).

to appraise the value of the subject goods.[53]

Respondents asserted that they relied on the original temporary relief bond rate (43 percent of entered value) to determine whether to import the subject goods during the temporary relief phase of this investigation, and that retroactive modification of this rate would make the bonding procedure a "sham" because it would no longer cap their potential liability. We do not find these arguments to be persuasive for, among other reasons, respondents have mischaracterized the extent to which they were on notice of the Commission's original determination.

Specifically, in our opinion regarding temporary relief we expressly stated that section 337 now requires us to set the amount of respondents' temporary relief bond at a level sufficient to protect complainant Quickturn "from any injury."[54] In the analysis that followed, we explained that the bond must compensate complainant Quickturn both for the effects of price erosion and for the lower research and development expenditures that would result from sales lost to respondents. It was clear that both of these factors were keyed to the sales price of the

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[53] To the best of our knowledge, [ ]. Consequently, it is uncertain whether [ ]. We note that Customs regulations favor transaction value (as opposed to [ ]) as the basis for entered value, and that, in any event, the determination of the appropriate entered value is a matter within Customs' jurisdiction. *See* 19 C.F.R. Part 152. If Customs ultimately appraises respondents' merchandise on the basis of trnasaction value, a 180 percent bond rate could prove to be significantly more than is necessary to protect Quickturn from injury. Use of the "two-tiered" amended TEO bond rate is intended to ensure that, in the event respondents' goods ultimately are appraised by Customs at transaction value, the bond rate does not rise beyond the intended rate of 43 percent.

[54] TEO Opinion at 17, citing 19 U.S.C. § 1337(e)(1).

accused products, and were intended to generate the aggregate amount of *revenues* that the Commission believed sufficient to compensate Quickturn for any injury.

We applied the bond rate to the entered value of the accused products rather than to respondents' sales price only to satisfy the administrative needs of the Customs Service.[55] In so doing, the Commission tacitly assumed that the entered value of respondents' products would be based, [ ], on transaction value, [ ]. Thus, respondents were on notice as to the amount of revenue the Commission had determined to be necessary to protect Quickturn from any injury, and they knew or should have known that [ ]. Accordingly, our application of the amended bond rate does not deny respondents notice of their liability because we are simply ensuring that Quickturn receives the amount of revenue that respondents knew or should have known we anticipated Quickturn would receive when we granted Quickturn temporary relief. Indeed, the bond rate changes [ ].[56]

Finally, respondents drew an analogy to the bonding practices in antidumping investigations, pointing out that an importer's liability is capped at the amount of the bond imposed for all imports made during the preliminary phase of the Commerce Department's

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[55] Using a method that is not tied to entered value apparently causes significant administrative difficulties for the Customs Service.

[56] In addition, we note that respondents imported the subject articles knowing that Customs ultimately may appraise the merchandise at entered values [ ]. Thus, it is not clear that respondents in fact were relying on a fixed liability for those goods when they determined to import them.

antidumping investigation (which they assert is analogous to the temporary relief phase of a section 337 investigation).[57] Respondents asserted that this cap assures importers that the preliminary bond will represent their maximum potential liability for all imports made during Commerce's preliminary antidumping investigation. Respondents suggested that the same kind of cap should be imposed on their liability during the temporary relief phase of a section 337 investigation.

We believe that respondents' analogy is flawed. Congress added the provision in question to the antidumping statute only as a direct result of the Tokyo Round of multilateral trade negotiations, which explicitly required that signatories adopt such a provision in their antidumping laws.[58] There is nothing in the legislative history of this provision suggesting that Congress was of the view that importers' due process rights had previously been violated. Indeed, the bond rate that the Commerce Department sets following its preliminary determination is based on an *estimated* dumping margin.[59] Thus, for such bonds it is understood that an importer's ultimate liability will not be known until after the Commerce Department completes its administrative review.

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[57] 19 U.S.C. § 1673f(a).

[58] S. Rep. 96-249, Pub. L. 96-39, 93 Stat. 144, 1979 U.S.C.C.A.N. 381, 463 (legislative history of preliminary bond cap), citing Article 11(1) of the Agreement on Implementation of Article VI of the GATT.

[59] 19 C.F.R. § 353.15.