

FOR IMMEDIATE RELEASE  
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### Froman Decision on the USITC's Investigation of Certain Electronic Digital Media Devices

Washington, DC – Today, United States Trade Representative, Michael Froman, announced his decision on the results of the Administration's review of the U.S. International Trade Commission's (USITC) determination in its investigation of certain electronic digital media devices (e.g., smartphones and computer tablets).

Statement of the U.S. Trade Representative Regarding the Determination of the United States International Trade Commission in the Matter of Certain Electronic Digital Media Devices and Components Thereof, Investigation No. 337-TA-796

This Administration remains committed to advancing innovation and economic progress in the United States and globally. Consistent with that policy, ensuring adequate and effective protection of intellectual property rights, including enforcement of such rights at the U.S. border through exclusion orders under section 337, is an important national interest. At the same time, an exclusion order's impact on competitive conditions in the United States and U.S. consumers are considerations relevant to my policy review of USITC determinations under section 337.

On August 9, 2013, the USITC determined that Samsung Electronics Co. and related companies in the United States (Samsung) had violated Section 337 of the Tariff Act of 1930, as amended, in the importation of certain devices (e.g. smartphones and tablet computers) that infringe claims of two patents owned by Apple Inc. Based on this determination, the USITC issued a limited exclusion order prohibiting the unlicensed importation of infringing devices manufactured for or on behalf of Samsung. The Commission also issued a cease and desist order that prevents Samsung from engaging in certain activities, such as sale of these products in the United States. The Office of the United States Trade Representative (USTR) has conducted a review of that determination to determine if it should be disapproved on policy grounds.

After carefully weighing policy considerations, including the impact on consumers and competition, advice from agencies, and information from interested parties, I have decided to allow the Commission's determination in Certain Electronic Digital Media Devices and Components Thereof, Investigation No. 337-TA-796, to become final. In so doing, I am continuing the practice of successive Administrations of exercising section 337 policy review authority with restraint.

During the course of the USITC's investigation and during the policy review, Samsung raised concerns about the scope of the USITC's determination and possible issues that could arise in connection with U.S. Customs and Border Protection (CBP) interpretation and enforcement of the resulting exclusion order. More generally, Samsung and other members of the patent community have expressed concerns regarding the clarity of the USITC's exclusion orders and, in particular, regarding CBP procedures for interpretation and enforcement of those orders.

The Office of the Intellectual Property Enforcement Coordinator (IPEC) is conducting an interagency review aimed at strengthening the procedures and practices used during the enforcement of USITC exclusion orders. USTR, the Department of Justice, the Department of Homeland Security, and several other agencies are working with IPEC in this review. I look forward to receiving recommendations to address these issues on a systemic basis.

With regard to the exclusion order issued in this investigation, I note that the order includes a list of devices that the USITC determined did not infringe the two patents at issue. The order expressly states that these devices and any other Samsung electronic media devices incorporating the approved design-around technologies are not covered. Thus, I do not believe that concerns with regard to enforcement related to the scope of the order, in this case, provide a policy basis for disapproving it. If questions should arise about the scope of the exclusion order, I would urge close coordination between CBP and the USITC in addressing such enforcement issues.

END STATEMENT

Background:

The USTR's policy reviews and decisions on USITC determinations are based on a careful review of the relevant policy considerations. Decisions are made on a case-by-case basis.

Products covered by the USITC order are older model smart phones, table computers, and media devices made by Samsung that were found to infringe two Apple patents.

The USITC's orders would bar the importation and sale of certain older generation products.

The USITC found that the exclusion order will have minimal effect on the availability of Samsung products, especially since Samsung has been able to make changes to its products so that they avoid infringing the two Apple patents at issue in this case.

The most recent previous case in which the USTR issued a decision turned on the appropriate role of exclusion orders in circumstances involving standards-essential patents. The patents at issue in this case are not standards-essential patents. The nationality of the companies involved played no role in the review process. Both Samsung and Apple are important contributors to the U.S. economy and help advance innovation and technological progress.

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