

investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations.

The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On November 20, 2002, a petition was filed with the Commission and Commerce by Washington Mills Company, Inc., North Grafton, MA,² alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of refined brown aluminum oxide from China. Accordingly, effective November 20, 2002, the Commission instituted antidumping duty investigation No. 731-TA-1022 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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** of November 29, 2002 (67 FR 71195). The conference was held in Washington, DC, on December 11, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 6, 2003. The views of the Commission are contained in USITC Publication 3572 (January 2003), entitled *Refined Brown Aluminum Oxide from China: Investigation No. 731-TA-1022* (Preliminary).

Issued: January 17, 2003.

² On November 27, 2002, the petition was amended to include two additional petitioners, C-E Minerals, King of Prussia, PA, and Treibacher Schleifmittel Corporation, Niagara Falls, NY.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

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DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response on Proposed Final Judgment in *United States of America v. The MathWorks, Inc. and Wind River Systems, Inc.*

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States hereby publishes below the comments received on the proposed Final Judgments on *United States of America v. The MathWorks, Inc. and Wind River Systems, Inc.*, Civil Action No. 02-888-A, filed in the United States district court for the Eastern District of Virginia, together with the United States' response to the comments.

Copies of the comment and response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514-2481, and at the Office of the Clerk of the United States District Court for the Eastern District of Virginia, Albert V. Bryan United States Courthouse, 401 Courthouse Square, Alexandria, VA 22314. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations.

United States' Response to Public Comments

Pursuant to Section 5(d) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)-(h) (the "Tunney Act")), the United States responds to public comments received regarding the proposed Final Judgments submitted for entry in this civil antitrust proceeding.

I. Background

On June 21, 2002, the United States filed a civil antitrust Complaint alleging that The MathWorks, Inc., ("The MathWorks") and Wind River Systems, Inc. ("Wind River"), head-to-head competitors in the sale of dynamic control system design software products, restrained competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleged that, on February 16, 2001, The MathWorks and Wind River entered into a number of agreements (hereinafter, collectively, the "MATRIXx Agreement") pursuant to which, *inter alia*, The MathWorks obtained the executive worldwide right to price and sell Wind River's MATRIXx tools for a period of two

and one half years. As a result of the MATRIXx Agreement, actual competition between Wind River's MATRIXx toolset and The MathWorks' Simulink toolset has been eliminated.

In April 2000, Wind River acquired Integrated Systems, Inc. ("ISI"). At the time, ISI was a well regarded vendor of software, tools, and engineering services for the embedded systems market.¹ Its embedded real-time operating system, deployed in more than 38 million devices worldwide as of 2000, was supplied to telecom/datacom, consumer electronics, automotive, aerospace, and emerging Internet appliance customers. As part of its software portfolio it produced the MATRIXx family of software products, which are standalone products designed to automate the analysis, modeling, generation of code for, and simulation of, complex control systems. Although ISI had spent considerable resources developing MATRIXx since the mid-1980s, its primary business continued to revolve around the embedded systems market.

Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers that it hoped would shorten the time it takes to reach the market of critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor its central strategic focus for the future. Thus, Wind River decided not to devote any of its resources to the continued development and sale of MATRIXx.

Shortly after Wind River's acquisition of ISI, The MathWorks approached Wind River and began vigorously negotiating to acquire the MATRIXx assets. On February 16, 2001, The MathWorks and Wind River entered into the MATRIXx Agreement under which Wind River granted The MathWorks exclusive distribution and license rights to the MATRIXx toolset and the MATRIXx intellectual property (including the right to incorporate MATRIXx source code into The MathWorks products) during a thirty-month license period beginning on February 16, 2001. Following the expiration of the thirty-month license period, The MathWorks would have the option to acquire MATRIXx.

Under the MATRIXx Agreement, The MathWorks was required to provide two years of customer support (ending in February 2003) for existing MATRIXx users.² While Wind River agreed to

¹ Embedded systems are specialized computing systems used to control devices such as handheld computers, appliances or cars. These systems are typically invisible to the end-user, but enable operation of the devices.

² Wind River retained rights to the MATRIXx intellectual property during the license period in

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