In the matter of
CERTAIN CRAWLER CRANES AND COMPONENTS THEREOF

Investigation No. 337-TA-____

COMPLAINT OF MANITOWOC CRANES, LLC
UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED

Complainant
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I. INTRODUCTION

1.1. Complainant Manitowoc Cranes, LLC ("Manitowoc Cranes"), requests that the United States International Trade Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337"), to remedy the unlawful importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation, by the owner, importer, or consignee (or agents thereof), of certain crawler cranes and components thereof that: (a) infringe U.S. Patent No. 7,546,928 ("the '928 Patent") (Exhibit 1); (b) infringe U.S. Patent No. 7,967,158 ("the '158 Patent") (Exhibit 2), and (c) were designed and manufactured as a result of a misappropriation of Manitowoc Cranes' trade secrets (CONFIDENTIAL Exhibit 3), and then sold or offered for sale within the United States after importation.

1.2. The proposed Respondents Sany America, Inc. and Sany Heavy Industry (collectively "Respondents") manufacture, import, sell for importation, and/or sell after importation, among other things, crawler cranes that use certain variable position counterweight ("VPC") technology, such as the SCC8500 model crane ("the Sany SCC8500 Crane") and components thereof (collectively "the Accused Products").

1.3. Manitowoc Cranes asserts that the Accused Products directly infringe, contributorily infringe, and/or induce infringement of at least Claims 1, 2, and 5 of the '928 Patent and at least Claim 1 of the '158 Patent (collectively "the Asserted Claims"). The Accused Products were designed using not only the VPC technology disclosed in the '928 and '158 Patents (collectively "the Asserted Patents"), but also using transformable VPC technology that forms part of the trade secrets that Respondents misappropriated from Manitowoc Cranes. The use of those trade secrets to create the Accused Products for import, sale for importation, and/or
sale after importation threatens to substantially injure an industry in the United States developed by Manitowoc Cranes.

1.4. For many years, Manitowoc Cranes has been a leader in U.S. industry in researching, developing, designing, engineering, and commercially implementing new and innovative technology. Manitowoc Cranes researches and develops, manufactures, offers for sale, and sells in the United States crawler cranes, including mega capacity crawler cranes – for example, Manitowoc Cranes’ model 31000 crane ("the Manitowoc 31000 Crane"). The Manitowoc 31000 Crane uses novel methods of keeping the crane upright using the VPC technology disclosed in the Asserted Patents, which allows it to achieve a lifting capacity of over 2,500 tons. Such crawler cranes are well suited for constructing power generation facilities that require the lifting and installation of large components that may exceed 2,000 tons, such as nuclear power plants and "clean coal" facilities. Exhibit 4 at 3. Accordingly, Manitowoc Cranes’ patented VPC invention represents an important advance in crawler crane technology.

1.5. Manitowoc Cranes also has researched, developed, and plans to sell in the United States crawler cranes that use VPC technology and that are transformable into multiple configurations. Manitowoc Cranes’ transformable VPC technology allows a crane to be set up in completely different configurations for different purposes. In one configuration, a traveling mast is used with the VPC. In another configuration, the same crane may include a lattice mast with a VPC. The VPC system may be the same or different in the different configurations. The option to set the crane up in different configurations with a VPC results in a crane that is capable of performing a greater variety of lifts for a customer and allows the crane’s configuration to be tailored to the job for which it is being used.
1.6. Manitowoc Cranes’ transformable VPC technology was held as a trade secret prior to its misappropriation and/or unauthorized use by Respondents. Manitowoc Cranes also owned trade secrets relating to the commercialization of that technology (the transformable VPC technology and related trade secrets relating to the commercialization of that technology are collectively referred to herein as “the Manitowoc Trade Secrets”) prior to their misappropriation and/or unauthorized use by Respondents. The Manitowoc Trade Secrets include technical information, designs, business information, competitive market information, and know-how that were not generally known to Manitowoc Cranes’ competitors or others in the crane industry. See CONFIDENTIAL Exhibit 3.

1.7. Manitowoc Cranes has been careful to safeguard the Manitowoc Trade Secrets. Manitowoc Cranes has maintained the secrecy of many of its inventions and developmental breakthroughs prior to patenting those inventions, giving it an advantage over those competitors who do not know or use them. Manitowoc Cranes controlled access to information about the Manitowoc Trade Secrets, provided password protection to its IT systems, and caused its employees to use confidential markings on documents related to the Manitowoc Trade Secrets. Manitowoc also entered into confidentiality agreements with its employees that required them to keep the Manitowoc Trade Secrets confidential. CONFIDENTIAL Exhibit 7 at ¶¶ 17-20.

1.8. Certain of the Manitowoc Trade Secrets have been and/or are being misappropriated and used without authorization by Respondents. Upon information and belief, Respondents misappropriated the Manitowoc Trade Secrets via a high ranking Engineer at Manitowoc Cranes – Mr. John Lanning – who was recruited away from Manitowoc Cranes by Respondents and began working for Respondents in January 2010.
1.9. | CONFIDENTIAL Exhibit 7 at ¶ 21. |

| CONFIDENTIAL Exhibit 7 at ¶ 26. |

| CONFIDENTIAL Exhibit 7 at ¶ 26. |

1.10. |

| CONFIDENTIAL Exhibit 8 at 78:1-78:9. Upon information and belief, Mr. Lanning shared his knowledge of the transformable VPC technology and its value in the marketplace. The lifting capacity of the SANY SCC8500 falls within a specific capacity range – between 440 tons and 660 tons, which are the capacities of Manitowoc Cranes’ models 16000 crane ("the Manitowoc 16000 Crane") and Manitowoc Cranes’ model 18000 crane ("the Manitowoc 18000 Crane"), respectively. Exhibit 9. |


1.11. |

| CONFIDENTIAL Exhibit 10. |

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1.12. [ ]

CONFIDENTIAL Exhibit 8 at 94:5-94:11. [

] CONFIDENTIAL Exhibit 8 at 98:9-98:15; Exhibit 11 at 1; Exhibit 12 at 1.

1.13. The Sany SCC8500 Crane incorporates and was designed using the VPC technology disclosed in the Asserted Patents and the transformable VPC technology that forms part of the Manitowoc Trade Secrets. See Exhibit 13. Further, upon information and belief, the Manitowoc Trade Secrets regarding the commercial need and desirable properties for such a crane were used in the Sany SCC8500 Crane.

1.14. [ ]


1.15. On or about March 25, 2013, Respondents imported the Sany SCC8500 Crane into the United States. See, e.g., Exhibit 16 (Bill of Lading CPJQST45SHAHOU04, obtained from Ealing Market Data Engineering Co. Ltd.’s Trade Navigator© website (www.iealing.com) on May 9, 2013); Exhibit 17A (PIERS Import Records 2013050712, obtained through a search of the Piers website (www.piers.com) conducted on May 7, 2013); Exhibit 17B (reformatted version of Exhibit 6A); Exhibit 18 (DIALOG® File 573: Piers Imports(US Ports) 126122825/5, obtained through a search of the DIALOG® website (www.dialog.com) conducted on May 7, 2013); and Exhibit 19 (photographs of a Sany SCC8500 Crane). Upon information and belief, the Sany SCC8500 Crane was sold to Amquip, a reseller of heavy construction equipment in the Philadelphia, Pennsylvania area. Upon information and belief, the importation of additional units of the SCC8500 crane is imminent. The importation and/or imminent importation of the
Sany SCC8500 Crane into the United States and Respondents’ sale of the same product in the United States forms the basis of Manitowoc’s unfair trade claim against Respondents.

1.16. The trade secrets at issue in this Investigation were developed at Manitowoc Cranes with the knowledge and involvement of Mr. Lanning, are properly owned by Manitowoc Cranes, and are currently used in Manitowoc Cranes’ business, for example, in connection with products currently under development for production, such as the [ ] cranes (collectively “the In-Progress Cranes”).

1.17. Respondents’ patent infringement and trade secret misappropriation unfairly provided them with significant competitive advantages, and substantially and irreparably injures and/or threatens an industry in the United States pursuant to 19 U.S.C. § 1337(a)(1)(A)(i). Respondents’ ongoing patent infringement and trade secret misappropriation enabled Respondents to beat Manitowoc Cranes to market with a crane that uses transformable VPC technology. It also has enabled Respondents to specifically target (and as a consequence injure) the domestic industry for crawler cranes, directly at the expense of Manitowoc Cranes. Moreover, Respondents’ trade secret misappropriation has put Manitowoc Cranes in the position of having to compete with a business run according to Manitowoc Cranes’ own trade secrets.

1.18. A domestic industry as required by 19 U.S.C. § 1337(a)(2) and (a)(3) exists, based upon Manitowoc Cranes’ (a) significant investments in the United States in plant and equipment, (b) significant employment in the United States of labor and capital, and (c) substantial investment in the United States in the exploitation of the technologies covered by the Asserted Patents, including engineering, manufacturing, plant and equipment, and research and development – as set forth more fully in Section XI infra.
1.19. Manitowoc Cranes seeks as relief a permanent exclusion order, pursuant to 19 U.S.C. § 1337(d), barring from entry into and sale within the United States of the Sany SCC8500 Crane and components thereof, and other cranes that directly or indirectly infringe one or both of the Accused Patents, or that were developed using and/or that incorporate the Manitowoc Trade Secrets. Manitowoc Cranes further seeks as relief a permanent cease and desist order under 19 U.S.C. § 1337(f) prohibiting Respondents from marketing, distributing, selling, offering for sale, warehousing inventory for distribution, or otherwise transferring or bringing into the United States infringing crawler cranes and components thereof and/or crawler cranes and components thereof that were developed using and/or that incorporate Manitowoc’s patented technology and/or trade secrets.

II. COMPLAINANT

2.1. Manitowoc Cranes is a Wisconsin limited liability corporation with its headquarters at 2400 South 44th Street, Manitowoc, WI 54221. Manitowoc Cranes has been and continues to be in the business of researching, developing, and selling products, including crawler crane technology. As a result, Manitowoc Cranes is a worldwide leader in crawler crane technology.

2.2. Manitowoc Cranes is the owner by assignment of the '928 Patent with the right to sue for all past, present, and future infringement thereof. CONFIDENTIAL Exhibit 20 at ¶ 6; Exhibit 21. Manitowoc Cranes also is the owner by assignment of the '158 Patent with the right to sue for all past, present, and future infringement thereof. CONFIDENTIAL Exhibit 20 at ¶ 6; Exhibit 22.
2.3. Manitowoc Cranes is the owner by assignment of the Manitowoc Trade Secrets. A copy of the assignment of the Manitowoc Trade Secrets from Manitowoc Crane Companies, LLC to Manitowoc Cranes is provided as CONFIDENTIAL Exhibit 28.

2.4. Manitowoc Cranes has substantial operations in the United States with respect to the Asserted Patents and the Manitowoc Trade Secrets. Manitowoc Cranes has made and continues to make significant investments in the manufacture, design, and development of products that are protected by the Asserted Patents and/or that incorporate the Manitowoc Trade Secrets.

2.5. The Manitowoc 31000 Crane exploits the VPC technology covered by the Asserted Patents. Manitowoc Cranes also is developing two (2) crawler cranes – the In-Progress Cranes – that exploit the transformable VPC technology that forms part of the Manitowoc Trade Secrets.

2.6. The Manitowoc 16000 Crane and the Manitowoc 18000 Crane compete in the market that is the intended target for one of the crawler cranes currently under development at Manitowoc Cranes. The Sany SCC8500 Crane also competes with the Manitowoc 16000 Crane and the Manitowoc 18000 Crane.

III. PROPOSED RESPONDENTS

3.1. Sany Heavy Industry Co., Ltd. ("Sany Heavy Industry"), is a Chinese corporation with its headquarters at Sany Industry Town, Economic and Technological Development Zone, Changsha, Hunan Province, China. Sany Heavy Industry designs, imports into the United States, sells for importation into the United States, and/or sells within the United States after importation, crawler cranes that use transformable VPC technology, including the Sany SCC8500 Crane.
3.2. Sany America, Inc. ("Sany America") is a Delaware corporation with its headquarters at 318 Cooper Circle, Peachtree City, GA 30269. Sany America designs, imports into the United States, sells for importation into the United States, and/or sells within the United States after importation, crawler cranes that use transformable VPC technology, including the Sany SCC8500 Crane.

IV. THE TECHNOLOGY AND PRODUCTS AT ISSUE

A. The Technology

1. The '928 Patent

4.1. The claims of the '928 Patent, among other things, generally relate to a method of operating a mobile lift crane with a moveable counterweight unit.

4.2. Mobile lift cranes typically include counterweights to help balance the crane when the crane lifts a load. Those counterweights typically rest on the back of the crane in a stationary position. Often, the carbody of the crane also is equipped with a counterweight in the front of the crane to prevent backward tipping when no load is being lifted.

4.3. When a mobile lift crane is lifting a load, extra counterweight is often added, such as on a counterweight trailer, to further enhance the lift capacities of the crane. When there is no load on the hook, it is customary to support those extra counterweights on the ground adjacent to the crane. Otherwise, the counterweight could cause the crane to tip backward when no load is being lifted. Where counterweights that rest on the ground are used, the ground around the crane needs to be inspected and prepared so that the crane may be operated safely.

4.4. The more counterweight that is required for lifting a load, the more expensive it is to operate a mobile lift crane. Counterweights must be transported to the job site where the crane
is being used. With U.S. highway constraints, it takes fifteen (15) trucks to transport 300 metric tons of counterweight.

4.5. The invention of the '928 Patent employs a moveable counterweight unit that is part of the mobile lift crane itself. The moveable counterweight is never supported by the ground during a pick, move, and set operation (e.g., an operation where a crane at least picks up a load, moves it, and sets it down), other than indirectly by the moveable ground engaging members (e.g., crawlers) on the carbody of the crane.

4.6. The invention allows the counterweight to be positioned forward of a point directly below the top of the mast of the crane when no load is on the hoist line. That positioning prevents the crane from tipping over backward when no load is on the hoist line without requiring the counterweight to be supported by the ground.

4.7. The invention allows the counterweight to be positioned rearward of that same point when the hoist line is supporting a load, thereby increasing the lift capacity of the crane. The crane will have more lifting capacity than a crane with an equivalent amount of stationary counterweight positioned on the carbody because the moveable counterweight can generate a higher load moment the further it travels away from the boom of the crane.

4.8. The invention allows the crane to safely conduct a pick, move, and set operation without providing the carbody with a separate functional counterweight.

4.9. The invention reduces the amount of counterweight required to develop a higher load moment than conventional cranes of a comparable size. The reduction in the amount of counterweight reduces the force on the ground upon which the crane is sitting during the lift and also reduces the cost of transporting the crane between job sites.
2. The '158 Patent

4.10. The claims of the '158 Patent, among other things, generally relate to a method of operating a mobile lift crane with a moveable counterweight unit.

4.11. The invention includes a linear actuation device (e.g., a hydraulic cylinder or a rack and pinion assembly) for causing the counterweight to move. Like the invention in the '928 Patent, the moveable counterweight unit is never supported by the ground other than indirectly by the moveable ground engaging members during a pick, move, and set operation.

4.12. The invention allows the counterweight to be moved a greater distance than a stroke of the linear actuation device.

4.13. The claimed arrangement allows the moveable counterweight unit to move horizontally toward and away from the cab of the crane at a greater speed than that of the linear actuation device. In addition, the greater speed of movement of the counterweight unit allows the crane to more rapidly stabilize itself as load conditions change.

3. The Trade Secrets

4.14. In 2008, Manitowoc Cranes began developing a new generation of VPC technology. Mr. Lanning was heavily involved in the development of that technology and participated in the analysis of its value, its cost, its commercial viability, and its feasibility of implementation.

4.15. The Manitowoc Trade Secrets include Manitowoc Cranes' transformable VPC technology, which allows a crane to be set up in completely different configurations for different purposes, yet still include a VPC. **CONFIDENTIAL Exhibit 3.** The Manitowoc Trade Secrets also include information relating to commercial aspects and benefits of transformable VPC technology. **CONFIDENTIAL Exhibit 3.**
B. The Accused Products

4.16. The Accused Products are crawler cranes that use the VPC technology covered by the Asserted Claims and the transformable VPC technology that forms part of the Manitowoc Trade Secrets, including but not limited to the Sany SCC8500 Crane and components thereof. For example, Sany has advertised the SCC8500 as using transformable VPC technology. Exhibit 23 at 2. More specifically, the Sany SCC8500 Crane includes a VPC system -- referred to by Respondents as the Auto Counterbalance Equalization ("ACE") system -- that "senses ... boom angle and uses hydraulic cylinders to adjust counterweight position." Exhibit 23 at 2; Exhibit 13 at 4. The Sany SCC8500 Crane is transformable and can be set up in completely different configurations for different purposes. Respondents refer to a configuration of the crane using the UltraLift package and a lattice mast. Exhibit 13 at 4, 7, 22. Thus, in one configuration a VPC is used with a traveling mast, while in a second configuration, a VPC is used with a lattice mast that is not present in the first configuration.

4.17. The Accused Products are imported into and offered for sale in the United States through Respondents' sales representatives, dealers, and/or other distribution channels. For example, at least one Sany SCC8500 Crane has been imported into and sold or offered for sale in the United States through Respondents' distribution channels. Exhibit 16; Exhibit 17A; Exhibit 17A; Exhibit 18; Exhibit 19; supra ¶ 1.15.

V. THE ASSERTED PATENTS AND NON-TECHNICAL DESCRIPTION

5.1. At issue in this investigation, along with related trade secrets, is Respondents' infringement of two (2) United States patents: (1) the '928 Patent and (2) the '158 Patent. Manitowoc Cranes overviews each patent below.
A. The '928 Patent

1. Identification of the Patent and Ownership by Manitowoc Cranes


5.3. Manitowoc Cranes is the assignee of the '928 Patent and has the exclusive right to enforce it. A certified copy of the assignment history of the '928 Patent is included as Exhibit 21. Prior to obtaining ownership of the '928 Patent, Manitowoc Cranes was a licensee of the '928 Patent. See CONFIDENTIAL Exhibit 20.

5.4. Pursuant to Commission Rule 210.12(c), a certified copy and three (3) additional copies of the prosecution history of the '928 Patent are included as Appendix A. Four (4) copies of the references cited in the certified prosecution history of the '928 Patent are included as part of Appendix B.

2. Non-Technical Description of the Patented Invention

5.5. The '928 Patent claims mobile lift cranes and methods of operating mobile lift cranes. The inventions at issue involve the use of moveable counterweight units to counterbalance a load being lifted by the crane.

5.6. The moveable counterweight units of the invention can move toward and away from the crane during a pick, move, and set operation to prevent the crane from tipping over, regardless of whether the crane is lifting a load or has released that load.
5.7. In the '928 Patent, one embodiment of the invention employs a moveable counterweight unit that is part of the lift crane itself. The moveable counterweight is never supported by the ground during a pick, move, and set operation, other than indirectly by the moveable ground engaging members (e.g., the crawlers on the crane) on the carbody of the crane.

5.8. In the '928 Patent, one embodiment of the invention allows the counterweight to be positioned forward of a point directly below the top of the mast of the crane when no load is on the hoist line. That positioning prevents the crane from tipping over backward without requiring the counterweight to be supported by the ground when no load is on the hoist line.

5.9. In the '928 Patent, one embodiment of the invention allows the counterweight to be positioned rearward of that same point when the hoist line is supporting a load, thereby increasing the lift capacity of the crane. The crane will have more lifting capacity than a crane with a stationary counterweight because the moveable counterweight can generate a higher load moment the further it travels away from the boom of the crane.

5.10. In the '928 Patent, one embodiment of the invention allows the crane to safely conduct a pick, move, and set operation without providing the carbody with a separate functional counterweight.

3. Foreign Counterparts to the '928 Patent

5.11. Pursuant to Commission Rule 210.12(a)(9)(v), lists of all foreign patents and patent applications corresponding to the '928 Patent, including an indication of status, are attached as Exhibit 24. There are no other foreign counterpart applications that have been filed, issued, abandoned, rejected, withdrawn, or that remain pending.
June 12, 2013

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COMPLAINANT'S STATEMENT ON THE PUBLIC INTEREST

Pursuant to Commission Rule § 210.8(b), Complainant Manitowoc Cranes, LLC ("Manitowoc Cranes") submits this Statement on the Public Interest with respect to the remedial orders its seeks against Proposed Respondents Sany America, Inc. and Sany Heavy Industry (collectively "Respondents").

Manitowoc Cranes seeks a permanent limited exclusion order excluding from entry into the United States certain crawler cranes and components thereof that (a) infringe one or more claims of U.S. Patent Nos. 7,546,928 and 7,967,158 (collectively "the Asserted Patents") and (b) that were manufactured with or that include one or more of Manitowoc Cranes' trade secrets. Manitowoc Cranes also seeks permanent cease and desist orders prohibiting Respondents from engaging in the importation, sale for importation, marketing and/or advertising, distribution, offering for sale, sale, testing, use after importation, sale after importation, or other transfer with the United States of certain crawler cranes and components thereof that either infringe one or more of the claims of the Asserted Patents or that were manufactured with or include one or more of Manitowoc Cranes' trade secrets. If the Commission issues one or more of these remedial orders in its final determination, there will be little or no harm to the public interest. Manitowoc's requested remedial orders serve the public interest.
I. **THE REQUESTED REMEDIAL ORDERS ARE IN ACCORD WITH THE PUBLIC INTEREST**

The public interest in protecting intellectual property rights is very strong. *See, e.g.*, *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chip, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm’n Op. at 136-37 (June 19, 2007). In the few instances where the Commission found that an adverse impact on the public interest was significant enough to deny relief, “the exclusion order was denied because inadequate supply with the United States – by both the patentee and domestic licensees – meant that an exclusion order would deprive the public of products necessary for some important health or welfare need ....” *Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1360 (Fed. Cir. 2010). Manitowoc Cranes’ requested remedial orders do not raise public interest concerns because: (1) the accused devices are not essential to the public health or welfare; (2) Manitowoc Cranes and others already sell articles that directly compete with Respondents’ infringing crawler cranes in the United States; (3) Manitowoc Cranes’ requested remedial orders would only effect a subset of the crawler cranes available in the United States; and (4) Manitowoc Cranes and others could fill any void in the market that might be created by the requested remedial orders. The strong public interest in protecting Manitowoc Cranes’ patents and trade secrets therefore outweighs any hypothetical adverse impact on the public.

A. **Explanation of how the articles potentially subject to the requested remedial orders are used in the United States.**

Crawler cranes are mounted on an undercarriage with a set of tracks (also called crawlers) that provide stability and mobility. Crawler cranes range in lifting capacity from about 40 to 3,500 short tons (35.7 to 3,125.0 long tons; 36.3 to 3,175.1 metric tons). Certain crawler
cranes, such as those developed by Manitowoc Cranes, use a variable position counterweight ("VPC") system to provide stability to the crane. An advantage to these crawler cranes is that they can move around on site and perform each lift with (a) less ground prep and (b) less overall machine weight, because the crane is stable on its tracks with no outriggers and requires less total counterweight than competitors' cranes that have fixed counterweight systems. As such, the versatility of crawler cranes incorporating a VPC system makes them ideal for a variety of lift operations with reduced operating cost. Respondents are an importer and supplier of crawler cranes that incorporate Manitowoc Cranes' patented VPC systems as part of their foreign-manufactured products.

B. Identification of any public health, safety, or welfare concerns relating to the requested remedial orders.

Manitowoc Cranes requests remedial orders that, if issued, will not raise any public health, safety, or welfare concerns. The requested remedial orders will not have a significant impact on the market for crawler cranes overall. The specific accused products in this investigation are or would be predominantly used by the heavy construction industry offering crawler cranes that are not necessarily used for public health, safety, or welfare purposes.

C. Identification of like or directly competitive articles that Manitowoc and/or third parties make which could replace the subject articles if they were excluded.

In this investigation, Manitowoc Cranes accuses only one manufacturer/supplier of crawler cranes of infringing the Asserted Patents in the U.S. market and of misappropriating the trade secrets of Manitowoc Cranes. Manitowoc Cranes and other companies, such as Liebherr and Demag, produce crawler cranes with similar lift capacity that could replace Respondents' infringing crawler cranes after any remedial order takes effect.

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D. Indication of whether Manitowoc Cranes and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States.

No public interest concerns exist when the market contains an adequate supply of substitute products for those subject to a remedial order. Certain Lens-Fitted Film Packages, Inv. No. 337-TA-406, Comm’n. Op. at 18 (June 28, 1999). As noted above, Manitowoc Cranes and other third parties, such as Liebherr and Demag, have the capacity to replace the volume of articles subject to the requested remedial orders, and such replacement would entail no delay in reaching consumers, due to their current manufacturing and distribution activity levels.

E. Statement regarding how the requested remedial orders would impact consumers.

With the number of participants in the highly-competitive crawler crane market, it is unlikely that consumers would experience an impact if the Commission issues Manitowoc Cranes’ requested remedial orders. There would be no shortage of crawler cranes because numerous substitute products, including those from Manitowoc Cranes and other third parties, such as Liebherr and Demag, could replace the volume of excluded articles.

II. CONCLUSION

The accused devices are not essential to public health, safety, or welfare, and an adequate supply of substitute devices would be available to consumers if the requested remedial orders issue. The strong public interest in protecting Manitowoc Cranes’ intellectual property rights and trade secrets therefore outweighs any hypothetical adverse impact on the public.
June 12, 2013

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