

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436**

In the Matter of

**CERTAIN AGRICULTURAL TRACTORS,
LAWN TRACTORS, RIDING LAWNMOWERS,
AND COMPONENTS THEREOF**

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) **Inv. No. 337-TA-486**
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**NOTICE OF COMMISSION DECISION NOT TO REVIEW
AN INITIAL DETERMINATION TERMINATING THE INVESTIGATION AS TO A
RESPONDENT ON THE BASIS OF A CONSENT ORDER; ISSUANCE OF CONSENT
ORDER; AND REQUEST FOR SUBMISSIONS ON REMEDY, THE PUBLIC
INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the above-captioned investigation as to a respondent on the basis of a consent order. In connection with final disposition of the investigation, the Commission is requesting briefing on remedy, the public interest, and the appropriate bond during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3012. Copies of the ALJ's ID and all other 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, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION:

The Commission instituted this investigation on February 10, 2003, based on a complaint and motion for temporary relief filed by New Holland North America, Inc. (“complainant”) of New Holland, PA. 68 *Fed. Reg.* 6772 (Feb. 10, 2003). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain tractors and components thereof by reason of misappropriation of New Holland’s trade dress. The notice of investigation identified three respondents: Beiqi Futian Automobile Co., Ltd. (“Futian”) of Beijing, China; Cove Equipment, Inc. (“Cove”) of Conyers Georgia; and Northwest Products, Inc. (“Northwest”) of Auburn, Washington. *Id.* On March 19, 2003, the ALJ issued an ID (Order No. 6) finding respondent Futian in default. On March 31, 2003, the ALJ issued an ID (Order No. 8) amending the complaint and notice of investigation to clarify the identity of Cove and to add Brian Navalinsky of Conyers, Georgia as an additional respondent. On April 1, 2003, the ALJ issued an ID (Order No. 9) terminating respondents Cove and Navalinsky on the basis of a consent order. Those IDs were not reviewed by the Commission.

On March 26, 2003, complainant and Northwest moved pursuant to Commission rule 210.21(c)(1)(ii) to terminate the investigation with respect to Northwest based upon a settlement agreement and consent order. On March 28, 2003, the Commission investigative attorney filed a response supporting the joint motion. On April 2, 2003, complainant filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking immediate entry of permanent relief against respondent Futian.

On April 8, 2003, the ALJ issued an ID (Order No. 10) granting the motion to terminate the investigation as to respondent Northwest. In his ID, the ALJ noted that all respondents in the investigation had been found to be in default or had reached settlements with complainant. He stated that “[i]f the Commission adopts this Initial Determination or otherwise terminates the investigation as to Northwest and also terminates the investigation as to the other respondents, no respondent will remain in this investigation. Therefore, any outstanding motions (including Complainant’s Motion for temporary relief) will be moot, and this investigation will be terminated in its entirety.” ID at 5. No petitions for review of the ID were filed.

Section 337(g)(1), 19 U.S.C. § 1337(g)(1) and Commission rule 210.16(c), 19 C.F.R. § 210.16(c), authorize the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, respondent Futian has been found in default and complainant has requested issuance of a limited exclusion order that would deny entry to certain agricultural tractors, lawn tractors, and riding lawn mowers, and components thereof manufactured by or for Futian. Complainant also requests issuance of a cease and desist order. If the Commission decides to issue remedial orders against Futian, it must consider what the amount of the bond should be during the Presidential review period.

In connection with the final disposition of this investigation, the Commission may issue remedial orders. The requested remedies are (1) a limited exclusion order that could result in the exclusion from entry into the United States of certain agricultural tractors, lawn tractors, and riding lawn mowers, and components thereof manufactured by or for Futian, and (2) a cease and desist order that could result in prohibiting Futian and its United States affiliates or agents from

importing, marketing, distributing, displaying, assembling, installing, servicing, or selling certain agricultural tractors, lawn tractors, and riding lawn mowers, and components thereof within the United States. Accordingly, the Commission is interested in receiving written submissions that address whether either or both such orders should be issued. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that remedial orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Written submissions including proposed remedial orders must be filed no later than close of business on [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Reply submissions must be filed no later than the close of business on [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.16 and 210.42 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.16 and 210.42.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: April 28, 2003