

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

In the Matter of

**CERTAIN AGRICULTURAL VEHICLES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-487 (Remand)

**NOTICE OF COMMISSION REQUEST FOR
FURTHER WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has requested additional written submissions to complete its review, in part, of the presiding administrative law judge's ("ALJ") final initial determination on remand in the above-captioned investigation and ALJ Order No. 55.

FOR FURTHER INFORMATION CONTACT: Jonathan Engler, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3112. Copies of non-confidential 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 at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) 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 13, 2003, based on a complaint filed by Deere & Company ("Deere") of Moline, Illinois. 68 *Fed. Reg.* 7388 (February 13, 2003). The complaint, as supplemented, 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 agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademarks Nos. 1,254,339; 1,502,576; 1,503,576; and 91,860.

Twenty-four respondents were named in the Commission's notice of investigation. Most of the respondents were terminated from the investigation on the basis of consent orders, or found in default. Of the remaining respondents, Erntetechnik Franz Becker; Sunova Implement

Company; Bourdeau Bros., Inc. and OK Enterprises (collectively, “the Bourdeau respondents”); Fitzpatrick Farms; Stanley Farms; J&T Farms; and Co-Ag LLC (collectively, “the Fitzpatrick Farms respondents”); and Agrideal participated in the investigation. On January 13, 2004, the ALJ issued his final initial determination (“ID”) finding a violation of section 337. He also recommended the issuance of remedial orders. The Bourdeau respondents and Fitzpatrick Farms respondents petitioned for review of the ID.

On March 30, 2004, the Commission determined not to review the ID. The Commission then issued its final determination on May 14, 2004, together with a general exclusion order, two limited exclusion orders, and cease and desist orders.

The Bourdeau respondents appealed the Commission’s final determination to the U.S. Court of Appeals for the Federal Circuit (the “Federal Circuit”). On March 30, 2006, the Federal Circuit vacated and remanded the Commission’s final determination as it related to Deere European-version self-propelled forage harvesters (EVSPFHs). *Bourdeau Bros. v. International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006).

On June 20, 2006, the Commission issued notice that it had rescinded the general exclusion order and certain cease and desist orders, and had remanded the investigation to the presiding ALJ for proceedings consistent with the Federal Circuit’s decision in *Bourdeau*. The ALJ issued his final ID on remand (“remand ID”) on December 20, 2006. He found that Deere did not authorize the sale of EVSPFHs in the United States and that all or substantially all of the Deere self-propelled forage harvesters sold in the United States were North American versions. The Bourdeau respondents petitioned for review of the remand ID. Deere and the Commission investigative attorney opposed the petition.

On February 27, 2007, the Commission determined to review in part ALJ Order No. 55 and the remand ID, and requested the parties to brief certain questions. The Commission has now determined to request further briefing by the parties on three additional issues: (1) an exclusively legal discussion of the relevance of the agency doctrines of actual and apparent authority in the context of gray market sales in the United States; (2) whether section 337 requires that the Commission take into account sales for importation of gray market EVSPFHs by John Deere’s European dealers in determining the total number of sales of EVSPFHs that were authorized by John Deere; (3) the total quantity of new and used EVSPFHs sold by John Deere’s official European dealers for importation to the United States from 1997 through 2002, including a) all European dealer sales for importation to the United States for which there is documentary evidence in the existing record, and b) an estimate of the total quantum of additional European dealer sales for importation to the United States for which there may not be documentary evidence on this record.

SCHEDULE FOR WRITTEN SUBMISSIONS: The parties' written submissions on the questions presented must be filed by March 31, 2008. Reply submissions must be filed by April 7, 2008. Written submissions may not exceed 20 pages in length; reply submissions may not exceed 15 pages. The page limits are exclusive of any factual exhibits.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.45).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: March 13, 2008