

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

In the Matter of

CERTAIN AUTOMOTIVE PARTS

Investigation No. 337-TA-557

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW A FINAL
DETERMINATION OF NO VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON REMEDY, 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 final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 4, 2006, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jonathan Engler, Esq., 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 January 4, 2006, based on a complaint filed by Ford Global Technologies, LLC (“Ford”) of Dearborn, Michigan. An amended complaint was filed on December 12, 2005, and a supplemental letter was filed on December 22, 2005. The amended complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos. D496,890 (“the ‘890 patent”), D493,552 (“the ‘552 patent”), D497,579 (“the ‘579 patent”), D503,135 (“the ‘135 patent”), D496,615 (“the

'615 patent"), D502,561 ("the '561 patent"), D492,044 ("the '044 patent"), D491,119 ("the '119 patent"), D503,912 ("the '912 patent") and D495,979 ("the '979 patent"). The complaint named the following as respondents: Keystone Automotive Industries, Inc. of Pomona, California; U.S. Autoparts Network, Inc. of Carson, California; Gordon Auto Body Parts Co., Ltd. of Taiwan; Y.C.C. Parts Manufacturing Co., Ltd. of Taiwan; TYC Brother Industrial Co., Ltd. of Taiwan; and Depo Auto Parts Ind. Co., Ltd. of Taiwan (collectively "the Respondents"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On August 3, 2006, the Commission issued a notice not to review an ID granting partial termination of this investigation as to the '801, '685, '299, '658 patents.

On December 4, 2006, the ALJ issued the final ID, finding that the '119, '912, and '979 patents are invalid due to public use; that the '890, '552, '135, '579, '561, '044, and '615 patents are not invalid, are enforceable, and are infringed; and that there is a domestic industry involving the patents in issue. Thus, he found a violation of section 337 of the Tariff Act of 1930, as amended.

On December 15, 2006, Ford and the Respondents filed petitions for review. Ford sought review of the ALJ's finding that the '119, '912 and '979 patents are invalid as anticipated. The Respondents petitioned for review of the ALJ's findings that patents '890, '552, '579, '135, '615, '561, and '044 were not anticipated, obvious or unenforceable, and of Orders No. 7 and 12, in which the ALJ denied certain affirmative defenses. The Office of Unfair Import Investigations opposed both petitions for review. On December 15, 2006, all parties filed responses to the petitions for review.

On December 26, 2006, the Commission determined to extend the deadline for determining whether to review the ALJ's ID by 60 days to March 20, 2007, and to extend the target date for completion of the investigation by 60 days to May 4, 2007.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined not to review the final ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party 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 In the Matter of 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 include the effect that an exclusion order and/or cease and desist 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 U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under 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 if a remedy is ordered.

WRITTEN SUBMISSIONS: The Commission does not wish to receive further written submissions on the issue of violation. However, parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should be no more than twenty-five (25) pages and should address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on March 30, 2007. Reply submissions must be filed no later than the close of business on April 6, 2007. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document 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* 19 C.F.R. § 210.6. 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.

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 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: