

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

In the Matter of

**CERTAIN HYDRAULIC EXCAVATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-582

**NOTICE OF COMMISSION DETERMINATION
NOT TO REVIEW THE INITIAL DETERMINATION CONTAINED IN ORDER NO. 45**

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") initial determination ("ID") contained in Order No. 45.

FOR FURTHER INFORMATION CONTACT: Jonathan J. 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 the ALJ's IDs and all other 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: On August 29, 2006, the Commission instituted this investigation, based on a complaint filed by Caterpillar Inc. ("Caterpillar") of Peoria, Illinois. The complaint 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 hydraulic excavators and components thereof by reason of infringement of U.S. Trademark Registration No. 2,140,606, U.S. Trademark Registration No. 2,421,077, U.S. Trademark Registration No. 2,140,605, and U.S. Trademark Registration No. 2,448,848. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The complaint named twenty (20) firms as respondents. Two respondents, Barkley Industries LLC and Frontera Equipment Sales, have been found in default. Thirteen have been terminated as a result of settlement agreements.

On April 17, 2007, Caterpillar filed a motion for summary determination on certain issues, including Caterpillar's satisfaction of the domestic industry requirement and affirmative defenses raised by the Respondents. On April 27, 2007, Alex Lyon & Son Sales Managers, Hoss Equipment Co., World

Tractor and Equipment Company, LLC, Worldwide Machinery, Inc. and Yoder & Frey Auctioneers (collectively, the “respondents”) filed an opposition to the motion and on May 3, 2007 the Commission Investigative Staff filed a response to the motion, opposing it in part and supporting it in part. The ALJ in an ID (Order No. 44) granted Caterpillar's motion with respect to the domestic industry requirement and the respondents' affirmative defenses of unclean hands, violation of public policy, trademark abandonment and antitrust violations, denied the motion with respect to the respondents' affirmative defenses of laches, acquiescence and estoppel, and left certain other issues unresolved. The Commission determined not to review the ID.

On June 20, the ALJ issued Order No. 45, resolving the several issues that were still before him, having not been addressed in Order No. 44. Specifically, Order No. 45 denied the respondents’ motion for summary determination, and denied, in part, the complainant's motion for summary determination. Order No. 45 also contained an ID, granting in part the complainant's motion for summary determination.

On June 27, 2007, the respondents moved for a “clarification” by the Commission as to whether that portion of Order 45 in which the ALJ denies the respondents’ motion for summary determination is part of the ID. To the extent that it is part of the ID, the respondents petitioned for review of the ID. Caterpillar opposed the respondents’ motion and petition for review.

The Commission finds that the ALJ’s denial of the respondents’ motion for summary determination is not part of the ID and therefore not before the Commission. The Commission further finds that any motion for clarification belongs before the ALJ, not the Commission. The respondents’ petition for review of the ID and motion for clarification are therefore denied as improperly filed.

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

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: July 26, 2007