

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HYDRAULIC EXCAVATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-582

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL DETERMINATION
GRANTING IN PART AND DENYING IN PART COMPLAINANT'S MOTION
FOR SUMMARY DETERMINATION**

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") (Order No. 44) granting in part and denying in part complainant's motion for summary determination.

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, respondents Alex Lyon & Son Sales Managers, Hoss Equipment Co., World Tractor and Equipment Company, LLC, Worldwide Machinery, Inc. and Yoder & Frey Auctioneers filed an opposition to the motion and on May 3, 2007 the Commission Investigative Attorney filed a response, opposing the motion in part and supporting it in part. The ALJ 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, and denied the motion with respect to the Respondents' affirmative defenses of laches, acquiescence and estoppel. No petitions for review were filed.

The Commission has determined not to review the ID.

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.

Marilyn R. Abbott
Secretary to the Commission

Issued: June 20, 2007