

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOVABLE BARRIER OPERATOR
SYSTEMS AND COMPONENTS THEREOF**

Investigation No. 337-TA-1118

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION EXTENDING THE TARGET DATE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined not to review an initial determination (“ID”) extending the target date for completion of the above-captioned investigation to November 10, 2020.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 11, 2018, the Commission instituted the present investigation based on a complaint, as supplemented, filed by The Chamberlain Group, Inc. (“CGI”) of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“Section 337”), in the importation, sale for importation, or sale in the United States after importation of certain movable barrier operator systems that purportedly infringe one or more of the asserted claims of U.S. Patent Nos. 8,587,404 (“the ’404 patent”); 7,755,223 (“the ’223 patent”); 6,741,052 (“the ’052 patent”). *Id.* The Commission’s notice of investigation named Nortek Security & Control, LLC of Carlsbad, CA; Nortek, Inc. of Providence, RI; and GTO Access Systems, LLC of Tallahassee, FL (collectively, “Nortek”) as respondents. 83 FR at 270721. The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

On December 12, 2018, CGI filed a motion for summary determination that it satisfied the economic prong of the domestic industry requirement. On June 6, 2019, the presiding administrative law judge (“ALJ”) issued a notice advising the parties that the motion would be granted and a formal written order would be issued later. Order No. 26 (June 6, 2019).

The ALJ held an evidentiary hearing on the remaining issues on June 10-14, 2019.

On November 20, 2019, the ALJ issued Order No. 37, making a “preliminary monetary sanctions award” to Nortek to compensate for certain travel and deposition-related expenses, court fees, and attorney time resulting from CGI’s allegedly late production of documents.

On November 25, 2019, the ALJ issued an ID (Order No. 38) granting CGI’s motion for summary determination that CGI satisfied the economic prong of the domestic industry requirement. On the same date, the ALJ issued the final ID finding no violation of Section 337 because the asserted claims of the ’404 and ’223 patents are not infringed, and the asserted claim of the ’052 patent is invalid. ID at 1, 286-87. In the event the Commission finds a violation, the ALJ recommended that the Commission issue a limited exclusion order and cease and desist orders against Nortek and impose a bond of 100 percent of the entered value of covered articles during the period of Presidential review. *Id.* at 277-86.

On February 19, 2020, the Commission issued a notice of its determination to review Order No. 38 and the final ID in part and asked the parties for further briefing on certain violation issues and remedy, the public interest, and bonding. 85 FR 10723-26 (Feb. 25, 2020). The parties submitted their initial briefs in response to the Commission’s notice on March 4, 2020, and their reply briefs on March 11, 2020.

On March 27, 2020, CGI filed a “request” to remand Order No. 37 to the ALJ for a final ruling on sanctions. Nortek filed its opposition to CGI’s request on April 1, 2020.

On April 20, 2020, the Commission determined to extend the target date for completion of this investigation to May 18, 2020. Comm’n Notice (Apr. 20, 2020).

On April 22, 2020, the Commission issued a notice of its determination to vacate Order No. 38 and remand the economic prong issue to the ALJ for further proceedings. Comm’n Notice (April 22, 2020). In the same notice, the Commission stated it determined not to review, and thereby adopts, the ID’s findings that there is no violation of Section 337 with respect to the ’404 and ’052 patents, while the ’223 patent remains under review. *Id.* The Commission also determined not to review or remand Order No. 37 and its sanctions award. *Id.*

On May 18, 2020, the ALJ issued the subject ID (Order No. 40) extending the target date to November 10, 2020. The ALJ also set the deadline for issuing the remand initial determination for July 10, 2020. The Commission has determined not to review Order No. 40.

The Commission approved this action in a vote taken on May 20, 2020.

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 part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: May 20, 2020