

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LUXURY VINYL TILE AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1155

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART
AND, ON REVIEW, TO AFFIRM AN INITIAL DETERMINATION GRANTING
SUMMARY DETERMINATION OF VIOLATION BY DEFAULTING RESPONDENTS;
REQUEST FOR WRITTEN SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST,
AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part and, on review, to affirm an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) granting summary determination of violation of section 337 by certain defaulting respondents. The Commission requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On May 16, 2019, the Commission instituted this investigation based on a complaint filed by Mohawk Industries, Inc. of Calhoun, Georgia; Flooring Industries Ltd. Sarl of Bertrange, Luxembourg; and IVC US Inc. of Dalton, Georgia (collectively, “Complainants”). 84 FR 22161 (May 16, 2019). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”) in the importation into the United States, the sale for importation, or the sale

within the United States after importation of certain luxury vinyl tiles by reason of infringement of certain claims of U.S. Patent Nos. 9,200,460 (“the ’460 patent”); 10,208,490 (“the ’490 patent”); and 10,233,655 (“the ’655 patent”) (collectively, “the Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation names forty-five respondents, including: ABK Trading Corp. of Katy, Texas (“ABK”); Aurora Flooring LLC of Kennesaw, Georgia (“Aurora”); Changzhou Runchang Wood Co., Ltd. of Jiangsu, China (“Runchang”); Go-Higher Trading (Jiangsu) Co., Ltd. of Jiangsu, China (“Go-Higher”); Jiangsu Divine Building Technology Development Co. Ltd. Jiangsu, China (“Divine”); Jiangsu Lejia Plastic Co. Ltd. of Jiangsu, China (“Lejia”); JiangSu Licheer Wood Co., Ltd. of Jiangsu, China (“Licheer”); Maxwell Flooring Distribution LLC of Houston, Texas (“Maxwell Flooring”); Mr. Hardwood Inc. of Acworth, Georgia (“Mr. Hardwood”); and Sam Houston Hardwood Inc. of Houston, Texas (“Sam Houston”) (collectively, “Defaulting Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also participating in the investigation. *Id.*

The Commission previously terminated the investigation as to thirty-five respondents based on settlement, consent order, or partial withdrawal of the complaint. *See* Order No. 14 (Sept. 26, 2019), *not rev’d*, Notice (Oct. 17, 2019); Order Nos. 15-21 (Sept. 27, 2019 for all), *not rev’d*, Notice (Oct. 17, 2019); Order Nos. 23-25 (Oct. 2, 2019 for all), *not rev’d*, Notice (Oct. 23, 2019); Order No. 27 (Oct. 9, 2019), *not rev’d*, Notice (Nov. 6, 2019); Order No. 26 (Oct. 9, 2019), *not rev’d*, Notice (Nov. 8, 2019); Order No. 30 (Oct. 25, 2019), *not rev’d*, Notice (Nov. 21, 2019); Order No. 34 (Nov. 7, 2019), *not rev’d*, Notice (Dec. 11, 2019); Order No. 35 (Jan. 24, 2020), *not rev’d*, Notice (Feb. 25, 2020).

On November 21, 2019, the Commission found respondent Go-Higher in default. *See* Order No. 31 (Oct. 25, 2019), *not rev’d*, Notice (Nov. 21, 2019). On November 22, 2019, the Commission found an additional eight respondents in default: ABK; Aurora; Divine; Lejia; Licheer; Maxwell Flooring; Mr. Hardwood; and Sam Houston. *See* Order No. 32 (Oct. 30, 2019), *not rev’d*, Notice (Nov. 22, 2019). On November 25, 2019, the Commission found respondent Runchang in default. *See* Order No. 33 (Oct. 30, 2019), *not rev’d*, Notice (Nov. 25, 2019).

On January 15, 2020, Complainants filed a motion for summary determination of domestic industry and violation of section 337 by the Defaulting Respondents. Complainants filed supplements to their summary determination motion on January 23, 2020, February 11, 2020, and February 19, 2020.

On February 12, 2020, OUII filed a response to Complainants’ motion. On May 14, 2020, OUII filed a supplemental response.

On May 15, 2020, the ALJ issued the subject ID (Order No. 36) granting the motion for summary determination and finding a violation of section 337 by the Defaulting Respondents. The ALJ recommended that the Commission issue a GEO and CDOs against the five domestic respondents: ABK, Aurora, Maxwell Flooring, Mr. Hardwood, and Sam Houston. The ALJ also

recommended setting a bond of \$0.08 per square foot of luxury vinyl tile product and components thereof imported during the period of Presidential review. *Id.* No party petitioned for review of the subject ID.

Having reviewed the record of the investigation, the Commission has determined to review the subject ID in part, and on review, to affirm the ID's finding of violation. Specifically, the Commission has determined to review and, on review, to take no position on the ID's findings regarding the economic prong under subsection 337(a)(3)(B) with respect to the '460 patent. The Commission has also determined to review the ID's findings regarding a domestic industry "in the process of being established" with respect to the '490 and '655 patents and affirms those findings but with the following clarifications: The ID addresses the issue of domestic industry for the '490 and '655 patents under the theory of whether the industry is "in the process of being established" since that is the theory advanced by Complainants. In affirming the ID's findings, the Commission does not intend to imply that the investments already made with respect to the '490 and '655 patents are not substantial or could not be used to show the existence of a domestic industry under section 337(a)(3). Further, although the "IVC Foamed Rigid LVT" product asserted by the Complainants is not yet commercially manufactured, under Commission precedent there is no requirement that there be a commercial domestic industry product in order to establish an existing domestic industry. *See Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II*, Inv. No. 337-TA-1073, Comm'n Op. at 9 (Aug. 12, 2019) (public version). The Commission has also determined to review the ID's findings with respect to the two products from non-parties, the Quickstyle and Uniflor Aqua products.

The Commission has determined not to review the remainder of the ID, including the findings that Complainants have satisfied the domestic industry requirement under subsection 337(a)(3)(A) with respect to the '460 patent. Accordingly, the Commission affirms the ID's finding of a violation of section 337 by the Defaulting Respondents' importation of luxury vinyl tiles and components thereof that infringe one or more of claims 7-8, 13, 15-17, 20-23, and 30 of the '460 patent, claims 1-6, 8, 10-11, 13-16, and 18 of the '490 patent, and claims 1-4, 6-16, 18, and 20-26 of the '655 patent.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders that could result in the respondents 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 *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context

of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainants seek a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.
3. Please discuss any other basis upon which the Commission could enter a cease and desist order.
4. To the extent Complainants seek a cease and desist order against defaulting respondent Runchang, please address whether the requirements of section 337(g)(1)(A)-(E) are satisfied with respect to Runchang.

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order 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, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 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: 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 address the recommended determination by the ALJ on remedy and bonding.

In their initial submission, Complainants are also requested to identify the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to state the dates that the Asserted Patents expire, the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **July 15, 2020**. Reply submissions must be filed no later than the close of business on **July 22, 2020**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1155) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on June 30, 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: June 30, 2020