

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington D.C. 20436

In the Matter of

**CERTAIN AGRICULTURAL TRACTORS,
LAWN TRACTORS, RIDING LAWNMOWERS,
AND COMPONENTS THEREOF**

Inv. No. 337-TA-486
Enforcement Proceedings

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW AND ON REVIEW
TO MODIFY AN ENFORCEMENT INITIAL DETERMINATION;
TERMINATION OF PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an enforcement initial determination (EID) of the presiding administrative law judge (ALJ) in the above-captioned investigation finding a violation of a limited exclusion order, but declining to recommend any enforcement measures. On review, the Commission has determined to modify the ID by correcting the ALJ's finding that the Commission intended to foreclose the possibility of issuing a general exclusion order as a remedy in the above-captioned proceedings when it denied complainant's petition for modification of the existing limited exclusion order. The Commission has determined not to review the remainder of the EID.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., telephone 202-205-3041, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. Copies of all nonconfidential 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 SW., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On July 3, 2003, at the conclusion of Inv. No. 337-TA-486, *Certain Agricultural Tractors*, the Commission issued a limited exclusion order which

denies entry to tractors manufactured by a single Chinese entity, respondent Beiqi Futian Automobile Co., Ltd. (Futian), that infringe the trade dress of complainant New Holland North America. On August 2, 2004, New Holland filed a single document styled “Consolidated Enforcement Complaint and Petition for Modification,” in which it requested both enforcement and modification of the existing limited exclusion order by replacing the limited exclusion order with a general exclusion order. On November 15, 2004, the Commission ordered the institution of a formal enforcement proceeding to determine whether Futian (now known as Beiqi Foton Motor Co., Ltd.) and Shandong Worldbest Shantou Co., Ltd., an allegedly related entity, (collectively, “the enforcement respondents”) were in violation of the limited exclusion order, and what if any enforcement measures were appropriate. The Commission found that the petition for modification proceedings to obtain a general exclusion order failed to satisfy Commission rule 210.76(a) in that the complainant did not provide an argument concerning the legal basis for the broad modification sought. Thus, the Commission did not institute modification proceedings.

The Commission assigned the enforcement proceedings to the ALJ who conducted the original investigation concerning violation. The Commission subsequently set a target date of November 21, 2005, for completion of the investigation in light of *VastFame et al. v USITC*, 386 F.3d 1108 (Fed. Cir. 2004), which holds that the Commission’s authority for conducting enforcement proceedings is found in 19 U.S.C. § 1337(b), a provision which requires the Commission to set a target date for completion of its investigations within 45 days of institution.

On February 4, 2005, the ALJ issued an ID finding the two enforcement respondents in default, and pursuant to Commission Rule 210.16(b)(3), to have waived their right to appear, be served with documents, or contest the allegations in the enforcement complaint. The Commission declined to review the ID and it became the final determination of the Commission.

On May 13, 2005, the ALJ issued an EID finding that the existing limited exclusion order had been violated by the enforcement respondents, but recommending against any enforcement measures by the Commission because: (1) he believed the Commission did not intend for him to issue a general exclusion order; (2) New Holland had failed to meet the statutory criteria for a general exclusion order in default investigations because it had not established a violation of section 337 by substantial, reliable, and probative evidence as required by 19 U.S.C. § 1337(g)(2)(A); and (3) New Holland did not seek any enforcement measures other than a general exclusion order.

The Commission has determined to review and modify the EID to the extent that the Commission does not adopt the ALJ’s conclusion that the Commission did not intend for him to issue a general exclusion order when it instituted these proceedings. Rather, the Commission determined only to deny New Holland’s petition for modification. The Commission adopts the EID’s finding that New Holland failed to meet the statutory criteria for a general exclusion order because it did not established a violation of its trade dress by substantial, reliable, and probative evidence as required by section 337(g)(2)(A). The Commission agrees with the ALJ that no

other enforcement measures are appropriate because New Holland did not seek any enforcement measure other than a general exclusion order.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and 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: August 15, 2005