

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

In the Matter of

CERTAIN ENERGY DRINK PRODUCTS

Investigation No. 337-TA-678

**NOTICE OF COMMISSION DECISION NOT TO REVIEW
AN INITIAL DETERMINATION OF VIOLATION OF SECTION 337; SCHEDULE FOR
SUBMISSIONS ON REMEDY, PUBLIC INTEREST, AND BONDING**

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 a final initial determination (“final ID”) (Order No. 34) issued by the presiding administrative law judge (“ALJ”) finding a violation of Section 337 of the Tariff Act of 1930, as amended (“section 337”) in the above-identified investigation .

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3065. Copies of the public version of the ID and 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, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. 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) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On June 17, 2009, the Commission instituted this investigation, based on a complaint filed by Red Bull GmbH of Fuschl am See, Austria, and Red Bull North America of Santa Monica, California (collectively, “Red Bull”) filed on May 15, 2009, and supplemented on June 1, 2009. The respondents named in the notice of investigation were: Chicago Import Inc., of Chicago, Illinois (“Chicago Import”); Lamont Distr., Inc., a/k/a Lamont Distributors Inc., of Brooklyn, New York (“Lamont”); India Imports, Inc., a/k/a International Wholesale Club of Metairie, Louisiana (“India Imports”); Washington Food and Supply of D.C., Inc., a/k/a Washington Cash & Carry of Washington, D.C (“Washington Food”); Vending Plus, Inc., of Glen Burnie, Maryland; and Baltimore Beverage Co., Glen Burnie, Maryland. The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, by reason of the importation, the sale for importation, or the sale after importation, of

certain energy drink products that infringe U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,2994,429; 3,479,607 and U.S. Copyright Registration No. VA0001410959. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On August 12, 2009, the Commission determined not to review an ID (Order No. 7) granting a motion to amend the notice of investigation to clarify that Vending Plus, Inc., and Baltimore Beverage Co., comprise a single entity, Vending Plus, Inc. d/b/a Baltimore Beverage Co (“Vending Plus”). On September 30, 2009, the Commission determined not to review an ID (Order No. 11) granting a motion to amend the notice of investigation to include the following additional respondents: Posh Nosh Imports (USA), Inc., of South Kearny, New Jersey (“Posh Nosh”); Greenwich, Inc., of Florham Park, New Jersey (“Greenwich”); Advantage Food Distributors Ltd., of Suffolk, UK (“Advantage Food”), Wheeler Trading, Inc., of Miramar, Florida (“Wheeler Trading”); Avalon International General Trading, LLC, of Dubai, United Arab Emirates (“Avalon”); and Central Supply, Inc., of Brooklyn, NY (“Central Supply”).

On January 5, 2010, the Commission determined not to review IDs (Order Nos. 21 and 22) finding Lamont and Avalon in default pursuant to Commission Rule 210.16. On January 20, 2010, the Commission determined not to review four IDs (Order Nos. 24, 25, 26, and 27) terminating the investigation as to respondents Wheeler Trading, Washington Food, India Imports, and Vending Plus on the basis of settlement agreements. On January 28, 2010, the Commission determined not to review IDs (Order Nos. 29 and 30) finding respondents Posh Nosh, Greenwich, Advantage Food, and Chicago Imports in default pursuant to Commission Rule 210.16. On February 16, 2010, the Commission determined not to review an ID (Order No. 32) finding respondent Central Supply in default pursuant to Commission Rule 210.16.

On December 2, 2009, Red Bull moved for summary determination on the issues of domestic industry, importation, and violation of Section 337. Pursuant to Commission Rule 210.16(c)(2), 19 C.F.R. § 216(c)(2), Red Bull also stated that it was seeking a general exclusion order. On December 23, 2009, the Commission investigative attorney submitted a response, in support of a finding that domestic industry exists and that Section 337 has been violated by defaulting respondents Avalon, Posh Nosh, Greenwich, Advantage Food, Central Supply, and Chicago Import, but not by respondent Lamont. On January 13, 2010, again on March 10, 2010, Red Bull filed without objection supplemental declarations and attachments to its motion for summary determination.

On March 31, 2010, the presiding administrative law judge issued the subject final ID, Order No. 34, granting Red Bull’s motion for summary determination of violation with respect to respondents Avalon, Posh Nosh, Greenwich, Advantage Food, Central Supply, and Chicago Import. He also recommended a general exclusion order and a 100 percent bond to permit importation during the Presidential review period.

No petitions for review were filed. The Commission has determined not to review Order No. 34.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United

States, and/or (2) issue one or more cease and desist orders that could result in the respondent 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 In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders 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 or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 *Fed. Reg.* 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. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS numbers under which the accused products are imported.

Written submissions must be filed no later than close of business on May 28, 2010. Reply submissions must be filed no later than the close of business on June 7, 2010. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 34. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. 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

C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.16 and 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16; 210.42-46).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: May 14, 2010