

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

In the Matter of

**CERTAIN MUZZLE-LOADING
FIREARMS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-777

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART
THE INITIAL DETERMINATION DENYING COMPLAINANTS' MOTION
FOR TEMPORARY RELIEF AND ON REVIEW TO TAKE NO POSITION
ON THE LIKELIHOOD OF SUCCESS, THE BALANCE OF HARDSHIPS
AND THE PUBLIC INTEREST**

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 the initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on August 31, 2011, denying complainants' motion for temporary relief. The Commission has determined not to review the ID's denial of temporary relief and its analyses of irreparable harm. On review, the Commission has determined to take no position on the remainder of the ID.

FOR FURTHER INFORMATION CONTACT: Erin D.E. Joffre, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2550. Copies of 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 (<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: The Commission instituted this investigation on June 17, 2011, based on a complaint filed by Thompson/Center Arms Company, Inc. ("T/C") and Smith & Wesson Corp. ("Smith & Wesson") of Springfield, Massachusetts ("Complainants"). 76 *Fed. Reg.* 35469 (Jun. 17, 2011). The complainants named seven respondents: (1) Dikar Sociedad Cooperativa Limitada of Bergara, Spain; (2) Blackpowder Products Inc. of Duluth,

Georgia; (3) Connecticut Valley Arms of Duluth, Georgia; (4) Bergara Barrels North America of Duluth, Georgia; (5) Bergara Barrels Europe of Bergara, Spain; (6) Ardesa Firearms of Zamudio (Vizcaya), Spain; and (7) Traditional Sporting Goods, Inc., d/b/a Traditions Sporting Firearms of Saybrook, Connecticut. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain muzzle-loading firearms and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,908,781 (“the ‘781 patent”); U.S. Patent No. 7,814,694 (“the ‘694 patent”); U.S. Patent No. 7,140,138 (“the ‘138 patent”); U.S. Patent No. 6,604,311 (“the ‘311 patent”); U.S. Patent No. 5,782,030 (“the ‘030 patent”); and U.S. Patent No. 5,639,981 (“the ‘981 patent”). On July 8, 2011, the ALJ granted Complainants’ motion to partially terminate the investigation as to the ‘781 and ‘138 patents. Order No. 7 (July 8, 2011), Notice of Commission Determination Not to Review (July 22, 2011).

The Complainants also filed with their complaint in this investigation a motion for temporary relief directed only to respondents Traditions and Ardesa (collectively, “TEO Respondents”) that requested the Commission to issue a temporary limited exclusion order and temporary cease and desist orders. The Complainants’ motion for temporary relief initially addressed the ‘781, ‘694, ‘138, ‘030, and ‘981 patents. During the initial pre-hearing conference, however, the parties entered into a stipulation that limited the Complainants’ motion to the ‘694 patent – specifically, claims 1, 10 and 11. The Initial Determination (“ID”) at issue is the ALJ’s denial of the Complainants’ motion. In the subject ID, the ALJ analyzed the four factors for determining whether to grant preliminary relief: the likelihood of success on the merits, irreparable harm, the balance of hardships, and the public interest.

The ID found that the Complainants had not demonstrated that they would suffer irreparable harm. Specifically, the ID found that the Complainants failed to demonstrate an irreparable harm from the following: (1) price erosion; (2) exclusivity erosion; (3) loss of goodwill and reputation; (4) lost sales and market share; or (5) reduced investment. The ALJ found that the lack of irreparable harm precluded temporary relief in this investigation. The ALJ also found the following: a likelihood of success on the merits with respect to claim 10 of the ‘694 patent; that the balance of hardships did not favor either party; and that the public interest would not preclude preliminary relief.

On September 12, 2011, the TEO Respondents filed opening comments and on September 14, 2011, the Complainants submitted reply comments as authorized by 19 C.F.R. §§ 210.66(c), (e)(1). These comments do not take issue with the ALJ’s findings regarding the lack of irreparable harm. Instead, the comments principally deal with Complainants’ likelihood of success on the merits, challenging various aspects of the ALJ’s analyses of infringement and the balance of hardships.

Having examined the record of this investigation, including the ALJ’s ID and the subsequent comments and reply comments, the Commission finds that irreparable harm has not been demonstrated. It was Complainants’ burden to demonstrate that such harm was likely absent temporary relief, and it failed to meet that burden. *Winter v. Natural Res. Defense Council, Inc.*, 129 S. Ct. 365, 375 (2008). The Commission has therefore determined not to review the ID’s

finding of lack of irreparable harm and the ID's denial of temporary relief.

Because irreparable harm is dispositive here, the Commission need not evaluate the remaining factors, *i.e.*, the likelihood of success on the merits, the balance of hardships, or the public interest. Therefore, the Commission has determined to review the ID's findings on the likelihood of success, the balance of hardships, and the public interest and to take no position on them. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421 (Fed. Cir. 1984).

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 210.66 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.66).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: November 10, 2011