

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN CASES FOR PORTABLE
ELECTRONIC DEVICES**

Investigation Nos. 337-TA-867/861

**NOTICE OF COMMISSION RECONSIDERATION OF ITS DETERMINATION TO
FIND RESPONDENT SW-BOX IN DEFAULT; REMAND TO ALJ FOR FURTHER
PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reconsider its determination to affirm the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 8) only to the extent that it finds respondent SW-Box of Sheung Wan, Hong Kong ("SW-Box") in default.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 at <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 Inv. No. 337-TA-861 on November 16, 2012, based on a complaint filed by Speculative Product Design, LLC of Mountain View, California ("Speck"). *77 Fed. Reg.* 68828 (Nov. 16, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of various claims of United States Patent No. 8,204,561 ("the '561 patent"). The complaint named several respondents, including SW-Box.

The Commission instituted Inv. No. 337-TA-867 on January 31, 2013, based on a complaint filed by Speck. 78 *Fed. Reg.* 6834 (Jan. 31, 2013). That complaint also alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of various claims of the '561 patent. The complaint named several respondents. On January 31, 2013, the Commission consolidated the two investigations. *Id.*

On January 15, 2013, Speck filed a motion for an order directing certain respondents, including SW-Box to show cause why they should not be found in default for their failure to respond to the complaint and notice of investigation. Speck's motion requested issuing a default ID against those respondents who failed to show cause. On January 25, 2013, the Commission Investigative Attorney filed a response in support of the motion. No other responses to the motion were filed.

On February 21, 2013, the ALJ issued Order No. 5, ordering the respondents to show by March 7, 2013, why they should not be found in default under 19 C.F.R. § 210.16 for their failure to respond to the complaint and notice of investigation. The respondents, including SW-Box did not respond to the show-cause order.

On April 2, 2013, the ALJ issued the subject ID, finding the respondents, including SW-Box in default under 19 C.F.R. § 210.16 for failing to respond to the complaint and notice of investigation. The ALJ also found the respondents in default under 19 C.F.R. § 210.17.

On May 1, 2013, the Commission determined to review the ID and upon review, the Commission determined to affirm the ALJ's determination finding the respondents, including SW-Box in default under 19 C.F.R. § 210.16. The Commission vacated the ALJ's reliance on 19 C.F.R. § 210.17.

The Commission has since learned that the address for SW-Box identified in Speck's complaint, the address that the show-cause order was sent to, is not the correct address for SW-Box. Accordingly, the Commission has determined to reconsider its prior determination to affirm the ALJ's ID (Order No. 8) finding respondents in default under 19 C.F.R. § 210.16 with respect to only SW-Box. The Commission remands to the ALJ for further proceedings.

The Commission notes that generally, an agency may decide to reopen or reconsider a decision "on its own motion." *Cf. SKF USA, Inc. v. United States*, 254 F.3d 1022, 1028-29 (Fed. Cir. 2011) (an agency may seek voluntary remand of its determination on appeal based on intervening events outside of its control or to reconsider its position, and that the Court shall usually grant such remand requests); *Certain Electric Fireplaces, Components Thereof, Manuals for Same, Certain Processes For Manufacturing or Relating to Same and Certain Products Containing Same*, Consolidated Inv. Nos. 337-TA-791/826, Comm'n Op. at 11 (May 1, 2013) (Commission reconsidering its determination not to review a portion of a final ID).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with the first name "Lisa" being the most prominent part.

Lisa R. Barton
Acting Secretary to the Commission

Issued: May 31, 2013