



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1033]

Certain Arrowheads with Arcuate Blades and Components Thereof

Notice of Commission Decision Not to Review an Initial Determination Granting Complainant's Motion for Summary Determination of a Violation of Section 337; Request for Submissions

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 an initial determination (“ID”) (Order No. 9) of the presiding administrative law judge (“ALJ”) granting complainant’s motion for summary determination of a violation of section 337. The Commission also requests written submissions regarding remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. 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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 January 6, 2017, based on a complaint filed on behalf of Flying Arrow Archery, LLC of Belgrade, Montana. 82 FR 1760-61. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 8,920,269; D713,919; and D729,336. The complaint further alleges that a domestic industry exists. The Commission's notice of investigation named the following respondents: Arthur Sifuentes of Spring, Texas; Liu Mengbao and Zhou Yang, both of Guangdong, China; Jiangfeng Mao of Jiangsu, China; Sandum Precision Industry (China) Co., Ltd. (In-Sail) of Guangdong Province, China (collectively, "the remaining respondents"); Wei Ran, Dongguan Hongsong, and Wanyuxue, all of Guangdong, China; and Yandong of Henan, China (collectively, "the terminated respondents"). The Office of Unfair Import Investigations ("OUII") is also a party to the investigation.

On April 28, 2017, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 7) terminating the investigation as to the terminated respondents based on withdrawal of the infringement allegations in the complaint. In the same notice, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 6) finding the remaining respondents in default ("the defaulting respondents").

Because a general exclusion order is sought, complainant is required to establish that a violation of section 337 has occurred by substantial, reliable, and probative evidence pursuant to Commission Rule 210.16(c)(2). On August 15, 2017, complainant filed a motion for summary determination of a violation of section 337 pursuant to Commission Rule 210.16(c)(2) to support its request for entry of a general exclusion order with respect to all asserted patents. OUII filed a

response in support of the motion.

The ALJ issued the subject ID on November 8, 2017, granting complainant's motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainants satisfied the domestic industry requirement. *See* 19 U.S.C. 1337(a)(1)(B), (a)(2). The ID finds that a violation of section 337 has occurred based on its finding that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the patents at issue as established by substantial, reliable, and probative evidence in accordance with Commission Rule 210.16(c)(2). No petitions for review were filed. The ID also contains the ALJ's recommended determination on remedy and bonding. The ALJ recommended a general exclusion order with respect to the asserted patents if the Commission finds a violation of section 337.

Having examined the record of this investigation, the Commission has determined not to review the subject ID.

As noted above, five respondents were found in default. Section 337(g) and Commission Rule 210.16(c) authorize the Commission to order relief against respondents found in default unless, after considering the public interest, it finds that such relief should not issue. Before the ALJ, complainant sought a general exclusion order under section 337(g)(2).

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. 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 (December 1994).

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 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.

Complainants and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on January 4, 2018. Reply submissions must be filed no later than the close of business on January 11, 2018. 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 and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1033") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

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 proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is 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 personnel¹, solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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.

Issued: December 21, 2017.

Katherine M. Hiner,
Supervisory Attorney.

¹ All contract personnel will sign appropriate nondisclosure agreements.

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