



## INTERNATIONAL TRADE COMMISSION

### [Investigation No. 337-TA-1155]

#### **Certain Luxury Vinyl Tile and Components Thereof; Issuance of a General Exclusion Order and Cease and Desist Orders; Termination of the Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has affirmed a summary determination of violation of section 337 with respect to certain defaulting respondents and has determined to issue a general exclusion order (“GEO”) denying entry of certain infringing luxury vinyl tile and components thereof as well as cease and desist orders (“CDOs”) against certain of the defaulting respondents. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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:** On May 16, 2019, the Commission instituted this investigation based on a complaint filed by Mohawk Industries, Inc. of Calhoun, Georgia; Flooring Industries Ltd. Sarl of Bertrange, Luxembourg; and IVC US Inc. of Dalton, Georgia (collectively, “Complainants”). 84 FR 22161 (May 16, 2019). The complaint, as supplemented,

alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain luxury vinyl tiles by reason of infringement of certain claims of U.S. Patent Nos. 9,200,460 (“the ’460 patent”); 10,208,490 (“the ’490 patent”); and 10,233,655 (“the ’655 patent”) (collectively, “the Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation names forty-five respondents, including: ABK Trading Corp. of Katy, Texas (“ABK”); Aurora Flooring LLC of Kennesaw, Georgia (“Aurora”); Changzhou Runchang Wood Co., Ltd. of Jiangsu, China (“Runchang”); Go-Higher Trading (Jiangsu) Co., Ltd. of Jiangsu, China (“Go-Higher”); Jiangsu Divine Building Technology Development Co. Ltd. Jiangsu, China (“Divine”); Jiangsu Lejia Plastic Co. Ltd. of Jiangsu, China (“Lejia”); JiangSu Licheer Wood Co., Ltd. of Jiangsu, China (“Licheer”); Maxwell Flooring Distribution LLC of Houston, Texas (“Maxwell Flooring”); Mr. Hardwood Inc. of Acworth, Georgia (“Mr. Hardwood”); and Sam Houston Hardwood Inc. of Houston, Texas (“Sam Houston”) (collectively, “Defaulting Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also participating in the investigation. *Id.*

The Commission previously terminated the investigation as to thirty-five respondents based on settlement, consent order, or partial withdrawal of the complaint. *See* Order No. 14 (Sept. 26, 2019), *unreviewed by*, Notice (Oct. 17, 2019); Order Nos. 15-21 (Sept. 27, 2019 for all), *unreviewed by*, Notice (Oct. 17, 2019); Order Nos. 23-25 (Oct. 2, 2019 for all), *unreviewed by*, Notice (Oct. 23, 2019); Order No. 27 (Oct. 9, 2019), *unreviewed by*, Notice (Nov. 6, 2019); Order No. 26 (Oct. 9, 2019), *unreviewed by*, Notice (Nov. 8, 2019); Order No. 30 (Oct. 25, 2019), *unreviewed by*, Notice (Nov. 21, 2019); Order No. 34 (Nov. 7, 2019), *unreviewed by*,

Notice (Dec. 11, 2019); Order No. 35 (Jan. 24, 2020), *unreviewed by*, Notice (Feb. 25, 2020).

On November 21, 2019, the Commission found respondent Go-Higher in default. *See* Order No. 31 (Oct. 25, 2019), *unreviewed by*, Notice (Nov. 21, 2019). On November 22, 2019, the Commission found an additional eight respondents in default: ABK; Aurora; Divine; Lejia; Licheer; Maxwell Flooring; Mr. Hardwood; and Sam Houston. *See* Order No. 32 (Oct. 30, 2019), *unreviewed by*, Notice (Nov. 22, 2019). On November 25, 2019, the Commission found respondent Runchang in default. *See* Order No. 33 (Oct. 30, 2019), *unreviewed by*, Notice (Nov. 25, 2019).

On January 15, 2020, Complainants filed a motion for summary determination that Complainants have satisfied the domestic industry requirement and of a violation of section 337 by the Defaulting Respondents. Complainants filed supplements to their summary determination motion on January 23, 2020, February 11, 2020, and February 19, 2020. On February 12, 2020, OUII filed a response to Complainants' motion. On May 14, 2020, OUII filed a supplemental response.

On May 15, 2020, the ALJ issued Order No. 36 granting the motion for summary determination and finding a violation of section 337 by the Defaulting Respondents. The ALJ recommended that the Commission issue a GEO prohibiting entry of luxury vinyl tiles that infringe the asserted claims of the Asserted Patents and CDOs against the five domestic Defaulting Respondents: ABK, Aurora, Maxwell Flooring, Mr. Hardwood, and Sam Houston. The ALJ also recommended setting a bond of \$0.08 per square foot of luxury vinyl tile product and components thereof imported during the period of Presidential review. *Id.* No party petitioned for review of the ID.

On June 30, 2020, the Commission determined to review the ID in part. 85 FR 40683 (July 7, 2020). On review, the Commission affirmed the finding of violation of section 337 by the Defaulting Respondents' importation of luxury vinyl tile and components thereof that infringe one or more claims of the Asserted Patents. *Id.* Further, the Commission determined to review and, on review, to take no position on the ID's findings regarding the economic prong of the domestic industry requirement under subsection 337(a)(3)(B) (19 U.S.C. 1337(a)(3)(B)) with respect to the '460 patent. *Id.* The Commission also determined to review the ID's findings regarding a domestic industry for the '490 and '655 patents, and on review, to clarify that the Commission did not intend to imply that the investments already made with respect to those patents are not significant or could not be used to show the existence of a domestic industry under section 337(a)(3). *Id.* The Commission further determined to review the ID's findings as to two products from non-parties, *i.e.*, the Quickstyle and Uniflor Aqua products. *Id.* The Notice also requested written submissions on remedy, public interest, and bonding. *See id.*

On July 15, 2020, Complainants and OUII submitted briefs on remedy, public interest, and bonding supporting the ALJ's recommendations. On July 22, 2020, OUII submitted a reply to Complainants' response. No other submissions were filed in response to the Notice.

As noted above, the Commission affirms the ID's finding that there is a violation of section 337 with respect to Defaulting Respondents. Moreover, the Commission finds that the statutory requirements for issuance of a GEO under section 337(d)(2) are met with respect to the Defaulting Respondents. *See* 19 U.S.C. 1337(d)(2). The Commission also finds that issuance of CDOs against the five domestic Defaulting Respondents is appropriate under 337(f)(1). *See* 19 U.S.C. 1337(f)(1). In addition, the Commission finds that the public interest factors do not preclude issuance of the requested relief. *See* 19 U.S.C. 1337(d)(1), (f)(1).

The Commission therefore has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed entry of certain luxury vinyl tile and components thereof that infringe one or more of claims 7-8, 13, 15-17, 20-23, and 30 of the '460 patent, claims 1-6, 8, 10-11, 13-16, and 18 of the '490 patent, and claims 1-4, 6-16, 18, and 20-26 of the '655 patent; and (2) CDOs against ABK, Aurora, Maxwell Flooring, Mr. Hardwood, and Sam Houston. The Commission has also determined that the bond during the period of Presidential review shall be in the amount of \$0.08 per square foot of imported luxury vinyl tile and components thereof that are subject to the GEO and CDOs. *See* 19 U.S.C. 1337(j). The Commission has further determined to vacate the findings under review to the extent the ID adjudicates infringement of the Asserted Patents as to non-respondents.

The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is terminated.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on September 16, 2020.

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: September 16, 2020.

Lisa Barton,  
Secretary to the Commission.

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