



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1183]

**Certain Foldable Reusable Drinking Straws and Components and Accessories Thereof;
Commission Determination Not to Review an Initial Determination Granting a Motion for
Partial Summary Determination and Finding a Violation of Section 337; Request for
Written Submissions on Remedy, the 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 an initial determination (“ID”) (Order No. 18) of the presiding administrative law judge (“ALJ”) granting complainant’s motion for partial summary determination and finding a violation of section 337. The Commission requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-2392. 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. 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: The Commission instituted this investigation on November 13, 2019, based on a complaint filed on behalf of The Final Co. LLC (“Final” or “Complainant”) of Santa Fe, New Mexico. 84 FR 61639 (Nov. 13, 2019). The complaint, as amended, alleges violations 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 foldable reusable drinking straws and components and accessories thereof by reason of infringement of claims 1-12, 14-17, and 20 of U.S. Patent No. 10,123,641 (“the ’641 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation names seventeen respondents, specifically, Huizhou Sinri Technology Company Limited of Guangdong, China; Hebei Serun Import and Export Trade Co., Ltd. of Hebei, China; Dongguan Stirling Metal Products Co., Ltd. of Guangdong, China; Ningbo Wwpartner Plastic Manufacture Co., Ltd. of Zhejiang, China; Shenzhen Yuanzhen Technology Co., Ltd. of Shenzhen, China; Jiangmen Boyan Houseware Co., Ltd. of Guangdong, China; Shanghai Rbin Industry And Trade Co., Ltd. of Shanghai, China; Jiangmen Shengke Hardware Products Co., Ltd. of Guangdong, China; Funan Anze Trading Co., Ltd. of Anhui, China; Hangzhou Keteng Trade Co., Ltd. of Zhejiang, China; Hunan Jiudi Shiye Import And Export Trading Co., Ltd. of Hunan, China (“Hunan Jiudi”); Shenzhen Yaya Gifts Co., Ltd. of Guangdong, China; Ningbo Weixu International Trade Co., Ltd. of Zhejiang, China (“Ningbo Weixu”); Ningbo Beland Commodity Co., Ltd. of Zhejiang, China; Xiamen One X Piece Imp. & Exp. Co., Ltd. of Fujian, China; Hunan Champion Top Technology Co., Ltd. of Hunan, China; and Yiwu Lizhi Trading Firm of Zhejiang, China. *Id.* at 61639-40. The Office of Unfair Import Investigations (“OUII”) is also named as a party in this investigation. *Id.* at 61640.

The Commission previously terminated respondents Ningbo Weixu and Hunan Jiudi from the investigation based on Complainant’s partial withdrawal of the complaint. *See* Order No. 7 (Feb. 13, 2019), *unreviewed by* Comm’n Notice (Mar. 9, 2020).

On March 16, 2020, the Commission found the remaining fifteen respondents (collectively, the “Defaulted Respondents”) in default. Order No. 8 (March 3, 2020), *unreviewed by* Notice (March 16, 2020).

On April 7, 2020, Complainant filed a motion for summary determination of a violation of section 337 by the Defaulted Respondents. On May 5, 2020, Complainant filed a motion for leave to supplement the MSD, and the ALJ granted leave on May 8, 2020. On May 27, 2020, OUII filed its response in support of Complainant's motion.

On July 17, 2020, the ALJ issued Order No. 13, an ID granting in part the motion for summary determination. *See* Order No. 13 (July 17, 2020). The ALJ found that Complainant established importation of the accused products and infringement of claims 1-12 and 14-17 of the '641 patent by Defaulted Respondents and that Complainant satisfied the technical prong of the domestic industry requirement. The ALJ also found, however, that Complainant did not satisfy the economic prong of the domestic industry requirement, and so the ALJ did not find a violation of section 337 by the Defaulted Respondents. The Commission determined not to review Order No. 13. *See* Notice (Aug. 18, 2020).

Also, on July 17, 2020, the ALJ issued Order No. 14, which required the parties to choose from several options on how to proceed. *See* Order No. 14, at 1-2 (July 17, 2020). On July 31, 2020, Complainant and OUII filed a joint response to Order No. 14. The joint response stated that Complainant would file an additional motion for summary determination on the remaining issues raised in the subject ID as well as a motion to amend the complaint to drop its assertion of claim 20 of the '641 patent.

On August 7, 2020, Complainant filed a motion for partial summary determination of the economic prong of the domestic industry requirement, a remedy in the form of a general exclusion order, and a bond of 100% during the Presidential review period. On August 14, 2020, Complainant moved to replace Exhibit 11C within its motion for summary determination, which was granted by the ALJ. *See* Order No. 16 (Aug. 20, 2020). On August 24, 2020, OUII filed its response in support of Complainant's motion.

On August 17, 2020, Complainant moved to terminate the investigation with respect to asserted claim 20 by reason of withdrawal of the complaint allegations. On August 26, 2020, the

ALJ granted the motion to withdraw claim 20. *See* Order No. 17 (Aug. 26, 2020), *unreviewed by* Notice (Sep. 15, 2020).

On September 22, 2020, the ALJ issued the subject ID granting Complainant's motion for partial summary determination that a domestic industry exists with respect to Complainant's research and development investments under section 337(a)(3)(C) and finding a violation of section 337 with respect to claims 1-12 and 14-17 of the '641 patent by the Defaulted Respondents. Order No. 18 also denied Complainant's motion for summary determination under section 337(a)(3)(B). The ALJ's denial of summary determination in Order No. 18 as to section 337(a)(3)(B) is not an initial determination subject to Commission review and hence is not adopted by the Commission and is not a part of the Commission's determination. No petitions for review of the subject ID were filed.

The ALJ concurrently issued a Recommended Determination ("RD") on the issues of remedy and bonding. The RD recommends the issuance of a general exclusion order and setting the bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value.

Having reviewed the record of the investigation, including the subject ID and the parties' submissions to the ALJ, the Commission has determined not to review the subject ID. Accordingly, the Commission adopts the ID's finding that a violation of section 337 has occurred in connection with claims 1-12 and 14-17 of the '641 patent.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents 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 *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order 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, disapprove, or take no action on the Commission's determination. 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.

In their initial submissions, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the Asserted Patent expires, to provide the HTSUS subheadings under which the accused products are

imported and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **Monday, November 23, 2020**. Reply submissions must be filed no later than the close of business on **Monday, November 30, 2020**. 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-**1183**) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. 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 CFR 201.6. Documents for which confidential treatment by the Commission is properly 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 personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be

available for public inspection on EDIS.

The Commission vote for this determination took place on November 5, 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: November 5, 2020.

Lisa Barton,

Secretary to the Commission.

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