

Issued: July 1, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-486]

In the Matter of Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof; Notice of Commission Issuance of Limited Exclusion Order and Termination of Investigation

AGENCY: International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT:

Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3012. Copies of the ALJ's ID and all other nonconfidential 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, SW., Washington, DC 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 February 10, 2003, based on a complaint and motion for temporary relief filed by New Holland North America, Inc. ("complainant") of New Holland, PA. 68 FR 6772 (Feb. 10, 2003). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain tractors and components thereof by reason of

infringement of New Holland's trade dress. The notice of investigation identified three respondents: Beiqi Futian Automobile Co., Ltd. ("Futian") of Beijing, China; Cove Equipment, Inc. ("Cove") of Conyers, Georgia; and Northwest Products, Inc. ("Northwest") of Auburn, Washington. *Id.* On March 19, 2003, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (Order No. 6) finding respondent Futian in default. On March 31, 2003, the ALJ issued an ID (Order No. 8) amending the complaint and notice of investigation to clarify the identity of Cove and to add Brian Navalinsky of Conyers, Georgia as an additional respondent. On April 1, 2003, the ALJ issued an ID (Order No. 9) terminating respondents Cove and Navalinsky on the basis of a consent order. Those IDs were not reviewed by the Commission.

On April 2, 2003, complainant filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking immediate entry of permanent default relief against respondent Futian. In the declaration, complainant stated that it sought a limited exclusion order directed to all accused agricultural tractors, lawn tractors, and riding lawn mowers and components thereof made or imported into the United States by or for respondent Futian or any affiliated company, and that it also sought a cease and desist order directed to respondent Futian and its U.S. affiliates or agents. Complainant further stated that it did not seek a general exclusion order.

On April 8, 2003, the ALJ issued an ID (Order No. 10) terminating the investigation as to respondent Northwest based on a consent order. In his ID, the ALJ noted that all respondents in the investigation had been found to be in default or had reached settlements with complainant. He stated that "[i]f the Commission adopts [the ID] or otherwise terminates the investigation as to Northwest and also terminates the investigation as to the other respondents, no respondent will remain in this investigation. Therefore, any outstanding motions (including Complainant's Motion for temporary relief) will be moot, and this investigation will be terminated in its entirety." Order No. 10 at 5. No petitions for review of the ID were filed. On May 2, 2003, the Commission issued a notice stating that the Commission had determined not to review the ALJ's ID and requesting briefing on the issues of remedy, the public interest, and bonding. 68 FR 23,497.

On May 16, 2003, the Commission investigative attorney ("IA") submitted his brief on remedy, the public interest,

and bonding. On the same day, complainant requested that the Commission consider complainant's April 2, 2003, declaration seeking immediate entry of default relief as complainant's submission on the issues of remedy, the public interest, and bonding. On May 23, 2003, complainant and the IA filed reply briefs. On May 27, 2003, complainant filed a motion for leave to file a sur-reply in response to the IA's reply submission. On May 29, 2003, the IA filed a motion for leave to comment on complainant's reply submission. No briefs were filed by any other person or government agency.

The Commission determined to grant the motions for leave. The Commission found that each of the statutory requirements of section 337(g)(1)(A)-(E), 19 U.S.C. 1337(g)(1)(A)-(E), has been met with respect to defaulting respondent Futian. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c), 19 CFR 210.16(c), the Commission presumed the facts alleged in the complaint to be true. The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of agricultural tractors, lawn tractors, riding lawnmowers, and components thereof that infringe New Holland's trade dress as described in the complaint that are manufactured abroad by or on behalf of, or imported by or on behalf of, Futian. The Commission declined to infer that the defaulting foreign respondent Futian maintains commercially significant inventory in the United States and, consequently, determined not to issue a cease and desist order. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.16(c) of the Commission's rules of practice and procedure, 19 CFR 210.16(c).

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