

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)

CERTAIN AGRICULTURAL VEHICLES)
AND COMPONENTS THEREOF)

Inv. No. 337-TA-487

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN
INITIAL DETERMINATION DISMISSING CERTAIN ANTITRUST
AFFIRMATIVE DEFENSES**

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) of the presiding administrative law judge. The ID dismisses certain affirmative defenses based on antitrust laws.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3104. Copies of the 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, S.W., Washington, D.C. 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-ON-LINE) 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: On February 13, 2003, the Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930, as amended, in the importation and sale of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademark Nos. 1,254,339; 1,502,103; 1,503,576; and 91,860. 68 *Fed. Reg.* 7388 (Feb. 13, 2003). The Commission later determined not to review an ID amending the complaint and notice of institution to add allegations that U.S. Registered Trademark No. 2,729,766 had been infringed or diluted by respondents. 68 *Fed. Reg.* 52418, 52419 (Sept. 3, 2003).

On August 19, 2003, complainant Deere & Co. (Deere) moved for summary determination that the antitrust defenses raised by respondents Stanley Farm, J&T Farm, Inc. and Co-Ag, LLC (collectively "Stanley") should be stricken because Stanley had not developed the antitrust defenses in discovery, offered an expert on the issues of relevant product market or geographic market, or offered any proofs in response to Deere's interrogatories concerning the antitrust defenses. Moreover, Deere contended that Stanley's allegations, even if taken as true, failed to establish a genuine issue of material fact as to their antitrust affirmative defenses. The Commission investigative attorney supported Deere's motion unless Stanley produced some evidence to support its antitrust claims. Stanley opposed Deere's motion, but did not present any evidence on its antitrust claims.

On September 10, 2003, the administrative law judge issued an ID (Order No. 33), in which he determined that Stanley had failed to establish a genuine issue of material fact as to its antitrust affirmative defenses, and accordingly dismissed those defenses. No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.42 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.42.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: October 7, 2003