

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

In the Matter of

**CERTAIN AGRICULTURAL VEHICLES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-487 (Remand)

**NOTICE OF COMMISSION DETERMINATION TO REVERSE A REMAND INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE THAT SECTION 337
HAS BEEN VIOLATED; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the presiding administrative law judge's finding of violation of section 337 of the Tariff Act, as amended, on remand and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3112. The public version of the ALJ's final 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: The Commission instituted this investigation on February 13, 2003, based on a complaint filed by Deere & Company ("Deere") of Moline, Illinois. 68 *Fed. Reg.* 7388 (February 13, 2003). The complaint, as supplemented, 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 agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademarks Nos. 1,254,339; 1,502,576; 1,503,576, and 91,860.

Twenty-four respondents were named in the Commission's notice of investigation. Most of the respondents were terminated from the investigation on the basis of consent orders, or found in default. The remaining respondents, Erntetechnik Franz Becker; Sunova Implement Company; Bourdeau Bros., Inc. and OK Enterprises (collectively, "the Bourdeau respondents"); Fitzpatrick Farms; Stanley Farms; J&T Farms; and Co-Ag LLC (collectively, "the Fitzpatrick Farms respondents"); and Agrideal participated in the investigation. On January 13, 2004, the ALJ issued his final initial determination ("ID") finding a violation of section 337. He also recommended the issuance of remedial orders. The Bourdeau respondents and Fitzpatrick Farms respondents petitioned for review of the ID.

On March 30, 2004, the Commission determined not to review the ID. The Commission then issued a general exclusion order directed to Deere European-version self propelled forage harvesters, two limited exclusion orders directed to Deere European-version telehandlers, and various cease and desist orders, on May 14, 2004.

The Bourdeau respondents appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit (the "Federal Circuit"). On March 30, 2006, the Federal Circuit vacated and remanded the Commission's final determination as it related to Deere European-version self-propelled forage harvesters ("EVSPFHs"). *Bourdeau Bros. v. International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006).

On June 20, 2006, the Commission rescinded the general exclusion order and certain cease and desist orders, and remanded the investigation to the presiding ALJ for proceedings consistent with the Federal Circuit's decision in *Bourdeau*. On August 18, 2006, the ALJ issued Order No. 55, denying complainant's and respondents' motions for summary determination. The ALJ issued his final ID on remand ("Remand ID") on December 20, 2006. He found that Deere did not authorize the sale of Deere European-version self-propelled forage harvesters in the United States and that all or substantially all of the Deere self-propelled forage harvesters sold in the United States were North American versions. In further briefing before the Commission, the respondents claimed error.

On February 20, 2007, the Commission determined to review in part Order No. 55 and the Remand ID. The Commission requested briefing by the parties (1) on the standard for authorization that was applied in Order No. 55 and how that standard was applied in light of the burden of proof; (2) on the issue of Deere's alleged financing of certain EVSPFHs; (3) with respect to the ALJ's application of the "all or substantially all" standard, including a statement of the type and number of sales relied on and the basis for reliance on those sales, especially the basis for including used sales of North American-version harvesters in the assessment of whether that standard has been met by Deere; and (4) on whether all or substantially all of Deere's sales of SPFHs were of North American versions of these machines.

On March 13, 2008, the Commission asked the parties to discuss (1) the total quantity of

new and used EVSPFHs sold by John Deere's official European dealers to the United States from 1997 through 2002, including a) all European dealer sales for importation to the United States for which there is documentary evidence in the existing record and b) an estimate of the total quantum of additional European dealer sales for importation to the United States for which there may not be documentary evidence on this record; (2) an exclusively legal discussion of the relevance of the agency doctrines of actual and apparent authority in the context of gray market sales in the United States; and (3) whether if the Commission were to take into account only sales of gray market EVSPFHs by U.S. dealers (i.e. sales within the United States after importation), and not sales for importation of gray market goods by John Deere's European dealers, it would in effect improperly limit the scope of the unlawful activities that it is required to consider under the statute, which includes within the Commission's jurisdiction "the sale for importation" as well as "the sale within the United States after importation" of articles that infringe a valid United States trademark. 19 U.S.C. Section 1337(a)(1)(C).

Written submissions were received by the parties on April 15 and April 24, 2008. On April 30, the parties each filed reply submissions.

Having considered the record and briefing in this investigation, the Commission has determined to reverse the ALJ's finding of violation. A Commission Opinion in support of its determinations will follow shortly.

The authority for this notice is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in section 210.45(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.45(c)).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: August 12, 2008