

In the Matter of

**CERTAIN PLASTIC MOLDING
APPARATUS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-66



USITC PUBLICATION 1032

FEBRUARY 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Washington, D.C. 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)
)
CERTAIN PLASTIC-MOLDING APPARATUS)
AND COMPONENTS THEREOF)

Investigation No. 337-TA-66

ORDER

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this Order upon all parties of record and shall publish it in the Federal Register.



Donald K. Duvall
Chief Administrative Law Judge

Issued: May 10, 1979



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

_____)
In the Matter of)

CERTAIN PLASTIC-MOLDING APPARATUS)
AND COMPONENTS THEREOF)
_____)

Investigation No. 337-TA-66

NOTICE OF INVESTIGATION

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 5, 1979, and amended on April 20, 1979, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of the I. P. Container Corporation, 864 East 25th Street, Paterson, New Jersey 07513, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of apparatus which produce plastic receptacles by injection and stretch-blow molding in a single machine, or in their sale, by reason of the alleged coverage of (1) such apparatus by claims 20-23, 26, 29, and 33-35 of U.S. Letters Patent No. 4,065,246, and (2) the method of using such imported apparatus by claims 1-3 and 5-8 of U.S. Letters Patent No. 3,776,991. With regard to claims 1-3 and 5-8 of the latter patent, it is alleged that the importation of such apparatus induces and contributes to the direct infringement of those claims by domestic purchasers of the apparatus.

The complaint, as amended, alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an

industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry. Complainant requests (1) exclusion from entry into the United States, except under bond, of the imports in question during the period of the investigation, (2) permanent exclusion from entry into the United States of the imports in question after a full investigation, and (3) such other relief as is authorized by the statute.

Having considered the complaint, as amended, the Commission, on May 15, 1979, ORDERED THAT--

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine whether there is, or there is reason to believe that there is, a violation of subsection (a) of this section in the unlawful importation of certain plastic-molding apparatus and components thereof into the United States, or in their sale, because such apparatus (1) are allegedly covered by claims 20-23, 26, 29, and 33-35 of U.S. Letters Patent No. 4,065,246, and (2) allegedly contribute to and induce infringement of claims 1-3 and 5-8 of U.S. Letters Patent No. 3,776,991 as a result of such importation and sale, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is--

I. P. Container Corporation
864 East 25th Street
Paterson, New Jersey 07513

(b) The respondents are the following companies alleged to be involved in the unauthorized importation of such apparatus into the United States, or in their sale, and are parties upon which the complaint and the amendment to the complaint are to be served:

Nissei Plastic Industrial Co., Ltd.
Sakaki
Nagano-Ken
389-06
Japan

Nissei America, Inc.
9836 Alburdis Avenue
Santa Fe Springs, California 90670

(c) Steven K. Morrison, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

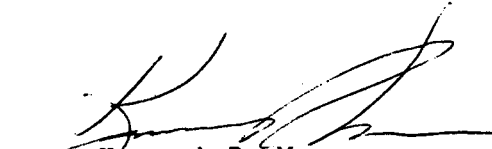
(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the amended complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and may authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, as amended, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York City Office, 6 World Trade Center, New York, N.Y. 10048.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: May 4 , 1979

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

In the Matter of)	
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CERTAIN PLASTIC MOLDING)	Investigation No. 337-TA-66
APPARATUS AND COMPONENTS)	
THEREOF)	

COMMISSION ACTION, ORDER, AND MEMORANDUM OPINION

The United States International Trade Commission ("Commission"), conducted an investigation under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), as alleged unfair methods of competition and unfair acts in the unauthorized importation into or sale in the United States of certain plastic molding apparatus and components thereof 1/ by reason of infringement of claims 20-23, 24, and 29, and 33-55 of U.S. Letters Patent No. 4,005,246, and the inducement of infringement by domestic firms of claims 1-3 and 5-8 of U.S. Letters Patent 3,776,991. On February 4, 1980, the Commission voted to terminate this investigation, based on the joint motion to terminate, as supported by the Settlement Agreement.

The purpose of this Commission action and order which follow is to provide for the final disposition of the Commission's investigation of certain plastic molding apparatus and components thereof.

1/ The infringed article consists of injection blow molding equipment which is used to produce plastic containers for commercial and pharmaceutical use.

ACTION

Having reviewed the recommended determination of the presiding officer, the joint motion to terminate, the supporting Settlement Agreement (Motion Docket No. 66-23), and the pleadings of the parties, and having considered the public interest, on February 4, 1980, the Commission voted to terminate investigation No. 337-TA-66, based on the joint motion to terminate, as supported to by the Settlement Agreement. 1/

ORDER

Accordingly, it is hereby ordered that--

- (1) The joint motion of complainant, I.P. Container Corp., the respondents, and the investigative attorney to terminate this investigation (Motion Docket No. 66-23) is granted;
- (2) Investigation No. 337-TA-66 is terminated effective upon the issuance of this Commission order; and
- (3) That this order and the opinion in support thereof be served upon each party of record to this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, and the Federal Trade Commission.

1/ In voting to terminate this investigation, Commissioner Moore determines that there is no present violation of section 337 of the Tariff Act of 1930, as amended. Commissioner Moore agrees with the recommendation of the administrative law judge that there is no evidence of a present violation of section 337 and that the Commission should terminate this investigation. (See Commissioner Moore's footnotes in Alternating Pressure Pads, investigation No. 337-TA-48; Certain Synthetic Gemstones, investigation No. 337-TA-50; and Certain Swivel Hooks and Mounting Brackets, investigation No. 337-TA-53).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Kenneth R. Mason', written over a horizontal line.

Kenneth R. Mason

Secretary

Issued: February 14, 1980.

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

In the Matter of)	
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CERTAIN PLASTIC MOLDING)	Investigation No. 337-TA-66
APPARATUS AND COMPONENTS)	
THEREOF)	

Proposed Memorandum Opinion

PROCEDURAL HISTORY

On April 4, 1979, I.P. Container Corporation filed a complaint under section 337 of the Tariff Act of 1930, as amended, and filed a supplemented complaint on April 18, 1979 replacing the earlier complaint. The supplemented complaint of April 18, 1979, was based on allegations of patent infringement of claims 20-23, 24 and 29 and 33-55 of U.S. Letters Patent 4,005,246 (the '246 patent), and the inducement of infringement by domestic firms of claims 1-3 and 5-8 of U.S. Letters Patent 3,776,991 (hereinafter the '991 patent). Nissei Plastic Industrial Co. Ltd. and Nissei America, Inc. were named as respondents. The present investigation was instituted by the Commission on May 4, 1979. 1/

On September 28, 1979, the complainant, the Nissei respondents, and the Commission investigative attorney filed a joint motion to terminate 2/ supported by a Settlement Agreement. On October 3, 1979, the party intervenors, International Bottle and National Can, filed a response in support of the motion to terminate.

1/ 44 F.R. 27504 (May 4, 1979).

2/ Motion Docket No. 66-23.

On October 19, 1979 International Bottle and National Can filed a motion for summary determination, 1/ to become effective only if the motion to terminate is denied.

On October 2, 1979, the ALJ filed a recommended determination with the Commission recommending that the Commission: (1) grant the motion to terminate this investigation as to all issues; and (2) make a finding of no present violation since no formal evidentiary record was made in this investigation. The ALJ also ordered that the joint motion 2/ and the Settlement Agreement be certified to the Commission.

On October 31, 1979, the Commission issued a notice seeking public comment on the proposed consent order agreement. The notice was published in the Federal Register of November 7, 1979 3/ and gave interested persons 30 days in which to file comments. Two letters were received in response to the notice from the Federal Trade Commission and the Department of Health, Education, and Welfare. Both agencies stated that they had no comments on the proposed settlement agreement. The Commission received no other comments.

DISCUSSION

Having considered the ALJ's recommended determination, the joint motion to terminate and the supporting Settlement Agreement, the pleadings of the parties, and the public interest, the Commission voted to terminate the instant investigation on February 4, 1980. In voting to terminate this investigation the Commission made no determination as to violation. The reasons for the Commission's decision are as follows.

1/ Motion Docket No. 66-24.

2/ Motion Docket No. 66-23.

3/ 44 F.R. 64576 (November 7, 1979).

1. Commission decision to grant the joint motion to terminate as supported by the Settlement Agreement.

In granting the joint motion to terminate the Commission considered the parties support of the motion, and public interest factors such as the potential anticompetitive effects of the provisions of the Settlement Agreement, and the lack of adverse comments received upon publication of the Settlement Agreement.

The joint motion to terminate was filed by the complainant, the respondents, and the investigative attorney. Although the party intervenors, National Can and International Bottle, did not join in the motion they filed a response in support of the joint motion to terminate.

The Commission's decision was also based on section 554(c)(1) 1/ of the Administrative Procedure Act which requires the Commission to give parties the opportunity to submit proposed settlements which are in the public interest. The terms of the agreement provide that respondents will pay a specified sum to complainant in exchange for which respondents and their past and future customers are released from liability for any existing claims of direct or indirect infringement of the '991 and '246 patents. Under the settlement respondents will be allowed to import, manufacture, and sell ASB machines in the United States. Complainant also agrees to refrain from bringing any future actions against respondents and their present and future customers

1/ 5 U.S.C. 554(c)(1). The relevant portion of section 554(c) reads as follows:

"(c) The agency shall give all interested parties opportunity for-
(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the notice of the proceeding, and the public interest permit . . ."

based on past or future manufacture, use, or sale of the Nissei ASB Series machines, or other stretch-blow injection molding machines. These terms do not appear to be anticompetitive. Additionally, this agreement settles all issues between the parties. It should also be noted that no adverse comments were received on publication of the Settlement Agreement in the Federal Register. 1/ For these reasons approval of the Settlement Agreement is in the public interest and therefore further expenditure of Commission resources to continue this investigation is unwarranted.

2. Commission decision to make no finding as to violation. 2/

In granting the joint motion to terminate the instant investigation the Commission makes no finding as to violation. This position conforms with Commission practice as established in Alternating Pressure Pads, Investigation No. 337-TA-48 3/ and is consistent with section 337(c) 4/ and the Administrative Procedure Act (hereinafter APA).

1/ 44 F.R. 64576 (November 7, 1979).

2/ Commissioner Moore disagrees by reason of the clear mandate in subsection (c) of Section 337 of the Tariff Act of 1930, as amended, which states that "The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section." In view of the fact that the settlement agreement between the parties became effective on September 19, 1979 more than 4 months prior to the Commission's determination; Commissioner Moore believes that based on the record before the Commission in this case there is no evidence of a present violation of Section 337. Commissioner Moore believes that the application of the Administrative Procedure Act to this sub-section relates to procedural matters and that such Act does not change the requirement that the commission shall make a determination as to whether or not there is a violation of Section 337. Therefore, Commissioner Moore adopts the recommendation of the Administrative Law Judge.

3/ This practice was also followed in Certain Synthetic Gemstones, Inv. No. 337-TA-50 (decided March 20, 1979), and Certain Cattle Whips, Inv. No. 337-TA-57 (decided August 9, 1979).

4/ 19 U.S.C. 1337(c).

The APA which is incorporated in section 337(c), provides in subsection 5 that agencies must give all interested parties an opportunity 1/ to settle cases. If section 337(c) were interpreted as requiring a determination as to violation in every investigation parties would be discouraged from entering into settlement agreements. Nothing in either the language of section 337(c) of the legislative history indicates that Congress intended section 337 to limit the provisions of the APA which provide for consideration of settlements as the public interest permits. Additionally, the decision to make no determination as to violation is particularly appropriate in investigations such as this in which no formal evidentiary record is made because there is insufficient evidence upon which to base a determination as to violation. For these reasons the Commission has declined to make a finding as to violation in the instant investigation.

1/ 5 U.S.C. 554(c).