



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1015]

Certain Hand Dryers and Housings for Hand Dryers

Commission Determination to Review In-Part an Initial Determination Granting Complainant's Motion for Summary Determination of Section 337 Violation by the Defaulting Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in-part an initial determination (“ID”) (Order No. 27) of the presiding administrative law judge (“ALJ”) granting Complainant’s motion for summary determination of section 337 violation by Defaulting Respondents. Specifically, the Commission has determined to review the ID’s analysis and findings with respect to the existence of a domestic industry. The Commission also requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential 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, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS)

at <https://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 August 1, 2016, based on a complaint filed by Complainant Excel Dryer, Inc. of East Longmeadow, Massachusetts, alleging a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon the importation into the United States, or in the sale of certain hand dryers and housings for hand dryers by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *See* 81 FR 50549-50 (Aug. 1, 2016). The notice of investigation identified twelve respondents, namely: ACL Group (Intl.) Ltd. of Skelbrooke, United Kingdom ("ACL"); Alpine Industries Inc. of Irvington, New Jersey ("Alpine"); FactoryDirectSale of Ontario, California; Fujian Oryth Industrial Co., Ltd. (a/k/a Oryth) of Fujian, China ("Oryth"); Jinhua Kingwe Electrical Co. Ltd., (a/k/a Kingwe) of Jinhua City, China ("Kingwe"); Penson & Co. of Shanghai, China ("Penson"); Taizhou Dihour Electrical Appliances Co., Ltd., a/k/a Dihour of Wenling City, China ("Dihour"); TC Bunny Co., Ltd. of Shanghai, China ("TC Bunny"); Toolsempire of Ontario, California; US Air Hand Dryer of Sacramento, California ("US Air"); Sovereign Industrial (Jiaxing) Co. Ltd. d/b/a Vinovo of Jiaxing, China ("Vinovo"); and Zhejiang Aike Appliance Co., Ltd. of Zhejiang, China ("Aike"). *See id.* In addition, the Office of Unfair Import Investigations is a party in this investigation. *See id.*

The ALJ terminated six respondents from the investigation based on consent order stipulations and the entry of consent orders, namely: Respondent Alpine (Order No. 11 (Sept. 8, 2016), *unreviewed*, Comm'n Notice (Oct. 11, 2016)); Respondent Kingwe (Order No. 12 (Sept. 8, 2016), *unreviewed*, Comm'n Notice (Oct. 11, 2016)); Respondent ACL (Order No. 15 (Sept.

28, 2016), *unreviewed*, Comm'n Notice (Oct. 27, 2016)); Respondent Aike (Order No. 16 (Oct. 4, 2016), *unreviewed*, Comm'n Notice (Nov. 3, 2016)); Respondent Toolsempire (Order No. 18 (Oct. 11, 2016) *unreviewed*, Comm'n Notice (Nov. 14, 2016)); and Respondent FactoryDirectSale (Order No. 19 (Oct. 11, 2016), *unreviewed*, Comm'n Notice (Nov. 14, 2016)). The ALJ found the six remaining respondents in default (collectively, "the Defaulting Respondents") based on their failure to respond to the complaint and notice of investigation, namely: Respondents Penson and Dihour (Order No. 21 (Oct. 31, 2016), *unreviewed*, Comm'n Notice (Nov. 28, 2016)); and Respondents US Air, Oryth, TC Bunny, and Vinovo (Order No. 24 (Feb. 2, 2017), *unreviewed*, Comm'n Notice (Feb. 22, 2017)).

On March 24, 2017, Complainant Excel filed a motion for summary determination on domestic industry and violation of section 337 by the Defaulting Respondents. Complainant Excel also requested a general exclusion order, cease and desist orders, and a bond of 100% during Presidential review. On April 5, 2017, the Commission Investigative Attorney filed a response in support of Complainant's Motion and requested remedy. On June 2, 2017, the ALJ issued the subject ID/RD (Order No. 27) granting Complainant's motion for summary determination on domestic industry and violation of section 337 by the Defaulting Respondents and recommending that the Commission issue a general exclusion order and cease and desist orders, and set a bond at 100% during the Presidential review period. No petitions for review of the subject ID were filed.

The Commission has determined to review the ID in-part. Specifically, the Commission has determined to review the ID's analysis and findings with respect to the existence of a domestic industry. The Commission does not request any submissions on the issue under review.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) 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 (Dec. 1994) (Comm'n Op.). In particular, the written submissions should address any request for a cease and desist order in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a defaulting respondent, the written submissions should respond to the following requests:

- (1) Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an

exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

- (2) In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders 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 or disapprove the Commission's action. *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. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the HTSUS numbers under which the accused products are imported and to supply the names of known importers of the infringing articles.

Written submissions must be filed no later than close of business on July 28, 2017. Reply submissions must be filed no later than the close of business on August 4, 2017. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 27. No further submissions on any of 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 and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1015") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/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. 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^[1], solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 July 14, 2017.

Lisa R. Barton
Secretary to the Commission

^[1] All contract personnel will sign appropriate nondisclosure agreements.

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