



INTERNATIONAL TRADE COMMISSION

Certain Carburetors and Products Containing Such Carburetors

[Investigation No. 337-TA-1123]

Commission Decision to Review in Part an Initial Determination Finding Complainant Failed to Satisfy the Economic Prong of the Domestic Industry Requirement; Termination of the Investigation

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 the administrative law judge's ("ALJ") initial determination ("ID"), which grants respondents' motion for summary determination that the complainant failed to satisfy the economic prong of the domestic industry requirement as to U.S. Patent Nos. 6,394,424 ("the '424 patent"); 6,439,547 ("the '547 patent"); 6,533,254 ("the '254 patent"); and 7,070,173 ("the '173 patent"). On review, the Commission affirms with modification the ID's finding that respondents are entitled to summary determination that the complainant failed to satisfy the domestic industry requirement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3228. 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, DC 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 July 20, 2018, based on a complaint filed by Walbro, LLC ("Walbro") of Tucson, Arizona. 83 *Fed. Reg.* 34614-615 (July 20, 2018). The complaint, as supplemented, alleges violations 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, the sale for importation, and the sale within the United States after importation of certain carburetors and products containing such carburetors by reason of infringement of one or more claims of the '424 patent; the '547 patent; the '254 patent; the '173 patent, and U.S. Patent No. 6,540,212 ("the '212 patent). *Id.* The complaint also alleges that an industry in the United States exists as required by 19 U.S.C. 1337(a)(2). 83 *Fed. Reg.* 34614-615. The notice of investigation names thirty-five (35) respondents. *Id.* The Office of Unfair Import Investigations ("OUII") is also a party to the investigation. *Id.*

The Commission previously terminated the '212 patent from the investigation. Order No. 72 (Aug. 5, 2019), *not reviewed*, Notice (Aug. 22, 2019).

On June 25, 2019, respondents Amazon.com, Inc.; Lowe's Companies, Inc.; Menard, Inc.; Techtronic Industries Co. Ltd.; The Home Depot, Inc.; Tractor Supply Company; Walmart, Inc.; and Zhejiang Ruixing Carburetor Manufacturing Co., Ltd. (collectively, "Respondents"), as well as Cabela's LLC and Thunderbay Products, filed a motion for summary determination that Walbro failed to satisfy the economic prong of the domestic industry requirement. ID at 1. On July 12, 2019, Walbro opposed the motion. *Id.* OUII did not submit a response to the motion. *Id.*

On August 7, 2019, the Commission terminated Cabela's LLC from the investigation due to settlement. Order No. 75 (Aug. 7, 2019), *not reviewed*, Notice (Aug. 22, 2019). On July 10, 2019, the Commission also terminated Thunderbay Products from the investigation based on a stipulated consent order and entry of a consent order. Order No. 65 (July 10, 2019), *not reviewed*, Notice (July 23, 2019).

On August 12, 2019, the ALJ issued the subject ID granting Respondents' motion for summary determination that Walbro failed to satisfy the economic prong of the domestic industry requirement. *See ID*.

On August 22, 2019, Walbro filed a petition for review of the ID.

On August 29, 2019, Respondents and OUII both filed responses to Walbro's petition for review.

The Commission has determined to review the subject ID in part. First, the Commission notes that Walbro's petition states that it no longer asserts the '547 patent in this investigation; and Walbro has abandoned its claim of a domestic industry with respect to the '547 patent by failing to seek Commission review. *See* Walbro petition at 1; *see also* 19 C.F.R. 210.43(b)(2). Second, the Commission affirms the ID's finding that respondents are entitled to summary determination that Walbro failed to satisfy the domestic industry requirement. However, the Commission declines to adopt certain statements on pages 4, 5, and 6 in the ID that could be misinterpreted as applying a minimum threshold and as inconsistent with the flexible approach to domestic industry analysis. The investigation is terminated.

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: October 11, 2019.

Lisa Barton,
Secretary to the Commission.

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