



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1169]

Certain Fish-Handling Pliers and Packaging Thereof

Commission Determination to Review-in-Part an Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review-in-part an initial determination (“ID”) (Order No. 14) of the presiding administrative law judge (“ALJ”). The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. 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 29, 2020, based on a complaint filed by complainant United Plastic Molders, Inc. of Jackson, Mississippi ("UPM"). 84 FR 36620-21 (July 29, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain fish-handling pliers and packaging thereof by reason of infringement of claims 1-11 of U.S. Patent No. 6,256,923 ("the '923 patent") and U.S. Trademark Registration Nos. 4,980,923 ("the '923 mark") and 5,435,944 ("the '944 mark"). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents Yixing Five Union Industry & Trade Co., Ltd. of Yixing City, China ("Five Union"); NOEBY Fishing Tackle Co., Ltd. of Weihai, China ("NOEBY"); Weihai iLure Fishing Tackle Co., Ltd. of Weihai, China ("iLure"); SamsFX of Yangzhou City, China ("SamsFX"); and Weihai Lotus Outdoor Co., Ltd. of Weihai, China ("Lotus") (collectively, "Respondents"). *Id.* The Office of Unfair Import Investigations ("OUII") is participating in the investigation. *Id.*

All five Respondents defaulted. On December 18, 2019, the Commission found NOEBY, iLure, Weihai Lotus, and Five Union in default for failing to respond to the complaint and notice of investigation. Order No. 11 (Nov. 19, 2019), *not reviewed* Notice (Dec. 18, 2019). Also on December 18, 2019, the Commission found SamsFX in default for failing to respond to

the complaint and notice of investigation. Order No. 12 (Nov. 25, 2019), *not reviewed* Notice (Dec. 18, 2019).

On December 5, 2019, UPM moved for a summary determination of violation based on infringement of the '923 patent, the '923 mark, and the '944 mark and for a recommendation for the issuance of a general exclusion order ("GEO"). In its motion, UPM withdrew its infringement allegations with respect to claims 2-6 and 8-11 of the '923 patent, but continued to assert claims 1 and 7 of the '923 patent. On January 3, 2020, OUII filed a response that largely supported UPM's motion.

On April 10, 2020, the ALJ issued the subject ID, Order No. 14, granting-in-part UPM's motion. Specifically, the ALJ issued a summary of determination of violation finding that SamsFX, Lotus, and NOEBY violated section 337 with respect to claims 1 and 7 of the '923 patent, as well as the '923 and '944 marks; that iLure violated section 337 with respect to claims 1 and 7 of the '923 patent; and that Five Union violated section 337 with respect to the '923 mark. The ALJ also found that UPM failed to show that iLure violated section 337 with respect to the '923 and '944 marks, as the only evidence of importation predates the registration of those marks. No petitions for review of the ID were filed.

The Commission has determined to review the subject ID in part. Specifically, the Commission has determined to review the ID's finding of violation with respect to the '923 patent; the ID's findings of trademark infringement; the ID's finding that UPM satisfied the economic prong of the domestic industry requirement; and the ID's finding of violation with respect to Lotus and Five Union. The Commission has not determined to review any other

findings in the ID.

In connection with its review, the Commission is interested in briefing on the following issues:

1. In view of UPM's acknowledgment that the '923 patent expired on February 25, 2020 (Complaint ¶ 23), how does that expiration impact the findings in the ID? Please specifically address any impact on the ID's findings on the economic prong of the domestic industry requirement.
2. Please identify all evidence in the record that demonstrates that Lotus and Five Union are involved in "the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee" of infringing articles. 19 U.S.C. 1337(a)(1)(C). Please explain how that evidence constitutes "substantial, reliable, and probative evidence." 19 U.S.C. 1337(g)(2)(B).

The parties are invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents 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, Comm'n Op. at 7-

10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order 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, disapprove, or take no action on the Commission's determination. *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: The Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. 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. Such initial submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainant and OUII are also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration.

Complainant is also requested to state the HTSUS subheadings under which the accused products are imported and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on June 10, 2020. Reply submissions must be filed no later than the close of business on June 17, 2020. No further submissions on 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. The Commission's paper filing requirements in 19 C.F.R. 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1169) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/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. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for these determinations took place on May 27, 2020.

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: May 27, 2020.

Lisa Barton,
Secretary to the Commission.

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