

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

In the Matter of

**CERTAIN HYDRAULIC EXCAVATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-582

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING RESPONDENTS BARKLEY INDUSTRIES LLC AND
FRONTERA EQUIPMENT SALES IN DEFAULT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 8) finding Respondents Barkley Industries LLC ("Barkley") and Frontera Equipment Sales ("Frontera") in default for failure to respond to the complaint and notice of investigation in the above-captioned 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. Copies of the ALJ's ID and all other 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) 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: On August 29, 2006, the Commission instituted this investigation, based on a complaint filed by Caterpillar Inc. ("Caterpillar") of Peoria, Illinois. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hydraulic excavators and components thereof by reason of infringement of U.S. Trademark Registration Nos. 2,140,606; 2,421,077; 2,140,605; 2,448,848. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant

requested that the Commission issue a general exclusion order and cease and desist orders. The complaint named twenty (20) firms as respondents, including Barkley and Frontera.

On October 23, 2006, Caterpillar filed a motion for an order to show cause why Barkley and Frontera should not be found in default for failure to respond to the complaint and notice of investigation. Complainant's motion also requested issuance of an ID finding these two respondents in default upon failure to show cause and an immediate entry of a limited exclusion order, cease and desist order, and/or other appropriate relief upon finding the above named respondents in default. No party opposed the motions. The Commission investigative attorney supported the motions, but submitted that Caterpillar's request for the immediate entry of exclusion orders and cease and desist orders against Barkley and Frontera should be rejected because there are other active respondents in this case and limited remedial orders should not be issued *seriatim* prior to the final determination by the Commission.

On November 3, 2006, the ALJ issued Order No. 6, in which he required Barkley and Frontera to show cause by November 23, 2006, why they should not be found in default, and to serve discovery statements, as required by Order No. 5, on the ALJ and the other parties. Neither Barkley nor Frontera responded to the show cause order or served discovery statements. On December 1, 2006, the ALJ issued the subject ID, finding Barkley and Frontera in default. With respect to remedy, the ALJ found the immediate entry of an exclusion order and cease and desist order against the two default respondents to be unnecessary. No party petitioned for review of the ID.

Having examined the record of this investigation, the Commission has determined not to review the ALJ's ID finding Barkley and Frontera in default.

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 section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: December 26, 2006