

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

In the Matter of

**CERTAIN ARCHERY PRODUCTS AND
RELATED MARKETING MATERIALS**

Investigation No. 337-TA-919

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN
INITIAL DETERMINATION FINDING RESPONDENT NINGBO TOPOINT
OUTDOOR SPORTS CO., LTD., TO BE IN DEFAULT; REQUEST FOR
WRITTEN SUBMISSIONS 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 has determined not to review an initial determination (“ID”) (Order No. 11) issued by the presiding administrative law judge (“ALJ”) on September 16, 2014, finding the sole respondent, Ningbo Topoint Outdoor Sports Co., Ltd. (“Ningbo”), to be in default. Accordingly, the Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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: The Commission instituted this investigation on June 16, 2014, based on a complaint filed by Bear Archery, Inc. and SOP Services, Inc. (“Complainants”). 79 *Fed. Reg.* 34356. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain archery products and related marketing materials by

reason of infringement of certain claims of U.S. Patent No. RE38,096; U.S. Patent No. 6,978,775; U.S. Patent No. 7,226,375; U.S. Trademark Registration No. 2,501,255; and U.S. Trademark Registration No. 3,312,392. *Id.* The complaint further alleges the existence of a domestic industry. *Id.* The Commission's notice of investigation named Ningbo as the respondent, and indicated that the Office of Unfair Import Investigations is participating in this investigation. *Id.*

On June 11, 2014, the Commission attempted to serve Ningbo with the complaint and notice of investigation, but the notice was returned as undeliverable mail on July 23, 2014. On July 24, 2014, Complainants sought leave to attempt to effect personal service on Ningbo, and the leave was granted on July 30, 2014. On July 31, 2014, Complainants filed proof that they had served Ningbo with the complaint and notice of investigation.

On August 19, 2014, Complainants moved for an order directing Ningbo to show cause why it should not be found in default for its failure to respond to the complaint and notice of investigation, and, upon failure to show cause, for the issuance of an initial determination finding Ningbo in default. On August 20, 2014, Complainants filed a letter indicating that they did not seek a general exclusion order in the event of a default. On August 21, 2014, the Commission Investigative Attorney ("IA") filed a response supporting Complainants' motion.

On September 2, 2014, the ALJ granted the motion and ordered Ningbo to show cause why it should not be found in default. *See* Order No. 10. No response to Order No. 10 was filed.

On September 16, 2014, the ALJ issued the subject ID finding Ningbo in default under Commission Rule 210.16(a)(1). *See* Order No. 11. No petitions for review of the ID were filed. The Commission has determined not to review the subject ID.

Ningbo is the sole respondent in this investigation. Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against a respondent found in default, unless, after considering the public interest, it finds that such relief should not issue. Complainants indicated that they were not seeking a general exclusion order pursuant to Commission Rule 210.16(c)(2).

In connection with the final disposition of this investigation, the Commission may: (1) issue an order that could result in the exclusion of articles manufactured or imported by the defaulting respondent; and/or (2) issue a cease and desist order that could result in the defaulting respondent 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).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect that the exclusion order and/or cease and desists 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 Fed. Reg. 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. Complainants and the IA are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS numbers under which the accused products are imported, and to state the dates that the patents expire.

Written submissions and proposed remedial orders must be filed no later than the close of business on October 30, 2014. Reply submissions must be filed no later than the close of business on November 6, 2014. 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 deadline stated above and submit eight true paper copies to the Office of the Secretary 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-919") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted

nonconfidential version of the document must also be filed simultaneously with any confidential filing. All nonconfidential 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 C.F.R. part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: October 16, 2014