

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d) and (f) do not preclude the issuance of the limited exclusion order and the cease and desist orders, and that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the imported fish cakes.

Accordingly, the Commission hereby **ORDERS** that:

1. Asian-style kamaboko fish cakes in packaging that bear federally registered U.S. trademark -YAMASA- (Reg. No. 1,918,197) and/or the common law mark +, or colorable imitations thereof, that are manufactured and/or imported by or on behalf of Yamasa, Kamaboko Co., Ltd. of Himeji, Japan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or its successors or assigns, are excluded from entry for consumption into the United States for the remaining term of the trademarks, except under license of the trademark owner or as provided by law.
2. The aforesaid Asian-style kamaboko fish cakes in packaging that bears federally registered U.S. trademark -YAMASA" (Reg. No. 1,918,197) and/or the common law mark #, or colorable imitations thereof, that are manufactured and/or imported by or on behalf of the entities identified in paragraph I above, are entitled to entry for consumption into the United States under bond in the amount of one hundred (100) percent of the entered value of such items pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.
3. In accordance with 19 U.S. C. § 1337(t), the provisions of this Order shall not apply to Asian-style kamaboko fish cakes in packaging that bears federally registered U.S. trademark "YAMASA" (Reg. No. 1,918,197) and/or the common law mark #1 or colorable imitations thereof, imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the United States Government.
4. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.
5. The Commission may modify this Order in accordance with the procedure described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §

210.76.

6. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

Donna R. Koehnke
Secretary

Issued: September 13, 1996

(D) "Person" shall mean an individual, or any nongovernmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, its successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term "covered product" shall mean Asian-style kamaboko fish cakes that are sold under, or that are contained in packaging that bears, federally registered U.S. trademark "YAMASA" (Reg. No. 1,918,197) and/or the common law mark or colorable imitations thereof.

II.

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra* for, with, or otherwise on behalf of Respondent.

III.

(Conduct Prohibited)

The following conduct of Respondent in the United States is prohibited by this Order. Until the expiration of the trademarks identified in Section I(G) above, Respondent shall not:

(A) import or sell for importation into the United States covered product; or

(B) sell, market, distribute, offer for sale, or otherwise transfer (except for exportation) in. the

United States imported covered product; or

(C) advertise imported covered product; or

(D) solicit U.S. agents or distributors for imported covered product.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of federally registered U.S. trademark "YAMASA" (Reg. No. 1,918,197) and/or the common law mark licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of Asian-style kamaboko fish cakes, by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting period shall commence on the first day of September, and shall end on the last day of the following August. The first report required under this section shall cover the period [date of issuance of this Order] through August 31, 1997. This reporting requirement shall continue in force until the expiration of the trademarks specified in Section I(G) herein unless, pursuant to subsection (j)(2) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order that he disapproves this Order.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the following: the quantity in units and the value in dollars of foreign-produced covered product that Respondent has imported or sold in the United States during the reporting period or that

remains in inventory at the end of the period.

Any failure to make the required report shall constitute a violation of this Order.

VI.

(Recordkeeping and Inspection)

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the importation, sale, offer for sale, marketing, advertising, distribution or other transfer in the United States of imported covered product made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, as are required to be retained by subparagraph VI(A) of this Order.

VII.

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution, or sale of imported covered product in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of the trademarks specified in Section I(G) herein.

VIII.

(Confidentiality)

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

(Enforcement)

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

(Modification)

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

(Bonding)

The conduct prohibited by Section M of this Order may be continued during the period in which this Order is under review by the President pursuant to section 3376) of the Tariff Act of 1930, 19 U.S.C. § 13370), subject to Respondent posting a bond in the amount of one hundred (100) percent of the entered value of the articles in question. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered product imported on or after [the date of issuance of this Order] is subject to the entry bond as set forth in the limited exclusion order issued by the Commission on [date of issuance], and is not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, the Commission's Orders of [date of issuance], or any subsequent final order issued after the completion of Investigation No. 337-TA-378, unless the U.S. Court of

Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made to the Commission.

By Order of the Commission.

Donna R. Koehnke
Secretary

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(G) The term "covered product" shall mean Asian-style kamaboko fish cakes that are sold under, or that are contained in packaging that bears, federally registered U.S. trademark "YAMASA" (Reg. No. 1,918,197) and/or the common law mark or colorable imitations thereof.

II.

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra* for, with, or otherwise on behalf of Respondent.

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(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, as are required to be retained by subparagraph VI(A) of this Order.

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(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of the trademarks specified in Section I(G) herein.

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Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

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Donna R. Koehnke
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