

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)	
)	
CERTAIN AGRICULTURAL VEHICLES)	Inv. No. 337-TA-487
AND COMPONENTS THEREOF)	
)	

**REMAND OF INVESTIGATION TO PRESIDING ADMINISTRATIVE LAW JUDGE;
RESCISSION OF GENERAL EXCLUSION ORDER AND CERTAIN CEASE AND
DESIST ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-captioned investigation to the presiding administrative law judge (“ALJ”) for proceedings consistent with the March 30, 2006, judgment of the U.S. Court of Appeals for the Federal Circuit in *Bourdeau Bros., Inc. v. International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006). The Commission has also determined to rescind the general exclusion order and certain cease and desist orders issued in the investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3090. Copies of nonconfidential 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-ON-LINE) 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 February 13, 2003, based on a complaint filed by Deere & Company (“Deere”) of Moline, Illinois. 68 *Fed. Reg.* 7388 (February 13, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; 1,503,576; and 91,860.

On August 27, 2003, the Commission issued notice that it had determined not to review Order No. 14, granting complainant's motion to amend the complaint and notice of investigation to add U.S. Trademark Registration No. 2,729,766.

On November 14, 2003, the Commission issued notice that it had determined not to review Order No. 29, granting complainant's motion for summary determination that complainant had met the technical prong of the domestic industry requirement.

Twenty-four respondents were named in the Commission's notice of investigation. Several of these were terminated from the investigation on the basis of consent orders. Several other respondents were found to be in default.

On January 13, 2004, ALJ issued his final initial determination ("ID") finding a violation of section 337. He also recommended the issuance of remedial orders. Two groups of respondents petitioned for review of the ID. Complainant and the Commission investigative attorney ("IA") filed oppositions to those petitions.

On March 30, 2004, the Commission issued notice that it had decided not to review the ID and set a schedule for written submissions on remedy, the public interest, and bonding. Complainant, respondents, and the IA timely filed such submissions.

After consideration of the relevant portions of the record in this investigation, including the ALJ's recommended determination, the written submissions on remedy, public interest, and bonding, and the replies thereto, the Commission determined to issue (1) a general exclusion order prohibiting the unlicensed entry for consumption of European version self-propelled forage harvesters manufactured by or under the authority of Deere & Co. which infringe any of the asserted trademarks, (2) a limited exclusion order prohibiting the unlicensed entry for consumption of European version telehandlers manufactured by or under the authority of Deere & Co. which infringe any of the asserted trademarks, (3) a limited exclusion order prohibiting the unlicensed entry for consumption of agricultural tractors which infringe one or more of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; and 1,503,576, (4) cease and desist orders to respondents Davey-Joans Tractor & Chopper Supermarket, Bourdeau Bros., Co-Ag LLC, J & T Farms, OK Enterprises, and Stanley Farms, prohibiting activities concerning the importation and sale of European version self-propelled forage harvesters manufactured by or under the authority of Deere & Co. which would constitute infringement of any of the asserted trademarks, and (5) cease and desist orders to respondents SamTrac Tractor & Equipment, Pacific Avenue Equipment, Task Master Equipment LLC/Tractors Etc., China America Imports, and Lenar Equipment, LLC prohibiting activities concerning the importation and sale of agricultural tractors which would constitute infringement of one or more of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; and 1,503,576.

The Commission also determined that the public interest factors enumerated in section 337(d) did not preclude the issuance of the aforementioned remedial orders and that the bond during the Presidential review period should be 90 percent of the entered value of the articles in

question.

On September 14, 2004, certain respondents, including Bourdeau Bros., Sunova Implement Co., and OK Enterprises appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). On March 30, 2006, the Federal Circuit issued its decision in the appeal, vacating and remanding the Commission's final determination as it related to Deere European version self-propelled forage harvesters. *Bourdeau Bros. Inc. v. International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006). The Court issued its mandate on May 22, 2006.

Upon consideration of this matter, the Commission has determined to (1) rescind the general exclusion order relating to Deere European version self-propelled forage harvesters issued in this investigation on May 14, 2004, and (2) rescind the cease and desist orders relating to Deere European version self-propelled forage harvesters issued in this investigation on May 14, 2004, and directed to Davey-Joans Tractor & Chopper Supermarket, Bourdeau Bros., Co-Ag LLC, J & T Farms, OK Enterprises, and Stanley Farms. The remaining remedial orders issued in this investigation remain in force. The Commission has also determined to remand the investigation to the presiding administrative law judge for proceedings consistent with the March 30, 2006, judgment of the Federal Circuit in *Bourdeau Bros., Inc. v. International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006), including the issuance of a final initial determination on violation with respect to the subject gray market imports of Deere European version self-propelled forage harvesters.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, the Administrative Procedure Act, and Part 210 of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: June 20, 2006