

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

**In the Matter of**

**CERTAIN AGRICULTURAL VEHICLES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-487 (Remand)**

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART  
THE ADMINISTRATIVE LAW JUDGE'S INITIAL DETERMINATION ON REMAND;  
SCHEDULE FOR WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") final initial determination on remand in the above-captioned investigation, including part of Order No. 55.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Engler, 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 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:** 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; 1,502,576; 1,503,576, and 91,860.

Twenty-four respondents were named in the Commission's notice of investigation. Most of the respondents were terminated from the investigation on the basis of consent orders, or found in default. Of the remaining respondents, Erntetechnik Franz Becker; Sunova Implement

Company; Bourdeau Bros., Inc. and OK Enterprises (collectively, “the Bourdeau respondents”); Fitzpatrick Farms; Stanley Farms; J&T Farms; and Co-Ag LLC (collectively, “the Fitzpatrick Farms respondents”); and Agrideal participated in the investigation. On January 13, 2004, the ALJ issued his final initial determination (“ID”) finding a violation of section 337. He also recommended the issuance of remedial orders. The Bourdeau respondents and Fitzpatrick Farms respondents petitioned for review of the ID.

On March 30, 2004, the Commission determined not to review the ID. The Commission then issued its final determination, together with a general exclusion order, two limited exclusion orders, and cease and desist orders, on May 14, 2004.

The Bourdeau respondents appealed the Commission’s final determination to the U.S. Court of Appeals for the Federal Circuit (the “Federal Circuit”). On March 30, 2006, the Federal Circuit vacated and remanded the Commission's final determination as it related to Deere European-version self-propelled forage harvesters. *Bourdeau Bros. v. International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006).

On June 20, 2006, the Commission issued notice that it had rescinded the general exclusion order and certain cease and desist orders, and had remanded the investigation to the presiding ALJ for proceedings consistent with the Federal Circuit's decision in *Bourdeau*. The ALJ issued his final ID on remand (“Remand ID”) on December 20, 2006. He found that Deere did not authorize the sale of Deere European-version self-propelled forage harvesters in the United States and that all or substantially all of the Deere self-propelled forage harvesters sold in the United States were North American versions. The Bourdeau respondents have petitioned for review of the remand ID, including Order No. 55 and Order No. 59. Deere and the Commission investigative attorney oppose the petition.

The Commission has determined to review in part Order No. 55 and the Remand ID. The Commission requests briefing by the parties (1) on the standard for authorization that was applied in Order No. 55 and how that standard was applied in light of the burden of proof; (2) on the issue of Deere’s alleged financing of certain EVSPFHs; (3) with respect to the ALJ’s application of the “all or substantially all” standard, including a statement of the type and number of sales relied on and the basis for reliance on those sales, especially the basis for including used sales of North American-version harvesters in the assessment of whether that standard has been met by Deere; and (4) on whether all or substantially all of Deere’s sales of SPFHs were of North American versions of these machines. The Commission has determined not to review Order No. 59.

**SCHEDULE FOR WRITTEN SUBMISSIONS:** Written submissions on the issues under review are limited to the parties and must be filed by March 6, 2007. Reply submissions must be filed by March 13, 2007.

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

By order of the Commission.

/s/

Marilyn R. Abbott  
Secretary to the Commission

Issued: February 20, 2007