

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

In the Matter of

**CERTAIN HYDRAULIC EXCAVATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-582

**NOTICE OF FINAL DETERMINATION OF VIOLATION OF SECTION 337
AND ISSUANCE OF A GENERAL EXCLUSION ORDER AND
CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to find a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. Notice is also given that the Commission has issued a general exclusion order and two cease and desist orders, and has terminated the 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 205-3112. 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 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 the 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 No. 2,140,606, U.S. Trademark Registration No. 2,421,077, U.S. Trademark Registration No. 2,140,605, and U.S. Trademark Registration No. 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 complaint named twenty one (21) firms as respondents. The complainant requested that the Commission issue a general exclusion order and cease and desist orders. Two respondents, Barkley Industries LLC and Frontera Equipment Sales, have been found in default. Nineteen respondents have been terminated as a result of settlement agreements.

On September 9, 2008, the ALJ issued an initial determination, Order No. 67, granting Caterpillar's motion for summary determination concerning violations of section 337. No petitions for review were filed.

On October 8, 2008, the Commission determined to extend the deadline for determining whether to review the subject ID to October 30, 2008.

On October 30, 2008, the Commission determined to review Order No. 67. *73 Fed. Reg.* 65,879. The Commission requested briefing by the parties, based on the record, on several questions and solicited comments from the parties, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding.

On November 18, 2008, the Commission received comments from Caterpillar, the IA, and from interested party Volvo Construction Equipment North America, Inc. ("Volvo") Volvo filed additional comments on November 25, 2008.

Having examined the relevant portions of the record in this investigation, including the ALJ's ID, the trademarks at issue, and the written submissions on violation, remedy, the public interest, and bonding, the Commission has determined to issue a general exclusion order prohibiting sale and use in the United States, unlicensed entry for consumption in the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, of certain hydraulic excavators and components thereof that infringe United States Trademark Registration Nos. 2,140,606; 2,241,077; 2,140,605 and 2,448,848, which cover the "CAT" and "Caterpillar" marks. In so doing, the Commission determined that the public interest factors enumerated in section 337(g)(1) do not preclude the issuance of the aforementioned remedial order and that the bond during the period of Presidential review shall be 100 percent of the entered value of the articles in question. The Commission's order was delivered to the United States Trade Representative on the day of its issuance.

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 sections 210.16(c)(2), 210.45, 210.49, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16(c)(2), 210.45, and 210.49).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: January 14, 2009