

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN POCKET LIGHTERS

Investigation No. 337-TA-1142

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART
AN INITIAL DETERMINATION GRANTING COMPLAINANT’S MOTION
FOR SUMMARY DETERMINATION OF A VIOLATION OF SECTION 337;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS**

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 an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) granting complainant’s motion for summary determination of section 337 violation by certain defaulting respondents. The Commission also requests written submissions from the parties, interested government agencies and other interested persons, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On February 12, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by BIC Corporation of Shelton, Connecticut (“Complainant”). *See 84 Fed. Reg.* 3486-87 (Feb. 12, 2019). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pocket lighters by reason of infringement of U.S. Trademark Registration Nos. 1,761,622 and 2,278,917. *See id.* The notice of investigation names numerous respondents, including Milan Import Export Company, LLC of San Diego, California; Wellpine Company Limited of Hong Kong; and Zhuoye Lighter Manufacturing Co., Ltd. of Foshan City, China (collectively, “Defaulting Respondents”). *See id.* The Office of Unfair Import Investigations is also a party to the investigation. *See id.*

The Commission previously terminated other respondents based on settlement and entry of a consent order. *See* Order No. 21 (Oct. 30, 2019), *unreviewed*, Comm'n Notice (Nov. 25, 2019). The Commission also terminated an unserved respondent based on the withdrawal of the complaint allegations as to that respondent. *See* Order No. 23 (Dec. 18, 2019), *unreviewed*, Comm'n Notice (Jan. 16, 2020).

The Commission further found each of the Defaulting Respondents in default. *See* Order No. 13 (June 6, 2019), *unreviewed*, Comm'n Notice (July 8, 2019); Order No. 14 (June 6, 2019), *unreviewed*, Comm'n Notice (July 8, 2019); Order No. 15 (June 18, 2019), *aff'd with modification*, Comm'n Notice (July 10, 2019).

On November 14, 2019, Complainant filed a motion for summary determination of a violation of section 337 by the Defaulting Respondents. On December 16, 2019, the Commission Investigative Attorney filed a response in support of Complainant's motion.

On February 12, 2020, the ALJ issued the subject ID granting Complainant's motion for summary determination of violation of section 337 by the Defaulted Respondents. No petition for review of the subject ID was filed.

The Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID's findings with respect to the economic prong of the domestic industry requirement. At this time, the Commission does not request briefing on the issue under review.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) 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 (Dec. 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist 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, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 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. Such initial submissions should include views on the recommended determination by the ALJ on remedy and bonding. In its initial written submission, Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation.

Initial written submissions, including proposed remedial orders must be filed no later than close of business on May 8, 2020. Reply submissions must be filed no later than the close of business on May 15, 2020. No further submissions on any of 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 deadlines stated above. The Commission's paper filing requirements in 19 C.F.R. 210.4(f) are currently waived. 85 Fed. Reg. 15798 (March 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1142") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1], solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on [EDIS](#).

^[1] All contract personnel will sign appropriate nondisclosure agreements.

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 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: April 22, 2020