

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

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In the Matter of)	
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CERTAIN FOAM MASKING TAPE)	Inv. No. 337-TA-528
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**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE FOR
WRITTEN SUBMISSIONS ON REMEDY, PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 41) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 in the above-captioned investigation. Notice is also hereby given that the Commission is requesting briefing on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 205-3095. Copies of all 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: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by 3M Company, 3M Innovative Properties Company, and Mr. Jean Silvestre (collectively, “3M”), which was subsequently amended. 70 *Fed. Reg.* 386 (Jan. 4, 2005). The complaint, as amended, alleged a violation of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation and/or sale within the United States after importation, of certain foam masking tape by reason of infringement of certain claims of U.S. Patents Nos. 4,996,092 (“the ‘092 patent”) and 5,260,097 (“the ‘097 patent”). The notice of investigation named 13 respondents.

On February 10, 2005, 3M filed a motion to amend the complaint and notice of investigation to add two respondents. On March 1, 2005, the ALJ issued an ID (Order No. 14) granting the motion. No party petitioned for review. On March 29, 2005, the Commission issued a notice of its determination not to review the ID.

Between February and June of 2005, the investigation was terminated as to 14 of the 15 respondents on the basis of settlement agreements and consent orders, or based on consent orders alone. With respect to Jevtec, Ltd. – the sole respondent as to which the investigation was not terminated – 3M moved on May 17, 2005, for an order directing Jevtec to show cause why it should not be found in default for failure to respond to the amended complaint and notice of investigation. 3M also requested the issuance of an ID finding Jevtec in default if Jevtec failed to show such cause.

On May 26, 2005, 3M moved for a summary determination of a violation of section 337. On June 6, 2005, the Investigative Attorney (IA), filed a response in support of the motion for summary determination.

On June 7, 2005, the ALJ issued Order No. 36, ordering Jevtec to show cause why it should not be held in default no later than June 14, 2005. Jevtec did not file a response to the order, an answer to the complaint, or a notice of appearance within the time permitted. On June 15, 2005, the ALJ issued an ID (Order No. 39) finding Jevtec in default. No party petitioned for review of the ID. On July 11, 2005, the Commission issued a notice of its determination not to review that ID.

On June 21, 2005, the ALJ issued the subject ID (Order No. 41), granting 3M's motion for a summary determination of a violation of section 337. The ID notes that only the '097 patent is at issue in the summary determination, because the investigation has been terminated with respect to all respondents charged with infringement of the '092 patent. No party petitioned for review of the ID. The Commission has determined not to review this ID.

As to remedy, the ALJ recommended the issuance of a general exclusion order. He also recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. 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, it 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 *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that an exclusion order 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 President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a 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.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the June 21, 2005, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission's investigative attorney are also requested to submit proposed orders for the Commission's consideration. Complainants are further requested to state the expiration date of the patent at issue and the HTSUS numbers under which the infringing goods are imported. Main written submissions and proposed orders must be filed no later than close of business on July 25, 2005. Reply submissions, if any, must be filed no later than the close of business on August 1, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.42 and 210.50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42 and 210.50.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: July 15, 2005