

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AGRICULTURAL
TRACTORS, LAWN TRACTORS,
RIDING LAWNMOWERS, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-486

LIMITED EXCLUSION ORDER

The Commission instituted this investigation on February 10, 2003, based on a complaint filed on December 27, 2002, by complainant New Holland North America, Inc. ("New Holland") of New Holland, Pennsylvania, against respondents Beiqi Futian Automobile Co., Ltd. ("Futian"), Northwest Products, Inc., and Cove Equipment. 68 *Fed. Reg.* 6772 (Feb. 10, 2003). The complaint was subsequently amended to substitute "Cove Communications, Inc. d/b/a Cove Equipment, Inc." for "Cove Equipment," and to add as an additional respondent Brian Navalinsky. The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain agricultural tractors, lawn tractors, riding lawnmowers, and components thereof by reason of infringement of New Holland's trade dress. New Holland alleged in its complaint that the elements of its asserted trade dress include use of the color -

blue, use of the colors white and black, the particular placement and juxtaposition of the blue, white and black colors on the tractors and their wheels, the placement of all lettering and numbering in white against a black background in the same location on the side of the hood, and design features, namely, the silhouette, or profile, of the hood, and horizontal curved flares on the sides of the hood.

Complaint, ¶ 8

On March 5, 2003, complainant moved pursuant to section 337(g) and Commission rule 210.16 for issuance of an order directing respondent Futian to show cause why it should not be found in default. On March 7, 2003, the presiding administrative law judge ("ALJ") issued Order No.4, which ordered Futian to show cause by March 14, 2003, why it should not be found in default. Order No.4 noted Futian's failure to respond to the complaint and

notice of investigation or otherwise to acknowledge the existence of this proceeding. Futian did not respond to the order to show cause. On March 19, 2003, the ALJ issued an initial determination ("ID") (Order No.6) finding Futian in default, and the Commission determined not to review that ID.

On April 1, 2003, the ALJ issued an ID (Order No.9) terminating respondents Cove and Navalinsky on the basis of a consent order. The ID was not reviewed by the Commission.

On April 2, 2003, complainant filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking the immediate entry of permanent default relief against respondent Futian.

On April 8, 2003, the ALJ issued an ID (Order No.10) terminating the investigation as to respondent Northwest based on a consent order. In his ID, the ALJ noted that all respondents in the investigation had been found to be in default or had reached settlements with complainant. He stated that "[i]f the Commission adopts [the ID] or otherwise terminates the investigation as to Northwest and also terminates the investigation as to the other respondents, no respondent will remain in this investigation. Therefore, any outstanding motions (including Complainant's Motion for temporary relief) will be moot, and this investigation will be terminated in its entirety." Order No.10 at 5. No petitions for review of the ID were filed.

On May 2, 2003, the Commission issued a notice stating that it had determined not to review the ALJ's ID, and requested briefing on the issues of remedy, the public interest, and bonding. 68 *Fed. Reg.* 23,497.

On May 16, 2003, the Commission investigative attorney ("IA") submitted his briefing on remedy, the public interest, and bonding. On the same day, complainant requested that the Commission consider complainant's April 2, 2003, declaration seeking immediate entry of default relief as its submission on the issues of remedy, the public interest, and bonding. On May 23, 2003, complainant and the IA filed reply submissions. On May 27, 2003, complainant filed a motion for leave to file a sur-reply in response to the IA's reply submission. On May 29, 2003, the IA filed a motion for leave to comment on complainant's reply submission. No briefs were filed by any other person or government agency. The Commission has determined to grant the motions for leave.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission found that each of the statutory requirements of

section 337(g)(1)(A)-(E), 19 U.S.C. § 1337(g)(1)(A)-(E), has been met with respect to defaulting respondent Futian. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. § 1337(g)(1), and Commission rule 210.16(c), 19 C.F.R. § 210.16(c), the Commission presumes the facts alleged in the complaint to be true.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of agricultural tractors, lawn tractors, riding lawnmowers, and components thereof that infringe New Holland's trade dress as described in the complaint that are manufactured abroad by or on behalf of, or imported by or on behalf of, Futian. The Commission has declined to infer that the defaulting foreign respondent Futian maintains commercially significant inventory in the United States and, consequently, has determined not to issue a cease and desist order.

The Commission has further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. § 1337(g)(1), do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of agricultural tractors, lawn tractors, riding lawnmowers, and components thereof that are subject to this Order.

Accordingly, the Commission hereby **ORDERS THAT:**

1. Complainant's motion for leave to file a sur-reply and the IA's motion for leave to comment are granted.
2. Agricultural tractors, lawn tractors, riding lawnmowers, (collectively "tractors") and components thereof that infringe New Holland's trade dress that are manufactured abroad by or on behalf of, or imported by or on behalf of, Beiqi Futian Automobile Co., Ltd., or any of its affiliated companies, parents, subsidiaries, (contractors, licensees, or other related business entities, or their successors or assigns, whether assembled or unassembled, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the trade dress owner or as provided by law.
3. For the purpose of assisting the Bureau of Customs and Border Protection in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached to this Order a color copy of the photographs provided by New

Holland in its complaint which depict New Holland tractors incorporating the asserted trade dress described above.

4. Agricultural tractors, lawn tractors, riding lawnmowers, and components thereof that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, Under bond in the amount of 100 percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than 60 days after the date of receipt of this action.

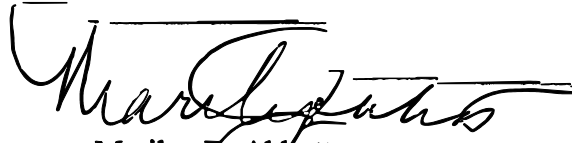
5. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to agricultural tractors, lawn tractors, riding lawnmowers, and components thereof that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

6. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the Bureau of Customs and Border Protection.

8. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: July 1, 2003