

In the Matter of

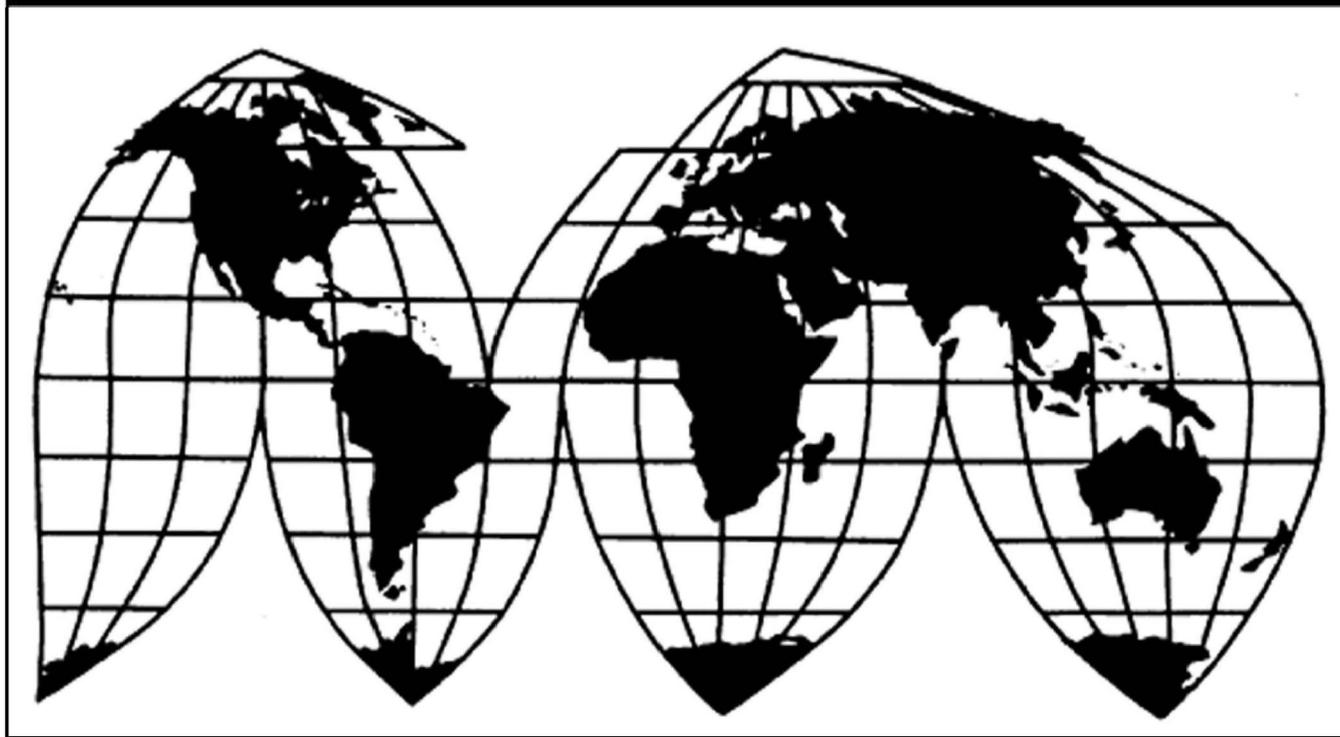
**CERTAIN FOOD PROCESSING
EQUIPMENT AND PACKAGING
MATERIALS THEREOF**

Investigation No. 337-TA-1161

Publication 5265

February 2022

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

David S. Johanson, Chairman
Rhonda K. Schmidlein, Commissioner
Jason E. Kearns, Commissioner
Randolph J. Stayin, Commissioner
Amy A. Karpel, Commissioner

**Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

In the Matter of

CERTAIN FOOD PROCESSING EQUIPMENT AND PACKAGING MATERIALS THEREOF

Investigation No. 337-TA-1161



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN FOOD PROCESSING
EQUIPMENT AND PACKAGING
MATERIALS THEREOF**

Investigation No. 337-TA-1161

**ISSUANCE OF A GENERAL EXCLUSION ORDER;
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 issued a general exclusion order (“GEO”) prohibiting the unlicensed entry of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more certification marks of U.S. Trademark Registration No. 1,976,117; U.S. Trademark Registration No. 5,189,919; or U.S. Trademark Registration No. 5,554,628 (collectively, “the Certification Marks”). The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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: The Commission instituted this investigation on June 18, 2019, based on a complaint filed by 3-A Sanitary Standards, Inc. of McLean, Virginia (“3-A SSI”). 84 FR 28335 (June 18, 2019). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation or sale of certain food processing equipment and packaging materials thereof by reason of false advertising and unfair competition, the threat or effect of which is to destroy or substantially injure an industry in the United States. The notice of investigation named as respondents Wenzhou QiMing Stainless Co., Ltd. of Wenzhou, China (“Wenzhou QiMing”); High MPa Valve Manufacturing Co., Ltd. of Wenzhou, China (“High MPa Valve”); Wenzhou Sinco Steel Co, Ltd. of Wenzhou, China (“Wenzhou Sinco”); Wenzhou Kasin Valve Pipe Fitting Co., Ltd. of

Wenzhou, China (“Wenzhou Kasin”); and Wenzhou Fuchuang Machinery (“Wenzhou Fuchuang”) (collectively, “defaulting respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. *Id.*

On October 15, 2019, the Commission found respondents Wenzhou QiMing, High MPa Valve, Wenzhou Sinco, and Wenzhou Kasin in default. Order No. 8 (Sept. 19, 2019), *unreviewed*, Notice (Oct. 15, 2019). On December 19, 2019, the Commission found Wenzhou Fuchuang in default. Order No. 13 (Nov. 19, 2019), *unreviewed*, Notice (Dec. 18, 2019).

On November 7, 2019, 3-A SSI moved for summary determination of violation of section 337 by the defaulting respondents. On November 20, 2019, and December 3, 2019, 3-A SSI supplemented its motion and exhibits. On December 13, 2019, OUII filed a response supporting 3-A SSI’s motion.

On February 18, 2020, the presiding administrative law judge issued Order No. 14, an initial determination (“ID”) granting 3-A SSI’s motion for summary determination of a violation of section 337 by the defaulting respondents. No party petitioned for review of the ID.

On April 3, 2020, the Commission determined not to review the ID. 85 FR 19955-56 (Apr. 9, 2020). The Commission’s determination resulted in finding a violation of section 337 as to the defaulting respondents. The Commission also requested written submissions on remedy, the public interest, and bonding. *See id.* On April 14, 2020, 3-A SSI and OUII submitted their briefs on remedy, the public interest, and bonding. OUII further filed a response brief on April 21, 2020.

The Commission finds that the statutory requirements for relief under section 337(g)(2), 19 U.S.C. 1337(g)(2), are met. In addition, the Commission finds that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the statutory relief.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more of the Certification Marks. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission’s order was delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on June 15, 2020.

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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

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: June 15, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, Todd Taylor, Esq., and the following parties as indicated, on **June 15, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant 3-A Sanitary Standards, Inc.:

Gregory L. Ewing, Esq.
Potomac Law Group PLLC
1300 Pennsylvania Ave, N.W., Suite 700
Washington DC 20004
Email: gewing@potomacclaw.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

Respondents:

Wenzhou QiMing Stainless Co., Ltd.
No. 659 Dingxiang Road, Binhai Industry Zone
Wenzhou Zhejiang, 325025
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

High MPa Valve Manufacturing Co., Ltd.
No. 97, Road 15, Avenue 4, Economic and Technological Zone
Wenzhou Zhejiang, 325024
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Wenzhou Sinco Steel Co, Ltd
167Ningcheng West Road, Ningcheng Industry ZoneYongzhong
Longwan District,
Wenzhou, 325024
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Wenzhou Kasin Valve Pipe Fitting Co., Ltd. 1
Binhai Industry Zone Wenzhou Economy & Technology
Development Zone, E,

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail

**CERTAIN FOOD PROCESSING EQUIPMENT AND
PACKAGING MATERIALS THEREOF**

Inv. No. 337-TA-1161

Certificate of Service – Page 2

Wenzhou, 325000
China

Wenzhou Fuchuang Machinery Co., Ltd.
Binhai Industrial Park Shacheng Town,
Longwang District, Wenzhou
Zhejiang 325024
China

Other: Service to Be
Completed by Complainants

Via Hand Delivery

Via Express Delivery

Via First Class Mail

Other: Service to Be
Completed by Complainants

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

In the Matter of

**CERTAIN FOOD PROCESSING
EQUIPMENT AND PACKAGING
MATERIALS THEREOF**

Investigation No. 337-TA-1161

GENERAL EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale within the United States after importation of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more certification marks of U.S. Trademark Registration No. 1,976,117; U.S. Trademark Registration No. 5,189,919; or U.S. Trademark Registration No. 5,554,628 (collectively, “Asserted Certification Marks”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of named persons and because there is a pattern of violation of Section 337 and it is difficult to identify the source of the unlicensed products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unauthorized importation of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more Asserted Certification Marks.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(g) do not preclude the issuance of the general exclusion order, and that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the articles in question.

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

1. Certain food processing equipment and packaging materials thereof that are falsely advertised, including but not limited to online advertisements, print advertisements, packaging, and/or data sheets, through the misrepresentation of the unauthorized use of one or more Asserted Certification Marks (“covered articles”) 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, for the remaining term of the trademarks, except under license from, or with the permission of, the trademark owner or as provided by law, until such date as the Asserted Certification Marks are abandoned, canceled, or rendered invalid or unenforceable.
2. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of 100 percent of the entered value of the products, pursuant to subsection (j) of Section 337 (19 U.S.C. § 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative

notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

3. At the discretion of CBP and pursuant to the procedures it establishes, persons seeking to import covered articles that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish records or analyses as are necessary to substantiate the certification.
4. This Order does not exempt infringing articles from seizures under the trademark laws enforced by CBP, most notably 19 U.S.C. § 1526(e) and 19 U.S.C. § 1595a(c)(2)(C) for a violation of 15 U.S.C. § 1124.
5. 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).
6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.
7. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: June 15, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served via EDIS upon the Commission Investigative Attorney, Todd Taylor, Esq., and the following parties as indicated, on **June 15, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant 3-A Sanitary Standards, Inc.:

Gregory L. Ewing, Esq.
Potomac Law Group PLLC
1300 Pennsylvania Ave, N.W., Suite 700
Washington DC 20004
Email: gewing@potomacclaw.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

Respondents:

Wenzhou QiMing Stainless Co., Ltd.
No. 659 Dingxiang Road, Binhai Industry Zone
Wenzhou Zhejiang, 325025
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

High MPa Valve Manufacturing Co., Ltd.
No. 97, Road 15, Avenue 4, Economic and Technological Zone
Wenzhou Zhejiang, 325024
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Wenzhou Sinco Steel Co, Ltd
167Ningcheng West Road, Ningcheng Industry ZoneYongzhong
Longwan District,
Wenzhou, 325024
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Wenzhou Kasin Valve Pipe Fitting Co., Ltd. 1
Binhai Industry Zone Wenzhou Economy & Technology
Development Zone, E,

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail

**CERTAIN FOOD PROCESSING EQUIPMENT AND
PACKAGING MATERIALS THEREOF**

Inv. No. 337-TA-1161

Certificate of Service – Page 2

Wenzhou, 325000
China

Wenzhou Fuchuang Machinery Co., Ltd.
Binhai Industrial Park Shacheng Town,
Longwang District, Wenzhou
Zhejiang 325024
China

Other: Service to Be
Completed by Complainants

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN FOOD PROCESSING
EQUIPMENT AND PACKAGING
MATERIALS THEREOF**

Investigation No. 337-TA-1161

COMMISSION OPINION

This investigation is before the Commission on a final determination on remedy, the public interest, and bonding. On February 18, 2020, the presiding administrative law judge (“ALJ”) issued Order No. 14, a combined initial determination (“ID”) and recommended determination on remedy and bonding (“RD”). The ID found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), by five respondents that defaulted in the investigation. ID at 1-39; *see also* 85 *Fed. Reg.* 19955-56 (Apr. 9, 2020). On April 3, 2020, the Commission determined not to review the ID and requested written submissions on remedy, the public interest, and bonding. *Id.*

Upon consideration of the submissions received, the Commission has determined that the appropriate form of relief is a general exclusion order (“GEO”) prohibiting the importation of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more certification marks, *i.e.*, U.S. Trademark Registration No. 1,976,117; U.S. Trademark Registration No. 5,189,919; or U.S. Trademark Registration No. 5,554,628 (collectively, “the Certification Marks”). *See* 19 U.S.C. § 1337(g)(2). The Commission has determined to set a bond in the amount of 100 percent of the entered value of the unlicensed articles imported during the period of Presidential review.

I. BACKGROUND

On June 18, 2019, the Commission instituted this investigation based on a complaint and supplements thereto filed on behalf of 3-A Sanitary Standards, Inc. (“3-A SSI”) of McLean, Virginia. 84 *Fed. Reg.* 28335-36 (June 18, 2019). The complaint, as supplemented, alleges violations of section 337 based upon the importation or sale of certain food processing equipment and packaging materials thereof by reason of false advertising and unfair competition with respect to the Certification Marks, the threat or effect of which is to destroy or substantially injure an industry in the United States.¹ The complaint further alleged that an industry in the United States exists as required by section 337.

The Commission’s notice of investigation named five respondents: (1) Wenzhou QiMing Stainless Co., Ltd. of Wenzhou, China; (2) High MPa Valve Manufacturing Co., Ltd. of Wenzhou, China; (3) Wenzhou Sinco Steel Co, Ltd. of Wenzhou, China; (4) Wenzhou Kasin Valve Pipe Fitting Co., Ltd. of Wenzhou, China; and (5) Wenzhou Fuchuang Machinery of Wenzhou, China (collectively, the “defaulting respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

During the course of the investigation, all five respondents were found in default. Order No. 8 (Sept. 19, 2019), *unreviewed*, Notice (Oct. 15, 2019); Order No. 13 (Nov. 19, 2019), *unreviewed*, Notice (Dec. 18, 2019); *see also* 85 *Fed. Reg.* 19955-56 (Apr. 9, 2020).

On November 7, 2019, 3-A SSI moved for summary determination of violation of section 337 by the defaulting respondents.² On November 20, 2019, 3-A SSI moved for leave to file a

¹ The Certification Marks connote that a product bearing the marks meets 3-A SSI cleanliness standards. *See* Complainant’s Motion for Summary Determination (Nov. 7, 2020) at 17.

² Complainant’s Motion for Summary Determination (Nov. 7, 2020).

corrected memorandum in support of its motion for summary determination and supplemental declaration and exhibits.³ On December 3, 2019, 3-A SSI moved for leave to file a supplemental declaration and exhibits.⁴

On December 13, 2019, OUII filed a response supporting 3-A SSI's motion.⁵ More specifically, OUII stated that (1) 3-A SSI established the importation requirement as to each defaulting respondent; (2) 3-A SSI established that the defaulting respondents falsely advertised their products using the Certification Marks; and (3) 3-A SSI established that a domestic industry exists and injury to that domestic industry was shown. OUII also supported 3-A SSI's request for a GEO and the imposition of a bond during the period of Presidential review of 100 percent of the entered value of the products.

On February 18, 2020, the presiding ALJ issued Order No. 14, an ID granting 3-A SSI's motion for summary determination of a violation of section 337 by the defaulting respondents. The ALJ found, *inter alia*, that (1) 3-A SSI established the importation requirement as to each defaulting respondent; (2) 3-A SSI established that the defaulting respondents have falsely advertised their products using the Certification Marks; and (3) 3-A SSI has established the existence of a domestic industry and had shown injury to that domestic industry. ID at 22-39. No party petitioned for review of the ID.

The ID in Order No. 14 also included the ALJ's RD on remedy and bonding. In particular, the RD recommended that the Commission issue a GEO and impose a bond during the

³ Complainant's Motion to Supplement and Correct (Nov. 20, 2020) ("Compl. 1st Mot. Supp."). This filing included Complainant's Corrected Memorandum in Support of Its Motion for Summary determination ("Corr. Mem."). We refer to the motion exhibits as "Mot. Ex."

⁴ Complainant's Motion to Supplement (Dec. 3, 2020).

⁵ Staff's Response to Complainant's Motion for Summary Determination (Dec. 13, 2020).

period of Presidential review of 100 percent of the entered value of subject articles. RD at 40-53.

On April 3, 2020, the Commission determined not to review the ID. 85 *Fed. Reg.* 19955 (Apr. 9, 2020). The Commission’s determination resulted in a finding of violation as to all respondents, each of which had been found in default. *See id.* The Commission also requested written submissions on remedy, the public interest, and bonding. *See id.*

On April 14, 2020, 3-A SSI and OUII submitted their briefs on remedy, the public interest, and bonding.⁶ On April 21, 2020, OUII submitted its reply brief on remedy, the public interest, and bonding.⁷ No other submissions were filed in response to the Notice.

II. DISCUSSION

As explained below, the Commission finds that the statutory requirements for a general exclusion from entry of infringing articles under subsection 337(g)(2), 19 U.S.C. § 1337(g)(2), are individually met in this investigation. The Commission also finds that the public interest factors enumerated in subsection 337(g)(1), 19 U.S.C. § 1337(g)(1), do not warrant denying relief. Accordingly, the Commission determines that the appropriate remedy in this investigation is a GEO prohibiting the importation of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more of the Certification Marks. The Commission further determines that the bond during the period

⁶ Complainant’s Memorandum Re Remedy, the Public Interest, And Bonding (Apr. 14, 2020) (“CSub.”); Submission of the Office of Unfair Import Investigations on Remedy, the Public Interest, and Bonding (“OSub.”).

⁷ Reply Submission of the Office of Unfair Import Investigations on Remedy, the Public Interest, and Bonding. OUII’s reply focuses on the additional information that the Commission requested from 3-A SSI (*e.g.*, HTSUS subheadings, and draft exclusion order language).

of Presidential review pursuant to 19 U.S.C. § 1337(j) shall be in the amount of 100 percent of the entered value of the imported subject articles.

A. General Exclusion Order

Subsection 337(g)(2) provides that “[I]n addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if— (A) no person appears to contest an investigation concerning a violation of the provisions of this section, (B) such a violation is established by substantial, reliable, and probative evidence, and (C) the requirements of subsection (d)(2) are met.” 19 U.S.C. § 337(g)(2). Subsection 337(d)(2), in turn, sets forth the requisite findings upon which a GEO can be predicated as follows: “The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that— (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2); *see also* 19 C.F.R. § 210.50(c).

The RD found that the evidence of record supports issuing a GEO. *See* RD at 41-51. Citing subsection 337(d)(2), which sets forth the requirements for issuance of a GEO, as well as the appropriate Commission precedent, RD at 41-46, the RD found that “[s]ubstantial, reliable, and probative evidence establishes that a general exclusion order is necessary to prevent circumvention of an exclusion order limited to products of named persons,” *id.* at 46. The RD also found that “3-A SSI has presented substantial, reliable, and probative evidence . . . [that

there is] a widespread pattern of violation and [] difficulty in identifying the source of the infringing goods.” *Id.* at 46; *see also id.* at 46-51. Based on these findings, the RD recommended the issuance of a GEO. *Id.* at 51.

In response to the Commission’s April 3, 2020 Notice, both 3-A SSI and OUII support the RD’s recommendation for the issuance of a GEO. *See* CSub. at 1-6; OSub. at 1-4. With regard to subsection 337(d)(2)(A), 3-A SSI explains that food processing equipment that is within the scope of the investigation ships primarily from China. CSub. at 1-6. 3-A SSI repeats the RD’s findings to argue that the issuance of a GEO under subsection 337(d)(2)(A) is appropriate. According to 3-A SSI, the RD correctly found that both the defaulting respondents and non-respondents⁸ have large financial incentives to circumvent any limited exclusion order that the Commission would issue. *Id.* at 4. 3-A SSI further explains that the RD also correctly determined that because “none of the respondents had appeared and had ignored the proceedings suggests ‘that they would not abide by the terms of any LEO order that the Commission may impose.’” *Id.* (citing RD at 43-44). 3-A SSI further contends that “the [RD] found that 3-A SSI had provided evidence confirming that ‘unlicensed products are advertised and sold from multiple large online retailers and other specific websites, both of which allow respondents and other violating parties to sell directly to consumers and distributors.’” *Id.* 3-A SSI argues that the products are shipped in unmarked, generic packages. *Id.* Finally, 3-A SSI asserts that “manufacturers of the accused products use e-commerce websites such as eBay, Alibaba.com, and made-in-china.com to sell their goods and could easily change names and establish new store fronts to circumvent any limited exclusion order.” *Id.* (citing RD at 45).

⁸ The non-respondents are unspecified entities that 3-A SSI alleges engage in unfair competition by falsely advertising their products in association with the Certification Marks.

OUII explains that it agrees with the ALJ's recommendation to issue a GEO. OSub. at 1-2. Specifically, OUII argues that under subsection 337(d)(2)(A), a GEO is appropriate to prevent circumvention. *Id.* at 3. OUII explains that the record contains evidence of the following:

- Unlicensed products are advertised and sold from multiple large online retailers and specific websites, both of which allow Respondents and non-respondents to sell directly to consumers and distributors;
- There are many other non-respondents who are advertising unlicensed products;
- It is not clear how certain Respondents and non-respondents do business even though it is clear that they are advertising unlicensed products that have been imported into the United States; and
- Because Respondents ship the Accused Products in non-descript, cardboard boxes, without any branding to identify the sender, it is difficult to identify the ultimate source of the product.

Id. (citing Corr. Mem. at 21-26; *see also* RD at 42-52).

With regard to subsection 337(d)(2)(B), in addition to the evidence discussed above, 3-A SSI also argues that there is a widespread pattern of violation of section 337. CSub. at 5-6. In particular, 3-A SSI identified numerous foreign manufacturers using online marketplaces to sell the accused products. *Id.* 3-A SSI argues that “some of these sellers provide too little information to have even been named as Respondents in this investigation. These companies operate under multiple names that appear to change over time.” *Id.* 3-A SSI contends that it is not clear how the defaulting respondents and non-respondents are doing business. *Id.* 3-A SSI explains that an order to one company “may solicit a response from another, and result in fulfillment by yet another.” *Id.* 3-A SSI asserts that its efforts to stop the defaulting respondents’ and non-respondents’ infringement has failed. *Id.* at 5-6. 3-A SSI also contends that because defaulting “[r]espondents, and likely non-respondents, ship the accused products ‘in

small quantities and generic packaging,’ it is difficult to identify the ultimate source of the product.” *Id.* at 6. 3-A SSI concludes that “[g]iven the large number of importers importing the infringing products under a wide variety of names and aliases, it is difficult, if not impossible, for 3-A SSI to determine which of these companies have stopped importing allegedly infringing goods, and which have simply rebranded themselves and their products to continue importing the same goods under new aliases.” *Id.*

With regard to whether there is a pattern of violation and difficulty in identifying the source of accused products under subsection 337(d)(2)(B), OUII argues that the evidence supports finding that the requirements of this subsection are met. OSub. at 3-4. Specifically, OUII argues “[i]n addition to the above recited evidence, the record also includes evidence that unlicensed products can and are shipped with generic, unmarked product shipments, thus illustrating the clear risk of circumvention.” *Id.* at 4. (citing Corr. Mem. at 21-26; *see also* RD at 42-52).

Based on the record and the parties’ submissions, the Commission has determined to issue a GEO pursuant to 19 U.S.C. § 1337(g)(2). As discussed below, a GEO is necessary to prevent circumvention of an LEO, there is a pattern of violation, and it is difficult to identify the source of the infringing products.

1. High likelihood of circumvention

The record evidence shows difficulty in identifying the source of the violative articles. For example, 3-A SSI presented evidence that “products are advertised and sold from multiple large online retailers and other specific websites, both of which allow respondents and other violating parties to sell directly to consumers and distributors.” Corr. Mem. at 23-24 (citing Mot. Exs. 1-9). 3-A SSI attached exhibits showing what appear to be the same product being

sold under different websites and different names. *See, e.g.*, Mot. Exs. 1-3, 6-8. The products are also shipped with generic, unmarked product shipments, illustrating the clear risk of circumventing any LEO. Corr. Mem. at 24 (citing Mot. Exs. 1, 2, 4). Moreover, the evidence shows that the defaulting respondents use e-commerce websites (*e.g.*, eBay.com) to sell their products. Mot. Exs. 1-9. The defaulting respondents also use intermediaries while providing little or no information about the company behind the products. *See, e.g.*, Mot. Exs. 2, 4. Thereby, it is difficult to identify the source of the goods.

2. Widespread pattern of violation

The record evidence also establishes a widespread pattern of unauthorized use. The RD relied on the evidence above in finding that there is a widespread pattern of violation. In addition, the RD found that most sales are on the internet and there is often too little information for some companies to even name them as a respondent in the investigation even though they are using, without authorization, the Certification Marks. RD at 46-47. Some of the online sellers sell their products through various different websites and operate under multiple names. *Id.* As the RD explained, the companies import their products in small quantities and generic packaging, making it difficult to identify the seller. *Id.* at 49-50 (citing and reproducing, respectively, Corr. Mem. at 24; Mot. Exs. 1-5 (reproducing sample packaging)). In addition, 3-A SSI's efforts to stop the defaulting respondents and non-respondents has been mostly unsuccessful. *Id.* at 48-49. Given the number of importers importing the accused products under a wide variety of names and aliases, it is difficult to determine which of the companies have stopped selling illicit goods or whether they have rebranded themselves and their products to continue importing the same goods. *Id.* at 49. The evidence shows that the identity of the infringers is difficult to discern and that the limited exclusion order could easily be evaded. *Id.*;

see also Corr. Mem. at 24, 25-27; Mot. Exs. 1-7. The RD also determined that there is a low barrier to entry of the accused products. *Id.*

3. Conclusion

Based on the evidence discussed above, including the evidence discussed in the RD, the Commission finds the record evidence supports the issuance of a GEO prohibiting the importation of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more of the Certification Marks.

B. Public Interest

Before issuing any remedial order, the Commission must “consider[] the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.” *See, e.g.*, 19 U.S.C. § 1337(g)(1). “[T]he statute does not require the Commission to determine that a remedial order would advance the public interest factors but rather requires the Commission to consider whether issuance of such an order will adversely affect the public interest factors.” *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op., 2015 WL 5000874, at *9 (June 26, 2015) (citation omitted) (“*Loom Kits*”).

OUII and 3-A SSI agree that “the public interest will not be adversely affected by the issuance of the recommended remedy in this Investigation.” *See* OSub. at 1, 4-5; *see also* CSub. at 8. As noted by 3-A SSI and OUII, an exclusion order in this investigation may actually serve to promote public health and safety. *Id.* at 5; CSub. at 8-9. 3-A SSI argues that licensed U.S. manufacturers have the capacity to replace the subject articles and they have enough capacity to meet the demands of the market. CSub. at 9. 3-A SSI further argues that U.S. consumers

would benefit from the exclusion of counterfeit imports, as the standards represented by the Certification Marks protect the health and safety of the American people. *Id.* at 10.

The record in this investigation contains no evidence that a GEO would adversely affect the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. *See* 19 U.S.C. § 1337(g)(1). The Commission requested submissions from the public with respect to the public interest, but no third party responded to the Commission’s Notice. *See* 85 *Fed. Reg.* 19955-56 (Apr. 9, 2020). As explained above, there would be a benefit to the public health and welfare in excluding goods that purloin the Certification Marks, not a detriment. 3-A SSI represents that U.S. manufacturers produce competing articles that would replace the excluded articles and the U.S. manufacturers can adequately supply the market. CSub. at 9-10. Finally, the exclusion of misleading goods would also benefit U.S. consumers. *Id.* at 10. Thus, based on the record of this investigation, the Commission determines that the public interest does not preclude the issuance of a GEO.

C. **Bonding**

During the 60-day period of Presidential review under 19 U.S.C. § 1337(j), “articles directed to be excluded from entry under subsection (d) . . . shall . . . be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury.” *See* 19 U.S.C. § 1337(j)(3). “The Commission typically sets the bond based on the price differential between the imported infringing product and the domestic industry article or based on a reasonable royalty. However, where the available pricing or royalty information is inadequate due to the default of the respondent, the

bond may be set at one hundred (100) percent of the entered value of the infringing product.”
Loom Kits, 2015 WL 5000874 at *11.

The RD recommended that the bond amount be set at 100 percent of the entered value of the accused products during the period of Presidential review in the event a violation of section 337 is found. RD at 52. OUII argues “[u]nless the Complainant requests a bond in its remedy briefing and adequately supports that request, OUII recommends that importers of covered articles not be required to post a bond during the 60-day Presidential review period.” OSub. at 6. However, 3-A SSI, in its remedy submission, argues that the bond should be set at 100 percent. CSub. at 10-11 (citing *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm’n Op., 2009 WL 6751505, *16 (Oct. 1, 2009); see also *Certain Tadalafil or Any Salt or Solvate Thereof and Products Containing Same*, Inv. No. 337-TA-539, Comm’n Op., 2008 WL 2109706, at *9 (June 16, 2006); *Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles*, Inv. No. 337-TA-448, Limited Exclusion Order, 2002 WL 342071, *3 (Mar. 1, 2002)).

The RD found that the evidence shows that calculating an average price for a price differential analysis would be difficult because sales were made online at various price points and quantities. RD at 53. The RD further stated that given the state of the evidentiary record and the fact that all respondents have defaulted and not provided discovery, a 100 percent bond is appropriate. *Id.*

Given the fact that the defaulting respondents chose not to participate in this investigation and provided no discovery relating to pricing, we agree with the RD’s recommendation.⁹ As the ALJ noted, the record shows that sales of imported subject articles were made online at various price points and quantities, making the calculation of an average price differential difficult. The

⁹ The record contains no evidence to support a calculation of reasonable royalties.

Commission has set the bond at 100 percent in similar circumstances. *See Loom Kits*, 2015 WL 5000874 at *12 (setting the bond at 100 percent where “the record [] shows that a large number of infringing loom kits are sold on the Internet at different prices,” “the defaulting respondents in th[e] investigation provided no discovery, including discovery about pricing,” and “[t]he record [] lacks a reliable comparison of the price of the domestic industry products to the price of the infringing products”). Accordingly, the Commission finds the appropriate bond amount is 100 percent of the entered value of the subject articles.

III. CONCLUSION

For the foregoing reasons, the Commission issues a GEO prohibiting the importation of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more of the Certification Marks. The Commission finds that the public interest does not preclude issuance of this remedial order. The Commission sets the bond during the period of Presidential review in the amount of 100 percent of the entered value of the imported products.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: July 14, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Opinion, Commission** has been served via EDIS upon the Commission Investigative Attorney, Todd Taylor, Esq., and the following parties as indicated, on **July 14, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant 3-A Sanitary Standards, Inc.:

Gregory L. Ewing, Esq.
Potomac Law Group PLLC
1300 Pennsylvania Ave, N.W., Suite 700
Washington DC 20004
Email: gewing@potomacclaw.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

Respondents:

Wenzhou QiMing Stainless Co., Ltd.
No. 659 Dingxiang Road, Binhai Industry Zone
Wenzhou Zhejiang, 325025
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

High MPa Valve Manufacturing Co., Ltd.
No. 97, Road 15, Avenue 4, Economic and Technological Zone
Wenzhou Zhejiang, 325024
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Wenzhou Sinco Steel Co, Ltd
167Ningcheng West Road, Ningcheng Industry ZoneYongzhong
Longwan District,
Wenzhou, 325024
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Wenzhou Kasin Valve Pipe Fitting Co., Ltd. 1
Binhai Industry Zone Wenzhou Economy & Technology
Development Zone, E,

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail

**CERTAIN FOOD PROCESSING EQUIPMENT AND
PACKAGING MATERIALS THEREOF**

Inv. No. 337-TA-1161

Certificate of Service – Page 2

Wenzhou, 325000
China

Wenzhou Fuchuang Machinery Co., Ltd.
Binhai Industrial Park Shacheng Town,
Longwang District, Wenzhou
Zhejiang 325024
China

Other: Service to Be
Completed by Complainants

Via Hand Delivery

Via Express Delivery

Via First Class Mail

Other: Service to Be
Completed by Complainants

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN FOOD PROCESSING
EQUIPMENT AND PACKAGING
MATERIALS THEREOF**

Investigation No. 337-TA-1161

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337; REQUEST FOR
WRITTEN SUBMISSIONS ON REMEDY, THE 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. 14) issued by the administrative law judge (“ALJ”) on February 18, 2020, granting summary determination that the defaulting respondents have violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. The Commission requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Amanda Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, telephone 202-205-3427. 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, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 18, 2019, based on a complaint filed by 3-A Sanitary Standards, Inc. of McLean, Virginia (“Complainant”). 84 FR 28335 (June 18, 2019). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation or sale of certain food processing equipment and packaging materials thereof by reason of false advertising and unfair competition, the threat or effect of which is to destroy or substantially injure an industry in the United States. The notice of investigation named as respondents Wenzhou QiMing Stainless Co., Ltd. of Wenzhou, China (“Wenzhou QiMing”); High MPa Valve Manufacturing Co., Ltd. of Wenzhou, China (“High MPa Valve”); Wenzhou

Sinco Steel Co, Ltd. of Wenzhou, China (“Wenzhou Sinco”); Wenzhou Kasin Valve Pipe Fitting Co., Ltd. of Wenzhou, China (“Wenzhou Kasin”); and Wenzhou Fuchuang Machinery (“Wenzhou Fuchuang”) (collectively, “defaulting respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. *Id.*

On October 15, 2019, the Commission found respondents Wenzhou QiMing, High MPa Valve, Wenzhou Sinco, and Wenzhou Kasin in default. Order No. 8 (Sept. 19, 2019), *unreviewed*, Notice (Oct. 15, 2019). On December 18, 2019, the Commission found Wenzhou Fuchuang in default. Order No. 13 (Nov. 19, 2019), *unreviewed*, Notice (Dec. 18, 2019).

On November 7, 2019, 3-A SSI moved for summary determination of a violation of section 337 by the defaulting respondents. On November 20, 2019, and December 3, 2019, 3-A SSI supplemented its motion and exhibits. On December 13, 2019, OUII filed a response supporting 3-A SSI’s motion.

On February 18, 2020, the presiding ALJ issued Order No. 14, an ID granting 3-A SSI’s motion for summary determination of a violation of section 337 by the defaulting respondents. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, an exclusion 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, 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 that remedy upon the public interest. The public interest factors the Commission will consider 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 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 their initial submissions, Complainant and OUII are also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the HTSUS subheadings under which the accused products are imported and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **April 14, 2020**. Reply submissions must be filed no later than the close of business on **April 21, 2020**. No further submissions on 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-1161) 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. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 USC 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', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: April 3, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, Todd Taylor, Esq., and the following parties as indicated, on **April 3, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant 3-A Sanitary Standards, Inc.:

Gregory L. Ewing, Esq.
Potomac Law Group PLLC
1300 Pennsylvania Ave, N.W., Suite 700
Washington DC 20004
Email: gewing@potomacclaw.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

PUBLIC VERSION

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

In the Matter of

**CERTAIN FOOD PROCESSING
EQUIPMENT AND PACKAGING
MATERIALS THEREOF**

Inv. No. 337-TA-1161

Order No. 14

INITIAL DETERMINATION

Granting Complainant's Motion for Summary Determination of Violation

And

RECOMMENDED DETERMINATION

On Remedy and Bonding

PUBLIC VERSION

TABLE OF CONTENTS

I.	Background.....	1
A.	Institution of the Investigation; Procedural History.....	1
B.	The Parties	5
	1. Complainant.....	5
	2. Respondents	6
C.	3-A Certification Marks.....	7
D.	The Products at Issue	10
	1. The Accused Products.....	10
	2. The Domestic Industry Products.....	10
II.	Jurisdiction.....	13
III.	General Principles of Applicable Law	13
A.	Summary Determination.....	13
B.	False Advertising	14
	1. False Statement	15
	2. Deception	16
	3. Materiality.....	16
	4. Interstate Commerce	17
	5. Injury.....	17
C.	Domestic Industry	18
	1. Existence of an Industry in the United States	19
	2. Injury to the Domestic Industry	20
D.	Default.....	22
IV.	Summary Determination.....	22
A.	Importation.....	22
B.	False Advertising	26
	1. False Statement	27
	2. Deception	30
	3. Materiality.....	30
	4. Interstate Commerce	31

PUBLIC VERSION

5. Injury32

C. Domestic Industry32

 1. Existence of an Industry in the United States33

 2. Injury to the Domestic Industry37

V. Recommended Determination on Remedy and Bonding.....40

 A. General Exclusion Order.....41

 1. Necessary to Prevent Circumvention of an LEO42

 2. Widespread Pattern of Violation Where It Is Difficult to
 Identify the Source of Infringing Products46

 B. Bond.....52

VI. Initial Determination and Order.....53

PUBLIC VERSION

I. Background

A. Institution of the Investigation; Procedural History

By publication of a notice in the *Federal Register* on June 18, 2019, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

[W]hether there is a violation of subsections (a)(1)(A) of section 337 in the importation or sale of certain products identified in paragraph (2) by reason of false advertising and unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a), the threat or effect of which is to destroy or substantially injure an industry in the United States.

84 Fed. Reg. 28335 (June 18, 2019).

The complainant is 3-A Sanitary Standards, Inc. (“3-A SSI”) of McLean, Virginia. The named respondents are:

1. Wenzhou QiMing Stainless Co., Ltd. of Wenzhou, China;
2. High MPa Valve Manufacturing Co., Ltd. of Wenzhou, China;
3. Wenzhou Sinco Steel Co, Ltd. of Wenzhou, China;
4. Wenzhou Kasin Valve Pipe Fitting Co., Ltd. of Wenzhou, China;
and
5. Wenzhou Fuchuang Machinery Co., Ltd. of Wenzhou, China.

The Office of Unfair Import Investigations (“OUII” or “Staff”) is a party to this investigation. *Id.*

The target date for completion of this investigation was set at twelve months, *i.e.*, June 18, 2020. *See* Order No. 3 at 2 (July 18, 2019). Accordingly, the initial determination on alleged violation of section 337 is due on February 18, 2020.

All five respondents have been found in default. Specifically, on August 9, 2019, 3-A SSI moved for an order to show cause why all five respondents should not be found

PUBLIC VERSION

in default for failing to respond to the complaint and notice of investigation. Motion Docket No. 1161-2. On August 26, 2019, the administrative law judge granted the motion in part and issued an order to show cause as to respondents Wenzhou QiMing Stainless Co., Ltd.; High MPa Valve Manufacturing Co., Ltd.; Wenzhou Sinco Steel Co, Ltd.; Wenzhou Kasin Valve Pipe Fitting Co., Ltd. *See* Order No. 7 (Aug. 26, 2019). On September 19, 2019, the administrative law judge found these four respondents in default (Order No. 8 (Sept. 19, 2019)), and the Commission determined not to review the initial determination, *see* Notice of Comm'n Determination Not to Review an Initial Determination Finding Certain Respondents in Default (EDIS Doc. ID No. 691209) (Oct. 15, 2019).

With respect to the fifth respondent Wenzhou Fuchuang Machinery Co., Ltd. ("Wenzhou Fuchuang Machinery"), although the Commission was unable to serve the complaint and notice of investigation (returned from Wenzhou Fuchuang Machinery (EDIS Doc. ID No. 681731)), 3-A SSI moved for leave to effect personal service of the complaint and the notice of investigation upon respondent Wenzhou Fuchuang Machinery pursuant to Commission Rule 210.11(b). *See* Motion Docket No. 1161-1. On August 22, 2019, the administrative law judge granted the motion. *See* Order No. 6 (Aug. 22, 2019). On September 11, 2019, 3-A SSI filed notice that its attempt at personal service had been successful (EDIS Doc. ID 687895). On October 8, 2019, 3-A SSI moved for an order to show cause why Wenzhou Fuchuang Machinery should not be found in default for failing to respond to the complaint and notice of investigation. Motion Docket No. 1161-4. On October 24, 2019, the administrative law judge granted the motion and issued an order to show cause as to respondent Wenzhou Fuchuang

PUBLIC VERSION

Machinery. *See* Order No. 10 (Oct. 24, 2019). On November 19, 2019, the administrative law judge found Wenzhou Fuchuang Machinery in default (Order No. 13 (Nov. 19, 2019)), and the Commission determined not to review the initial determination, *see* Notice of Comm'n Determination Not to Review an Initial Determination Finding Respondent Wenzhou Fuchuang Machinery in Default (EDIS Doc. ID No. 697555) (Dec. 18, 2019).

On August 22, 2019, 3-A SSI moved to suspend the procedural schedule and stated, "Complainant requests that the Procedural Schedule... be suspended pending resolution of Complainant's Motion for an Order to Show Cause and the expected Motion for Summary Determination to follow." Motion Docket No. 1161-3 at 1. On September 19, 2019, the administrative law judge granted the motion. *See* Order No. 9 (Sept. 19, 2019).

On October 9, 2019, 3-A SSI moved to terminate the investigation as to Wenzhou QiMing based on a licensing agreement. *See* Motion Docket No. 1161-6. On November 1, 2019, the administrative law judge denied 3-A SSI's motion to terminate the investigation as to Wenzhou QiMing because "the administrative law judge [did] not have jurisdiction over the investigation involving Wenzhou QiMing." Order No. 12 at 3 (Nov. 1, 2019).

All five respondents have thus been found in default, and are the subject of complainant's pending motion for summary determination seeking a finding of a violation of section 337 and requesting entry of a general exclusion order ("GEO"). Mot. at 1-2.

PUBLIC VERSION

Corrected Motion for Summary Determination

On November 7, 2019, pursuant to Commission Rule 210.18, 3-A SSI filed a motion for summary determination that respondents have engaged in unfair methods of competition and unfair acts, and for a recommended determination on remedy and bonding. Motion Docket No. 1121-8. As noted above, the respondents are Wenzhou QiMing Stainless Co., Ltd.; High MPa Valve Manufacturing Co., Ltd.; Wenzhou Sinco Steel Co, Ltd.; Wenzhou Kasin Valve Pipe Fitting Co., Ltd.; and Wenzhou Fuchuang Machinery Co., Ltd.

On November 20, 2019, 3-A SSI filed a motion (“1st Suppl. Mot.”) for leave to file a corrected memorandum (“Corr. Mem.”) in support of its motion for summary determination and supplemental declarations and exhibits. *See* Motion Docket No. 1161-9. Then, on December 3, 2019, 3-A SSI filed a motion for leave to file a supplemental declaration and exhibits. *See* Motion Docket No. 1161-11 (“2nd Suppl. Mot.”). Motion Nos. 1161-9 and 1161-11 are granted.

3-A SSI argues that substantial, reliable, and probative evidence supports the following requested relief:

[A] permanent General Exclusion Order, pursuant to 19 U.S.C. §1337(d)(2)(A) and (B), or in the alternative, a Limited Exclusion Order, pursuant to 19 U.S.C. §1337(d), excluding entry into the United States of certain food processing equipment imported or sold by an entity that engages in unfair methods of competition and unfair acts in importation through false advertising, false or misleading descriptions of fact, false or misleading representations of fact, based on the unlicensed use of the 3-A Certification Marks.

Corr. Mem. at 1.

On December 13, 2019, the Staff filed a response supporting the motion, and

PUBLIC VERSION

supporting the requested remedy of a general exclusion order. *See* EDIS Doc. ID No. 697231 (Staff’s Response to Complainant’s Motion for Summary Determination). The Staff argues:

The Staff supports the motion for a summary determination of violation. In short, there is no genuine issue as to any material fact that there has been a violation of section 337. In the event that a violation is found, the evidence also supports the issuance of a general exclusion order (“GEO”) directed to food processing equipment falsely advertising the 3-A Certification Marks and subsequently imported into the United States.

Staff Resp. at 1.

B. The Parties

1. Complainant

Complainant 3-A SSI is an independent not-for-profit corporation organized under the laws of the State of Delaware, with its principal place of business at 6888 Elm Street, Suite 2D, McLean, Virginia. 2nd Am. Compl., ¶ 14. 3-A SSI is a membership organization consisting of four associations:

- American Dairy Products Institute;
- International Dairy Foods Association;
- Food Processing Suppliers Association; and
- International Association for Food Protection.

1st Suppl. Mot., Decl. (Rugh), ¶ 5.

3-A SSI develops and administers voluntary sanitary standards for the food, beverage, and pharmaceutical industries. 2nd Am. Compl., ¶ 15. The complainant currently maintains 76 standards that cover a large variety of food and beverage processing equipment ranging from storage tanks to rotary pumps to ball valves. 1st Suppl. Mot., Decl. (Rugh), ¶ 6. 3-A SSI provides qualifying manufacturers with the 3-A

PUBLIC VERSION

SSI Certification Marks following inspection and verification by a qualified third party (the third-party verification process). 2nd Am. Compl., ¶ 15.

3-A SSI maintains accreditation as a Standards Developer Organization by the American National Standards Institute (ANSI)—a private, non-profit organization that administers and coordinates the voluntary standards and conformity assessment system in the United States. 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶ 2. This accreditation means the 3-A SSI Procedures for the Development and Maintenance of 3-A SSI Standards and 3-A Accepted Practices meet the consensus and due process requirements of ANSI. *Id.* 3-A SSI is the only entity creating sanitary standards for equipment for this scope of intended use in the United States and is the only association in this industry. *Id.*

2. Respondents

As noted above, the following five Chinese respondents were named in this investigation:

1. Wenzhou QiMing Stainless Co., Ltd. of Wenzhou, China;
2. High MPa Valve Manufacturing Co., Ltd. of Wenzhou, China;
3. Wenzhou Sinco Steel Co, Ltd. of Wenzhou, China;
4. Wenzhou Kasin Valve Pipe Fitting Co., Ltd. of Wenzhou, China;
and
5. Wenzhou Fuchuang Machinery Co., Ltd. Of Wenzhou, China.

84 Fed. Reg. 28335 (June 18, 2019).

As discussed above, none of the respondents responded to 3-A SSI's complaint or the notice of investigation. These respondents are companies based in China that manufacture, offer for sale, and sell food and beverage processing equipment through Internet sites like Ebay, Alibaba, and made-in-china.com. *See, e.g.*, Mem. Ex. 1 at 2; Mem. Ex. 2 at 3; Mem. Ex. 3; Mem. Ex. 5 at 3–7; Mem. Ex. 6 at 1–19; Mem. Ex. 7 at 1–

PUBLIC VERSION

13. The evidence demonstrates that these respondents make generic, unmarked product shipments directly to consumers in the United States, often in small quantities. *See, e.g.*, Mem. Ex. 1 at 6; Mem. Ex. 2 at 5–6; Mem. Ex. 4 at 10. These respondents are not licensed to use the 3-A certification marks. Corr. Mem. at 1.¹

C. 3-A Certification Marks

The Trademark Act provides for the registration of “certification marks,” which are defined in 15 U.S.C. § 1127:

The term “certification mark” means any word, name, symbol, or device, or any combination thereof—

(1) used by a person other than its owner, or

(2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this chapter,

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person’s goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

15 U.S.C. § 1127.

Certification marks may certify “[s]tandards met with respect to quality, materials, or mode of manufacture. Certification marks may be used to certify that authorized users’ goods or services meet certain standards in relation to quality, materials, or mode of manufacture (e.g., approval by Underwriters Laboratories).”

¹ One Respondent, Wenzhou QiMing Stainless Co., Ltd., entered into a license agreement and was therefore the subject of a Motion to Terminate for Settlement. As noted above, before the license agreement was finalized, Wenzhou QiMing Stainless was found in default. EDIS Doc. Nos. 688732 and 691209. As a result of the intervening finding of default, the Motion to Terminate was denied for lack of jurisdiction. EDIS Doc. No. 692988.

PUBLIC VERSION

Trademark Manual of Examining Procedure (“TMEP”) § 1306.01 (8th ed. Oct. 2018) (citing *Midwest Plastic Fabricators Inc. v. Underwriters Labs. Inc.*, 906 F.2d 1568 (Fed. Cir. 1990) (UL certifies, among other things, representative samplings of electrical equipment meeting certain safety standards)).

“[T]he purpose of a certification mark is to inform purchasers that the goods or services of a person possess certain characteristics or meet certain qualifications or standards established by another person. A certification mark does not indicate origin in a single commercial or proprietary source the way a trademark or service mark does.” TMEP § 1306.01(b).

3-A SSI alleges that the respondents are engaged “in unfair methods of competition and unfair acts in importation through false advertising, false or misleading descriptions of fact, false or misleading representations of fact, based on the unlicensed use of the 3-A Certification Marks.” Corr. Mem. at 1. 3-A SSI also alleges that a domestic industry exists with respect to its activities in the United States related to standards developed and maintained by 3-A SSI that are represented by the 3-A SSI Certification Marks. *Id.* at 16, 27.

Specifically, 3-A SSI alleges that its sanitary standards are represented by three U.S. Trademark Registrations of certification marks:

Reg. No.	Reg. Date	For:	Certification Mark
1,976,117	May 28, 1996	“SANITARY FOOD HANDLING EQUIPMENT”	

PUBLIC VERSION

5,189,919	April 25, 2017 ²	“Sanitary industrial food handling equipment”	
5,554,628	September 4, 2018 ³	“Sanitary industrial food handling equipment”	3A

2nd Am. Compl., ¶ 24, Compl. Exs. 1–3. As to the ’117 and ’628 certification marks, 3-A SSI contends its authorized designees first began using the marks in interstate commerce on March 2, 1949, and have continued to use such marks continuously and without interruption to the present day. 2nd Am. Compl. at 13 n.11, 13. As to the ’919 registration, 3-A SSI contends its authorized designees first began using the mark in interstate commerce on October 31, 1997, and have continued to use the mark continuously and without interruption to the present day. *Id.* at 13 n.12.

Finally, 3-A SSI alleges in the verified complaint that it owns all right, title, and interest to these U.S. Trademark Registrations. 2nd Am. Compl., ¶ 24. 3-A SSI also alleges that the registrations are active, valid, subsisting, and incontestable, and represent evidence of its ownership and exclusive right to exercise legitimate control over the use of the certification marks in interstate commerce in connection with sanitary food handling equipment.⁴ *Id.* at 13 n.11–13; *see* 15 U.S.C. § 1115(a) (a registered mark is

² The registration indicates that the first use of the certification mark was on Oct. 31, 1997. Compl., Ex. 2 at 2. 3-A SSI argues that they “continue to use such mark continuously and without interruption to the present day.” Compl. at 13 n.12.

³ The registration indicates that the first use of the certification mark was on March 2, 1949. Compl., Ex. 3 at 2. 3-A SSI argues that they “continue to use such mark continuously and without interruption to the present day.” Compl. at 13 n.13.

⁴ No assignment records were filed with the complaint.

PUBLIC VERSION

“prima facie evidence of the validity of the . . . mark . . . and of the registrant’s exclusive right to use the mark in commerce.”).

D. The Products at Issue

1. The Accused Products

The food processing equipment and related packaging materials at issue include:

- Valves (including Clamped Cleaning Balls);
- Clamps (including Hygienic Fittings Clamps); and
- Fittings (including Sanitary Elbows, Sanitary Clamp Elbows, and Pipe Fittings).

84 Fed. Reg. 28335 (June 18, 2019). The following chart identifies the Accused Products and summarizes the evidence of importation:

Respondent	Accused Product	Compl. Exhibit	Motion Exhibit	Point-of-Sale	Mark
Wenzhou QiMing	Sanitary clamp elbows	7	5	qmstainless.com (directs to ebay.com)	'919, '628
High MPa	Sanitary elbows	13	1	Alibaba.com	'117, '628
Wenzhou Sinco Steel	Pipe fittings	15	3	Alibaba.com	'919, '628
Wenzhou Kasin	Clamped cleaning balls	16	4	www.wzststeel.com	'919, '628
Wenzhou Fuchuang	Hygienic fittings clamps	14	2	Made-in-China.com	'117, '628

2. The Domestic Industry Products

3-A SSI argues that a domestic industry exists with respect to “3-A SSI’s activities in the United States related to articles protected, i.e., the standards represented

PUBLIC VERSION

by the 3-A SSI Certification Marks.” Corr. Mem. at 16. The 3-A Certification Marks, as used by authorized licensees of 3-A SSI, certify that the sanitary industrial food handling equipment meets standards of cleanliness established by 3-A SSI. *Id.* at 17.

3-A SSI has provided evidence that “3-A SSI develops and updates standards, and [that] it also grants licenses to show conformance to those standards to fabricators that meet [Third-Party Verification] inspection criteria.” 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶ 15. As of October 16, 2018, 3-A SSI had 516 licensees, including 261 U.S. licensees. Corr. Mem. at 18; Mem. Ex. 13C (list of 3-A SSI licensees). A license corresponds to products falling under a given standard, for example, pumps, mixers, conveyors. 1st Suppl. Mot., Decl. (Rugh), ¶ 8.

3-A SSI has also provided evidence that the Certification Marks are used in connection with food processing equipment in the United States. *See* Mem. Ex. 13C (as to U.S. licensees, for example, the 3rd column indicates which 3A standard (represented by the Certification Marks) they use).

As to significance, “[t]hroughout the U.S., state and federal regulators use the 3-A SSI standards as the baseline criteria for the determination of whether equipment is safe and sanitary.” 1st Suppl. Mot., Decl. (Rugh), ¶ 9. Moreover, the 3-A SSI standards are directly referenced in state legislation. *Id.*; *see also id.* Ex. 19 (Wisconsin Administrative Code). The USDA also specifically cites to 3-A SSI’s standards in its USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment. *Id.*, ¶ 11; *see also id.* Ex. 20 (USDA Guidelines).

3-A SSI also contends it “is the only entity creating sanitary standards for equipment for this scope of intended use in the United States and is therefore the most

PUBLIC VERSION

important and only association in this industry.” 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶

2. 3-A SSI maintains accreditation as a Standards Developer Organization by the American National Standards Institute (ANSI)—an organization that administers and coordinates the U.S. voluntary standards and conformity assessment system. *Id.*

3-A SSI currently maintains 76 standards which cover a variety of food and beverage processing equipment ranging from storage tanks to rotary pumps to ball valves. 1st Suppl. Mot., Decl. (Rugh), ¶ 6; *see also* 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶ 23, Ex. 27 (list of 3-A sanitary standards); *id.*, ¶ 21 (discussing Sanitary Standard for Sanitary Fittings (Ex. 25), the standard with which the products of certain respondents should have conformed). Conformance with these standards is apparently represented by the 3-A Certification Marks. 3-A SSI also maintains 10 accepted practices providing the design criteria for certain types of processing systems. 1st Suppl. Mot., Decl. (Rugh), ¶ 6.

In addition to the evidence of the nature and significance of its domestic industry, 3-A SSI also provided evidence of its investments in (i) a facility in McLean, Virginia, (ii) the employment of three full-time employees, and (iii) research (*e.g.*, staff administrative program services) and development (*e.g.*, funds spent on developing standards). Corr. Mem. at 17–18, 1st Suppl. Mot., Decl. (Rugh), ¶¶ 21–23, Mem. Ex. 14C (2018 Investments in Facility), Ex. 15C (2018 Employment of Labor), Mem. Ex. 16C (Investments in R&D per Year); 2nd Suppl. Mot., Suppl. Decl. (Rugh); *see also* *Certain Hand Dryers and Housings for Hand Dryers* (“*Hand Dryers*”), Inv. No. 337-TA-1015, Comm’n Op. at 4–5 (Oct. 30, 2017) (a showing pursuant to section

PUBLIC VERSION

337(a)(3)(A)-(C) may be sufficient to establish the domestic industry required by section 337(a)(1)(A)).

II. Jurisdiction

No party has contested the Commission's *in rem* jurisdiction over the accused products. Evidence of specific instances of importation of the accused products is discussed in the importation section of this initial determination. Accordingly, it is found that the Commission has *in rem* jurisdiction over the accused products.

As indicated in the Commission's Notice of Investigation, discussed above, this investigation involves the importation of products in contravention of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). No party has contested the Commission's jurisdiction over the subject matter of this investigation. It is found that the Commission has subject matter jurisdiction over this investigation.

No party has contested the Commission's personal jurisdiction over it. In particular, the respondents are all deemed to have received notice of this investigation at least through service of the complaint and notice of investigation. It is therefore found that the Commission has personal jurisdiction over all parties.

III. General Principles of Applicable Law

A. Summary Determination

Section 337 prohibits “[u]nfair methods of competition and unfair acts in the importation of articles . . . into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is— (i) to destroy or substantially injure an industry in the United States;” 19 U.S.C. § 1337(a)(1)(A)(i).

A complainant need only prove importation of a single accused product to satisfy the

PUBLIC VERSION

importation element. *See Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm'n Op. at 7–8, USITC Pub. No. 1605 (Nov. 1984).

The Commission Rules provide that “[a]ny party may move with any necessary supporting affidavits for a summary determination in its favor upon all or part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a). Summary determination “shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law.” 19 C.F.R. § 210.18(b).

B. False Advertising

Under the Lanham Act, it is unlawful to use in commerce, in connection with goods or services, any “false or misleading description of fact, or false or misleading representation of fact . . . in commercial advertising . . . [which] misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities.” 15 U.S.C. § 1125(a)(1)(B). False advertising has been recognized as a form of unfair competition under 19 U.S.C. § 1337(a)(1)(A).

Certain Woven Textile Fabrics and Products Containing Same (“Woven Textile Fabrics”), Inv. No. 337-TA-976, Initial Determination Granting Complainant AAVN, Inc.’s Motion for Summary Determination that Respondent Pradip Overseas Ltd. Has Violated Section 337 at 7–8 (EDIS Doc. ID No. 594867) (Nov. 10, 2016) (unreviewed), *see* Notice of a Commission Determination Not to Review an Initial Determination Finding a Violation of Section 337; Request for Written Submission on Remedy, the Public Interest, and Bonding (EDIS Doc. ID No. 598632) (Dec. 20, 2016).

PUBLIC VERSION

To succeed on a Lanham Act claim of false advertising, the complainant must prove:

- (1) The defendant made false or misleading statements about his own or another person's product;
- (2) There is actual deception or at least a tendency to deceive a substantial portion of the intended audience;
- (3) The deception is material in that it is likely to influence purchasing decisions;
- (4) The advertised good traveled in interstate commerce; and,
- (5) There is a likelihood of injury to the [complainant] in terms of declining sales, loss of good will, etc.

Woven Textile Fabrics, Unreviewed ID at 7–8 (citing *Groupe SEB USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 198 (3rd Cir. 2014); *Certain Cigarettes and Packaging Thereof* (“Cigarettes”), Inv. No. 337-TA-424, Initial Determination and Recommended Determination at 43–44 (June 22, 2000) (EDIS Doc. ID No. 116095) (unreviewed), see Notice of Commission Determination Not to Review an Initial Determination; Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bonding (EDIS Doc. ID No. 52778) (Aug. 28, 2000).

1. False Statement

To show element 1 (a false statement), “the complainant must prove that the advertisement is ‘either (1) literally false, or (2) literally true or ambiguous but likely to mislead or deceive consumers.’” *Woven Textile Fabrics*, Unreviewed ID at 8 (quoting *Groupe SEB USA*, 774 F.3d at 198).

An advertisement is “literally false” if the message is both (1) unambiguous and (2) false. *Id.* The “literally false message” can be either (1) explicit or (2) “conveyed by necessary implication when, considering the advertisement in its entirety, the audience

PUBLIC VERSION

would recognize the claim as readily as if it had been explicitly stated.” *Groupe SEB USA*, 774 F.3d at 198 (citing *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 586-87 (3d Cir. 2002)). “Unless the claim is unambiguous, it cannot be literally false.” *Id.* “The more the message relies upon the consumer to integrate its components and draw apparent conclusions, the less likely it [is] a finding of a literally false message.” *Woven Textile Fabrics*, Unreviewed ID at 8–9 (citing *Groupe SEB USA*, 774 F.3d at 198–99).

Whether the statement is “literally false” is a question of fact. *Woven Textile Fabrics*, Unreviewed ID at 9 (citing *Clorox Co. Puerto Rico v. Proctor & Gamble Commercial Co.*, 228 F.3d 24, 34 (1st Cir. 2000)).

2. Deception

The second element the complainant must prove is that “there is actual deception or at least a tendency to deceive a substantial portion of the intended audience.” *Groupe SEB USA*, 774 F.3d at 198. “Proof of literal falsity relieves the plaintiff of its burden to prove actual consumer deception.” *Id.* (citing *Novartis*, 290 F.3d at 586). “If the statement is literally false, then the administrative law judge ‘may grant relief without considering evidence of consumer reaction.’” *Woven Textile Fabrics*, Unreviewed ID at 9 (quoting *Clorox*, 228 F.3d at 33)).

3. Materiality

The third element the complainant must prove is that “the deception is material in that it is likely to influence purchasing decisions.” *Woven Textile Fabrics*, Unreviewed ID at 14 (quoting *Groupe SEB USA*, 774 F.3d at 198).

PUBLIC VERSION

4. Interstate Commerce

The fourth element to a false advertising claim is showing that the “advertised goods traveled in interstate commerce.” *Groupe SEB*, 774 F.3d at 198. Regarding this element, “interstate commerce” includes “United States import or export trade that can be regulated by Congress.” 5 McCarthy on Trademarks and Unfair Competition § 27:24 (5th ed.).

5. Injury

A complainant in a section 337 investigation must prove that it either has been or is likely to be substantially injured or threatened with substantial injury by respondent’s false advertising. *See* 19 USC § 1337(a)(1)(A); *Cigarettes*, Unreviewed ID at 43.

To determine whether a complainant has been injured, the Commission considers a broad range of indicia, including: “the volume of imports and their degree of penetration, lost sales, underselling by respondents, reduction in complainants’ profits or employment levels, and declining production, profitability and sales.” *Certain Cast Steel Railway Wheels, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same (“Railway Wheels”)*, Inv. No. 337-TA-655, Initial Determination at 81 (EDIS Doc. ID No. 414899) (Oct. 16, 2009) (unreviewed) (quoting *Certain Electric Power Tools, Battery Cartridges and Battery Chargers (“Electric Power Tools”)*, Inv. No. 337-TA-284, Unreviewed Initial Determination at 246, USITC Pub. No. 2389 (1991)), *see* Notice of Commission Determination Not to Review a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions Regarding Remedy, Bonding, and the Public Interest (EDIS Doc. ID No. 416143) (Dec. 17, 2009); *see also* *Certain Rubber Resins and Processes for Manufacturing Same*, Inv.

PUBLIC VERSION

No. 337-TA-849, Comm'n Op. at 60–61 (Feb. 26, 2014) (“*Rubber Resins*”). When the complainant alleges actual injury, there must be a causal nexus between the unfair acts of the respondents and the injury. *See Rubber Resins*, Comm'n Op. at 61.

The injury requirement may also be met “[w]hen an assessment of the market in the presence of the accused imported products demonstrates relevant conditions or circumstances from which probable future injury can be inferred.” *Railway Wheels*, Unreviewed ID at 81–82 (quoting *Electric Power Tools*, Unreviewed ID at 248). Such circumstances may include foreign cost advantages and production capacity, the ability of the imported product to undersell the domestic product, or substantial foreign manufacturing capacity combined with the respondent’s intention to penetrate the United States market. *Id.* at 82. The threatened injury must be “substantive and clearly foreseen.” *Rubber Resins*, Comm'n Op. at 64.

C. Domestic Industry

In order to establish a violation of section 337, the complainant must also prove that the alleged unfair competition involving false advertising has the “threat or effect of which is . . . to destroy or substantially injure an industry in the United States.” 19 U.S.C. § 1337(a)(1)(A)(i). Thus, the complainant must prove (i) the existence of a domestic industry, and (ii) that the alleged false statements of the respondents causes an actual or a future threatened substantial injury to that domestic industry. *See Certain Hand Dryers and Housings for Hand Dryers* (“*Hand Dryers*”), Inv. No. 337-TA-1015, Initial Determination at 38 (June 2, 2017) (unreviewed in relevant part), *see* Determination to Affirm the Domestic Industry Finding Under Modified Reasoning;

PUBLIC VERSION

Issuance of a General Exclusion Order; Issuance of Three Cease and Desist Orders; Termination of the Investigation (EDIS Doc. ID No. 627101) (Oct. 30, 2017).

1. Existence of an Industry in the United States

As to “an industry in the United States” under section 337(a)(1)(A)(i), the Commission “does not adhere to any rigid formula in determining the scope of the domestic industry,” but will “examine each case in light of the realities of the marketplace.” *TianRui Grp. Co. v. Int’l Trade Comm’n*, 661 F.3d 1322, 1336 (Fed. Cir. 2011) (quoting *Certain Floppy Disk Drives and Components Thereof*, Inv. No. 337-TA-203, USITC Pub. No. 1756, Initial Determination at 44–45 (May 9, 1985)).

Moreover, the Commission has clarified “that, while a showing under the section 337(a)(3) investment categories may be sufficient in certain circumstances to establish ‘an industry in the United States’ for purposes of section 337(a)(1)(A)(i), there is no requirement to show investments in the section 337(a)(3) categories to establish a violation of section 337(a)(1)(A).” *Hand Dryers*, Comm’n Op. at 4.

Nevertheless, complainants routinely put forward section 337(a)(3)(A–C) economic prong expenditures for purposes of satisfying the domestic industry requirement under section 337(a)(1)(A)(i). The Commission has applied such expenditures to a domestic industry under section 337(a)(1)(A). *See, e.g., Hand Dryers*, Comm’n Op. at 4–5 (affirming, with modified reasoning, the administrative law judge’s finding that the economic prong categories of expenditures under section 337(a)(3)(A–C) were “sufficient” for establishing “an industry in the United States” under section 337(a)(1)(A)(i)); *Certain Footwear Products*, Inv. No. 337-TA-936, Initial Determination at 128 (EDIS Doc. ID No. 690767) (Nov. 17, 2015) (unreviewed in relevant part), *see*

PUBLIC VERSION

Notice of Commission Determination to Review-in-part a Final ID Finding a Violation of Section 337; and to Request Written Submissions Regarding the Issues under Review and Remedy, Bonding, and the Public Interest (EDIS Doc. ID No. 573569) (Feb. 3, 2016), (finding that a showing pursuant to section 337(a)(3)(A) and (B) was sufficient to establish the domestic industry required by section 337(a)(1)(A)).

Further, there is no so-called “technical prong” requirement under section 337(a)(1)(A). *See Railway Wheels*, Unreviewed ID at 80 (“There is nothing in the statute to authorize a so-called ‘technical prong’ to be applied to section (a)(1)(A).”) As explained in *TianRui*, there is no express requirement that the domestic industry relate to the intellectual property involved in the investigation. 661 F.3d at 1335.

In summary, for purposes of section 337(a)(1)(A), the Commission considers the nature and significance of complainant’s domestic activities. *See, e.g., Certain Miniature, Battery-Operated, All-Terrain, Wheeled Vehicles*, Inv. No. 337-TA-122, USITC Pub. 1300 (Oct. 1982), Comm’n Op. at 6 (“The threshold question of the existence of an ‘industry . . . in the United States’ in this case requires an inquiry into the nature and significance of Complainants’ business activities in the United States which relate to the STOMPER toy vehicles.”); *Certain Cube Puzzles*, Inv. No. 337-TA-112, USITC Pub. 1334 (Jan. 1983), Comm’n Op. at 30 (the Commission analyzed the “significance” of complainant’s non-production domestic operations).

2. Injury to the Domestic Industry

To determine whether a complainant’s domestic industry has been substantially injured, the Commission considers a broad range of factors including:

- (1) the respondent’s volume of imports and penetration into the market;

PUBLIC VERSION

- (2) the complainant's lost sales;
- (3) underselling by the respondent;
- (4) the complainant's declining production, profitability and sales; and
- (5) harm to goodwill and reputation.

Railway Wheels, Unreviewed ID at 81 (citing *Electric Power Tools*, Unreviewed ID at 246); see also *Certain Digital Multimeters, and Products with Multimeter Functionality ("Digital Multimeters")*, Inv. No. 337-TA-588, Initial Determin. Granting Fluke Corp. Motion for Summary Det. of Viol. and Term. Inv. at 16–17 (EDIS Doc. ID No. 289768) (Jan. 14, 2008) (unreviewed), see Commission Determination Not to Review an ID Granting Summary Determination on Violation (EDIS Doc. ID No. 292150) (Feb. 12, 2008).

Three additional factors are considered when assessing threat of substantial injury:

- (1) foreign cost advantages and production capacity;
- (2) the ability of the imported product to undersell the domestic product;
and
- (3) substantial foreign manufacturing capacity combined with the respondent's intention to penetrate the U.S. market.

See *Certain Methods for Extruding Plastic Tubing*, Inv. No. 337-TA-110, USITC Pub. 1287, Comm'n Action & Order at 20 (Sept. 2, 1982); *Hand Dryers*, ID at 42 (June 2, 2017) (unreviewed in relevant part). "[T]here must also be proof of a nexus between the Respondents' unfair acts and the injury to [complainant's] domestic industry." *Certain Bearings and Packaging Thereof*, Inv. No. 337-TA-469, Initial Determination Concerning Violation of Section 337 and Recommended Determination on Issues

PUBLIC VERSION

Concerning Permanent Relief at 195 (Apr. 10, 2003) (unreviewed in relevant part), *see* Notice To Review (EDIS Doc. ID No. 184104) (May 28, 2003).

D. Default

“In any motion requesting the entry of default or the termination of the investigation with respect to the last remaining respondent in the investigation, the complainant shall declare whether it is seeking a general exclusion order.” 19 C.F.R. § 210.16(b)(4)(2). “A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.” 19 C.F.R. § 210.16(b)(4). After a respondent has been found in default by the Commission, “[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.” 19 C.F.R. § 210.16(c).

IV. Summary Determination

3-A SSI argues that the respondents have engaged in unfair methods of competition and unfair acts, in violation of 19 U.S.C. § 1337(a)(1)(A) and the Lanham Act (15 U.S.C. § 1125) through the use of false or misleading descriptions or representations of fact due to their unlicensed use of the 3-A Certification Marks in association with the advertising, offer for sale, and sale of certain food processing equipment and packaging materials thereof. Mot. at 1.

The Staff argues that “3-A SSI has presented substantial, reliable, and probative evidence of a violation.” Staff Resp. at 27.

A. Importation

Section 337 prohibits “[u]nfair methods of competition and unfair acts in the importation of articles . . . into the United States, or in the sale of such articles by the

PUBLIC VERSION

owner, importer, or consignee, the threat or effect of which is— [] to destroy or substantially injure an industry in the United States. . . .” 19 U.S.C. § 1337(a)(1)(A)(i). A complainant “need only prove importation of a single accused product to satisfy the importation element.” *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm’n Op. at 7-8, USITC Pub. No. 1605 (Nov. 1984) (importation of product sample sufficient to establish violation, even though sample “had no commercial value and had not been sold in the United States”).

3-A SSI argues the evidence shows that each of the defaulting respondents has imported accused products and/or sold such products within the United States after importation. *See* Corr. Mem. at 12–16. The Staff argues that “there is no genuine issue of material fact that the accused products of the Respondents have been imported into the United States.” Staff Resp. at 10.

As discussed below, there is no factual dispute related to importation of accused products by each of the defaulting respondents. 3-A SSI’s complaint, the facts in which must be presumed to be true as to the defaulting respondents, under 19 C.F.R. § 210.16(c)(1), and the evidence of importation (Mem. Exs. 1–14), provide substantial, reliable, and probative evidence that the defaulting⁵ respondents import into the United States, have others make for import into the United States, and/or sell after importation

⁵ Commission Rule 210.17 provides that “the presiding administrative law judge or the Commission [may] draw adverse inferences and [] issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to [a] party who fails to . . . respond to a motion for summary determination under § 210.18.” 19 C.F.R. § 210.17(c). Additionally, Commission Rule 210.15(c) provides that “a nonmoving party . . . shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion.” 19 C.F.R. § 210.15(c).

PUBLIC VERSION

into the United States products that unlawfully and falsely advertise the 3-A Certification Marks. *See* Corr. Mem. at 12–16.

In particular, 3-A SSI provided evidence of specific instances of importation by each of the defaulting respondents. The evidence shows that the defaulting respondents offered for sale food and dairy products on Alibaba, Made-in-China.com and eBay, and using well-known shipping companies, including at least UPS and DHL, import their products directly to consumers in the United States. *See id.* The evidence shows 3-A SSI purchased accused products of each defaulting respondent in the United States. *See* Mem. Exs. 1–5. The evidence includes invoices indicating that the products were purchased in the United States. *See id.* Labels on the devices or the packaging, or tracking information indicates that the devices were manufactured in China or shipped from China. *See id.*

Wenzhou QiMing Stainless Co., Ltd.

Complainant purchased a tri clamp elbow from Wenzhou QiMing Stainless Co., Ltd. in the United States. *See* Corr. Mem. at 16; Mem. Ex. 5. Complainant’s evidence includes photographs showing an invoice indicating the product was purchased in the United States. *See* Mem. Ex. 5. Labels on the device and/or product packaging indicate that the accused product was manufactured in China. *See id.*

High MPa Valve Manufacturing Co., Ltd.

Complainant purchased 20 sanitary elbows from High MPa Valve Manufacturing Co., Ltd. in the United States. *See* Corr. Mem. at 13; Mem. Ex. 1. Complainant’s evidence includes photographs showing an invoice indicating the product was purchased

PUBLIC VERSION

in the United States. *See* Mem. Ex. 1. Labels on the device and/or product packaging indicate that the accused product was manufactured in China. *See id.*

Wenzhou Sinco Steel Co., Ltd.

Complainant purchased pipe fittings from Wenzhou Sinco Steel Co., Ltd. in the United States. *See* Corr. Mem. at 14–15; Mem. Ex. 3. Complainant’s evidence includes photographs showing an invoice indicating the product was purchased in the United States. *See* Mem. Ex. 3. Labels on the device and/or product packaging indicate that the accused product was manufactured in China. *See id.*

Wenzhou Kasin Valve Pipe Fitting Co., Ltd.

Complainant purchased a cleaning ball from Wenzhou Kasin Valve Pipe Fitting Co., Ltd. in the United States. *See* Corr. Mem. at 15; Mem. Ex. 4. Complainant’s evidence includes photographs showing an invoice indicating the products were purchased in the United States. *See* Mot., Ex. 4. Labels on the devices and/or product packaging indicate that the accused products were manufactured in China. *See id.*

Wenzhou Fuchuang Machinery Co., Ltd.

Complainant purchased a stainless-steel elbow from Wenzhou Fuchuang Machinery Co., Ltd. in the United States. *See* Corr. Mem. at 12–13; Mem. Ex. 2. Complainant’s evidence includes photographs showing an electronic message indicating the product was purchased in the United States. *See* Mem. Ex. 2. Labels on the device and/or product packaging for the stainless-steel elbow indicate that the accused product was manufactured in China. *See id.*

The evidence regarding importation by the defaulting respondents includes:

PUBLIC VERSION

Defaulting Respondent	Principal Place of Business	Evidence of Purchase	Evidence of Source of Product
Wenzhou QiMing Stainless Co., Ltd.	China	Mem. Ex. 5 at 8	Mem. Ex. 5 at 9 (shipped from China)
High MPa Valve Manufacturing Co., Ltd	China	Mem. Ex. 1 at 3–5	Mem. Ex. 1 at 6–7 (shipped from China)
Wenzhou Sinco Steel Co., Ltd.	China	Mem. Ex. 3 at 9–11	Mem. Ex. 3 at 12 (shipped from China)
Wenzhou Kasin Valve Pipe Fitting Co., Ltd.	China	Mem. Ex. 4 at 8–9	Mem. Ex. 4 at 12–14 (shipped from China)
Wenzhou Fuchuang Machinery Co., Ltd.	China	Mem. Ex. 2 at 4–5	Mem. Ex. 2 at 6–7 (shipped from China)

Accordingly, the evidence shows that the importation requirement for finding a violation of section 337 has been satisfied for each defaulting respondent.

B. False Advertising

As noted above, 3-A SSI argues that substantial, reliable, and probative evidence supports a finding that respondents have engaged in unfair methods of competition and unfair acts through the use of false or misleading descriptions or representations of fact due to their unlicensed use of the 3-A Certification Marks in association with the advertising, offer for sale, and sale of certain food processing equipment and packaging materials thereof. Corr. Mem. at 1.

PUBLIC VERSION

1. False Statement

3-A SSI contends, “Respondents’ advertisements that their products are 3-A Certified and therefore meet the 3-A Standards are literally false.” Corr. Mem. at 7–8. In particular, 3-A SSI contends that the advertisements (i) make an express factual claim that is untrue by claiming to satisfy the 3-A Standard, and (ii) are implicitly false because the words or images considered in context (*i.e.*, use of the 3-A Certification Mark) necessarily imply a false statement. *Id.* at 8. 3-A SSI relies mainly on the display of the 3-A Certification Marks on certain websites—as opposed to use of the marks on accused products, product packaging, or product inserts.⁶ *Id.*; Mem. Ex. 2 at 4, Mem. Ex. 3 at 5–7.

The administrative law judge finds that 3-A SSI has shown the respondents use the 3-A Certification Marks on various point-of-sale (POS) displays, *i.e.*, websites, to represent falsely that the accused products have been certified as complying with 3-A SSI standards, the ability to use those same websites to order products, and the subsequent importation into the United States of the accused products.

As an initial matter, an article sold and imported in connection with the unauthorized use of a certification mark on a website may represent an unfair act under section 337(a)(1)(A). First, “[t]here is no doubt that trademark law and the Lanham Act are fully operative in cyberspace.” 5 McCarthy on Trademarks and Unfair Competition § 25A:1 (5th ed.) (citing *Cardservice Intern., Inc. v. McGee*, 950 F. Supp. 737, 741 (E.D. Va. 1997), *aff’d* without opinion, 129 F.3d 1258 (4th Cir. 1997)) (“The terms of the

⁶ As to High MPA, however, 3-A SSI also relies on a commercial invoice that was allegedly attached to the product packaging for sanitary elbows. Corr. Mem. at 13 (citing Mem. Ex. 1 at 5).

PUBLIC VERSION

Lanham Act do not limit themselves in any way which would preclude application of federal trademark law to the internet.”)).

Indeed, in the context of trademark infringement under the Lanham Act, the courts have found products sold in connection with unauthorized commercial use of registered trademarks on POS websites as infringing. *See, e.g., UL LLC v. Space Chariot, Inc.*, 250 F. Supp. 3d 596, 612 (C.D. Cal. 2017); *Marketquest Group, Inc. v. BIC Corp.*, 316 F.Supp.3d 1234, 1288 (S.D. Cal. 2018) (website displays of marks prominently near the goods for which the marks are registered constitute use in commerce under the Lanham Act, which “grants trademark protection only to marks that are used to identify and to distinguish goods or services in commerce—which typically occurs when a mark is used in conjunction with the actual sale of goods or services.”)

For instance, in *UL LLC v. Space Chariot*, after indicating that the case involved five causes of actions, including trademark infringement and false advertising, the court noted that the “gravamen of UL’s complaint is that [defendants] are using UL marks on various websites to falsely represent that [defendants’] goods—namely, hoverboards—have been certified by UL.” 250 F. Supp. 3d at 602. Further, the court found that defendants’ “Facebook page advertised their hoverboards as ‘safety certified’ along with images of the UL Certification Mark” and a defendant’s website used “what appears to be the UL Certification Mark along with a statement that all of their products were UL certified.” *Id.* at 603–04. Although the evidence also showed that a purchased hoverboard did not include any UL Certification Marks, the court ultimately concluded that “a rational trier of fact could not find for defendants on UL’s claims for trademark infringement and counterfeiting of a registered mark.” *Id.* at 612.

PUBLIC VERSION

These same principles can be applied in the context of false advertising under the Lanham Act—specifically to products sold in connection with the unauthorized use of certification marks on websites. Here, the evidence shows the respondents unambiguously display the 3-A Certification Marks on certain websites in connection with the accused products:

Respondent	Accused Product	Point-of-Sale	Certification Mark
Wenzhou QiMing	Sanitary clamp elbows	qmstainless.com (directs to ebay.com)	'919: Mem. Ex. 5 at 3 (splash screen)
			'628: Mem. Ex. 5 at 3 (splash screen), 4 (product page)
High MPa	Sanitary elbows	Alibaba.com	'117: Mem. Ex. 1 at 3 (product page)
			'628: Mem. Ex. 1 at 3 (product page), 4 (order details), 5 (commercial invoice)
Wenzhou Sinco Steel	Pipe fittings	Alibaba.com	'919: Mem. Ex. 3 at 4 (product page), 7 (certificate)
			'628: Mem. Ex. 3 at 5 (overview), 6 (specification)
Wenzhou Kasin	Clamped cleaning balls	www.wzststeel.com	'919: Mem. Ex. 4 at 2 (contact us), 3 (news center), 4 (product page)
			'628: Mem. Ex. 4 at 4 (product page)
Wenzhou Fuchuang	Hygienic fittings clamps	Made-in-China.com	'117: Mem. Ex. 2 at 4 (product page) ⁷
			'628 ⁸

⁷ The depiction of an alleged 3-A Certification Mark is not clear from the Exhibit, but according to the verified Complaint the web page displays the '117 mark. 2nd Am. Compl., ¶ 35.

⁸ 3-A SSI contends that Wenzhou Fuchuang's POS at Made-in-China.com displays the '628 mark in association with the hygienic fittings clamps. Corr. Mem. at 13–14.

PUBLIC VERSION

These unambiguous (and unauthorized) displays of 3-A SSI's Certification Marks (to represent that the accused products have been certified as complying with 3-A SSI standards) are false. Therefore, in context, these affirmative statements that the accused products have been certified as complying with 3-A SSI standards are literally false. *See Groupe SEB USA*, 774 F.3d at 198 (“In deciding whether an advertising claim is literally false, a court must decide first whether the claim conveys an unambiguous message and second whether that unambiguous message is false.”).

2. Deception

“If the statement is literally false, then the ALJ ‘may grant relief without considering evidence of consumer reaction.’” *Woven Textile Fabrics*, Inv. No. 337-TA-976, Unreviewed ID at 9 (quoting *Clorox Co. Puerto Rico v. Proctor & Gamble Commercial Co.*, 228 F.3d 24, 33 (1st Cir. 2000)). Therefore, inasmuch as the unauthorized displays of the 3-A SSI Certification Marks (to represent that the accused products have been certified as complying with 3-A SSI standards) are literally false, the administrative law judge finds actual deception.

3. Materiality

The record contains evidence that unlicensed use is likely to influence purchasing decisions:

[T]he 3-A Symbol is a selling feature for us and our customers ensuring quality in design, materials, and fabrication to comply with the many sanitary regulations of the states, USDA and FDA.

2nd Am. Compl., Ex. 18 (Oct. 22, 2018 Letter from Russell Copeland to Tim Rugh, Executive Director, 3-A SSI) at 2.

PUBLIC VERSION

Furthermore, “to understand the impact of fraudulent 3-A certification claims and unauthorized use of the 3-A mark by Chinese manufacturing companies, as seen by 3-A SSI’s legitimate licensees,” 3-A SSI conducted an online survey of all of its licensees. 1st Suppl. Mot., Decl. (Drumm), ¶¶ 2–4; *see also id.*, Exs. 17, 18. Based on 134 responses (1st Suppl. Mot., Decl. (Drumm), ¶ 5), the survey shows the unlicensed use of the 3-A Certification Marks is likely to influence purchasing decisions by (i) providing value in promoting sales, and (ii) being important to customers:

- Q.1: “Has your company found that displaying the 3-A Symbol is of value in promoting the sales of your products?” Result: Yes (89%), No (11%); and
- Q.3: “Do you consider use of the 3-A Symbol important in the ability of your company to attract customers?” Result: Yes (93%), No (7%).

Mem. Ex. 12 (Survey Results) at 2, 4.⁹

Therefore, the record here supports finding the unauthorized displays of the 3-A SSI Certification Marks (to represent that products have been certified as complying with 3-A SSI standards) is material because it is likely to influence purchasing decisions.

4. Interstate Commerce

Respondents’ products were manufactured in China, advertised on websites available in the United States, sold in the United States, shipped to the United States, and delivered to purchasers in the United States. *See, e.g.*, Mem. Ex. 2 at 1 (noting address of factory in China), *id.* at 3 (screenshot of made-in-china.com selling unauthorized products), *id.* at 2, 5 (communications showing sale to United States), *id.* at 6, 7 (showing shipment to the United States); Mem. Ex. 3 at 1 (noting address of factory in China), *id.*

⁹ It appears, however, that the survey was not limited to 3-A SSI’s licensees based in the United States. *See* 1st Suppl. Mot., Decl. (Drumm), ¶ 2.

PUBLIC VERSION

at 4–7 (screenshot of Alibaba.com as visited in the United States selling unauthorized products), *id.* at 8–11 (showing communications and sale to United States), *id.* at 12 (showing shipment to United States). Interstate commerce includes “United States import or export trade that can be regulated by Congress.” 5 McCarthy on Trademarks and Unfair Competition § 27:24 (5th ed.). Thus, the evidence shows that respondents’ products were sent through interstate commerce.

5. Injury

3-A SSI’s evidence below in section IV.C.2 (“Injury to the Domestic Injury”) shows substantial injury to a domestic industry. Consequently, 3-A SSI has likewise satisfied the fifth element—a likelihood of injury to its domestic industry. *See Verisign Inc. v. XYZ.com LLC*, 848 F.3d 292, 298–99 (4th Cir. 2017) (to succeed on a false advertising claim under the Lanham Act, a plaintiff must show, besides the other elements, that it has been or is likely to be injured as a result of a false or misleading statement of fact).

C. Domestic Industry

In a section 337 investigation, the complainant has the burden of proving the existence (or establishment) of a domestic industry that is subject to injury as a result of unfair acts. *See* 19 U.S.C. § 1337(a)(1). In a section 337(a)(1)(A)(i) investigation, the complainant must also prove that the “threat or effect” of any asserted unfair method of competition is “to destroy or substantially injure” a domestic industry. *See, e.g., Hand Dryers*, Comm’n Op. at 4. Thus, a complainant must prove both the existence of a domestic industry, and must prove that the unfair acts of the respondents cause either an

PUBLIC VERSION

actual injury to that domestic industry, or caused a future threatened injury to that domestic industry. *See, e.g., Hand Dryers*, ID at 37–38 (unreviewed in relevant part).

1. Existence of an Industry in the United States

3-A SSI argues that “[a] domestic industry, as required by 19 U.S.C. §1337(a)(1)(A), exists with respect to 3-A SSI’s activities in the United States related to articles protected, i.e., the standards represented by the 3-A SSI Certification Marks and subject to unfair competition by reasons of 3-A SSI’s significant investment in plant and equipment and significant employment of labor or capital.” Corr. Mem. at 16.

3-A SSI argues:

The 3-A SSI Certification Marks, as used by authorized licensees of 3-A SSI, certify that the sanitary industrial food handling equipment meets standards of cleanliness established by 3-A SSI. 3-A SSI currently maintains 76 Standards that cover a large variety of food and beverage processing equipment ranging from storage tanks to rotary pumps to ball valves. 3-A SSI also maintains 10 accepted practices which detail the design criteria for certain types of processing systems.

An industry exists in the United States by virtue of 3-A SSI’s investments in its facility, employment of labor, and research and development of standards represented by the 3-A SSI Certification Marks. 3-A SSI has invested in a facility located at 6888 Elm Street #2D, McLean, Virginia 22101 to support its growing business in connection with research and development of standards directed to food processing equipment protected by the 3-A SSI Certification Marks (“R&D”). 3-A SSI’s investment in its facilities in 2018, including rent and operating expenses for conducting activities related to R&D are set forth in Exhibit 14C.

3-A SSI has a staff of four full-time employees and one part-time technical assistant. Exhibit 15C details 3-A SSI’s employment of labor in the United States in connection with activities directed to R&D and sets forth 3-A SSI’s expenditures for their associated salaries and benefits. All of 3-A SSI’s employees work at 3-A SSI’s headquarters in McLean, Virginia.

The popularity of the articles protected by the 3-A SSI Certification Marks has led to a substantial investment in the exploitation

PUBLIC VERSION

of R&D, namely, an increase in investment in research (e.g. staff administrative program services) and development (e.g. funds spent on developing standards). 3-A SSI's investment in the exploitation of R&D is set forth in Exhibit 16C.

In summary, 3-A SSI's investments in the United States in its facility, employment of labor, and R&D, as described herein, and in Confidential Exhibits 13C-16C, demonstrate the existence of a domestic industry.

Id. at 17–18 (footnote omitted) (citations omitted).

The Staff argues:

[I]n view of the nature of the industry (developing and updating standards and granting licenses to show conformance to those standards) and significance (3-A SSI is the only entity creating sanitary standards for equipment for this scope of intended use in the United States), the Staff believes that 3-A SSI has shown that an “an industry in the United States” exists under section 337(a)(1)(A)(i).

Staff Resp. at 24.

3-A SSI argues that a domestic industry exists with respect to “3-A SSI's activities in the United States related to articles protected, i.e., the standards represented by the 3-A SSI Certification Marks.” Corr. Mem. at 16. The 3-A Certification Marks, as used by authorized licensees of 3-A SSI, certify that the sanitary industrial food handling equipment meets standards of cleanliness established by 3-A SSI. *Id.* at 17.

3-A SSI provided evidence that “3-A SSI develops and updates standards, and [that] it also grants licenses to show conformance to those standards to fabricators that meet [Third-Party Verification] inspection criteria.” 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶ 16. As of October 16, 2018, 3-A SSI had 516 licensees, including 261 U.S. licensees. Corr. Mem. at 16; Mem. Ex. 13C (list of 3-A SSI licensees). A license corresponds to products that fall under a given standard, for example, pumps, mixers, conveyors. 1st Suppl. Mot., Decl. (Rugh), ¶ 8. 3-A SSI has also provided evidence that

PUBLIC VERSION

the Certification Marks are used in connection with food processing equipment in the United States. *See* Mem. Ex. 13C (as to U.S. licensees, for example, the 3rd column indicates which 3A standard (represented by the Certification Marks) they use).

As to significance, “[t]hroughout the U.S., state and federal regulators use the 3-A SSI standards as the baseline criteria for the determination of whether equipment is safe and sanitary.” *Id.* ¶ 9. 3-A SSI provided evidence that the 3-A SSI standards are directly referenced in state legislation. 1st Suppl. Mot., Decl. (Rugh), ¶ 9; *id.* Ex. 19 (Wisconsin Administrative Code). The USDA also specifically cites to 3-A SSI’s standards in its USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment. *Id.* ¶ 11, *id.* Ex. 20 (USDA Guidelines).

3-A SSI also declares that it “is the only entity creating sanitary standards for equipment for this scope of intended use in the United States and is therefore the most important and only association in this industry.” 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶ 2. 3-A SSI maintains accreditation as a Standards Developer Organization by the American National Standards Institute (ANSI)—an organization that administers and coordinates the U.S. voluntary standards and conformity assessment system. *Id.*

3-A SSI provided evidence that it maintains 76 standards that cover a variety of food and beverage processing equipment ranging from storage tanks to rotary pumps to ball valves. 1st Suppl. Mot., Decl. (Rugh), ¶ 6; *see also* 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶ 23, Ex. 27 (list of 3-A sanitary standards); ¶ 25 (discussing Sanitary Standard for Sanitary Fittings (Exhibit 25), which the products of certain respondents should have conformed). Conformance with these standards is apparently represented by the 3-A Certification marks. 3-A SSI also maintains 10 accepted practices which provide the

PUBLIC VERSION

design criteria for certain types of processing systems. 1st Suppl. Mot., Decl. (Rugh), ¶ 6.

In addition to the evidence of the nature and significance of its domestic industry, 3-A SSI also provided evidence of its investments in (i) a facility in McLean, Virginia, (ii) the employment of three employees, and (iii) research (*e.g.*, staff administrative program services) and development (*e.g.*, funds spent on developing standards). Corr. Mem. at 17–18, 1st Suppl. Mot., Decl. (Rugh), ¶¶ 21–23, Mem. Ex. 14C (2018 Investments in Facility), Ex. 15C (2018 Employment of Labor), Ex. 16C (Investments in R&D per Year); 2nd Suppl. Mot., Suppl. Decl. (Rugh); *see also Hand Dryers*, Comm’n Op. at 4–5 (a showing pursuant to section 337(a)(3)(A-C) may be sufficient to establish the domestic industry required by section 337(a)(1)(A)).

Regarding the context of 3-A SSI’s domestic activities, the administrative law judge finds that the entirety of the above-stated investment is directed towards U.S. expenditures. *Cf. Certain Carburetors and Prods. Containing Such Carburetors*, Inv. No. 337-TA-1123, Comm’n Op. at 18–20 (Oct. 28, 2019). 3-A SSI provided evidence of operating expenses including professional services, travel/meetings, communications, standards development, office expenses, and general and administrative expenses totaling \$[]. *See* 1st Suppl. Mot., Decl. (Rugh), ¶ 21, Mem. Ex. 14C. 3-A SSI further provided evidence of salary and benefits totaling \$[]. *See* 1st Suppl. Mot., Decl. (Rugh), ¶ 22, Mem. Ex. 15C. 3-A SSI’s three employees “invest 100% of their time on the development and maintenance of the 3-A Standards and certification marks.” 1st Suppl. Mot., Decl. (Rugh), ¶ 22, Mem. Ex. 15C (2018 Employment of Labor).

PUBLIC VERSION

According to 3-A SSI, the editorial work to create new or manage existing standards is done by 3-A SSI staff. 2nd Suppl. Mot., Suppl. Decl. (Rugh), ¶ 3.

3-A SSI's investments in its facility and employment of labor demonstrate a showing of a domestic industry. 3-A SSI's headquarters includes four offices and a meeting space for conducting the day-to-day business of 3-A SSI—all of which are used to carry out the various standards settings and certification activities, which are related to the Certification Marks. 1st Suppl. Mot., Decl. (Rugh), ¶ 21, Mem. Ex. 14C (2018 Investments in Facility). 3-A SSI provided evidence of \$[] for its lease of its headquarters at 6888 Elm Street, Suite 2D McLean, Virginia 22101. *See* 1st Suppl. Mot., Decl. (Rugh), ¶ 21, Mem. Ex. 14C. The Director of Standards & Certification coordinates the activities of 14 Working Groups (consisting of experts representing fabricators of related types of equipment, systems, and materials and representatives of the users and sanitarian stakeholder groups) that carry out the bulk of the standards development work. *Id.*, ¶¶ 3–4.

In view of the nature of the industry (developing and updating standards and granting licenses to show conformance to those standards) and significance (3-A SSI is the only entity creating sanitary standards for equipment for this scope of intended use in the United States), 3-A SSI has shown that “an industry in the United States” exists under section 337(a)(1)(A)(i).

2. Injury to the Domestic Industry

To determine whether a complainant's domestic industry has been substantially injured, the Commission considers a broad range of factors including:

- (1) the respondent's volume of imports and penetration into the market;

PUBLIC VERSION

- (2) the complainant's lost sales;
- (3) underselling by the respondent;
- (4) the complainant's declining production, profitability and sales; and
- (5) harm to goodwill and reputation.

Railway Wheels, Unreviewed ID at 81 (citing *Electric Power Tools*, Unreviewed ID at 246); see *Digital Multimeters*, Unreviewed ID at 16–17.

Inasmuch as no respondents participated in this investigation, 3-A SSI did not receive discovery that might otherwise have allowed it to introduce evidence as to some of the indicia identified above. 3-A SSI primarily offered evidence of (i) lost licensing fees, and (ii) harm to goodwill and reputation. Corr. Mem. at 18–21; Mem. Ex. 12 (Survey Results); 1st Suppl. Mot., Decl. (Rugh), ¶¶ 13–19; 1st Suppl. Mot., Decl. (Drumm), Exs. 17 (Survey Participation Request), 18 (Survey Description).

The evidence shows that 3-A SSI has suffered a loss in licensing fees due to the respondents' unlicensed use of the 3A Certification Marks. For instance, had the respondents been established license-holders in 2018, each respondent would have been billed a flat renewal fee of \$950 per license for calendar year 2019. See Corr. Mem. at 18 (citing 1st Suppl. Mot., Decl. (Rugh), ¶ 8). Importantly, “[l]icensing fees are 3-A SSI’s primary revenue source.” 1st Suppl. Mot., Decl. (Rugh), ¶ 8. In these instances, there is a direct economic loss to 3-A SSI caused by the respondents’ unauthorized use of the 3-A Certification Marks.

The evidence also demonstrates that the unlicensed use of the 3-A Certification Marks has substantially injured 3-A SSI’s domestic industry by harming the goodwill associated with the 3-A Certification Marks. See Corr. Mem. at 19–21. For example, 3-A SSI presented evidence from conversations with its licensees that “unauthorized use

PUBLIC VERSION

of the marks and false advertising of compliance with the 3-A Standards by Chinese manufacturers was diminishing the value of the 3-A Standards, was hurting 3-A SSI's goodwill in the United States, and was injuring 3-A SSI." 1st Suppl. Mot., Decl. (Rugh), ¶ 17. Indeed, "U.S. federal and state regulators told [3-A SSI] that if 3-A SSI did not stop infringement of its certification marks by non-compliant, unlicensed Chinese companies, the 3-A certification marks would lose significant value." *Id.*, ¶ 15. 3-A SSI also presented survey evidence showing that the sale of products that falsely advertise the 3-A Certification Marks harms the goodwill and reputation of its licensees' businesses—which indirectly harms the goodwill and reputation of 3-A SSI. *See* Mem. Ex. 12 (Survey Results) (Q.8: "Does the sale of competitive infringing and counterfeit goods from China that falsely advertise the 3-A Symbol or Mark harm the goodwill and reputation of your business?" Result: Yes (65%), No (35%)).

The evidence shows that the importation of the unlicensed Accused Products has caused an actual injury to 3-A SSI's domestic industry (3-A SSI's activities in the United States related to articles certified by the 3-A SSI Certification Marks). Specifically, the evidence shows that 3-A SSI has suffered a loss in licensing fees and harm to its goodwill and reputation (and the goodwill and reputation associated with the 3-A Certification Marks).

There is no dispute with respect to the evidence offered by 3-A SSI. 3-A SSI has presented substantial, reliable, and probative evidence that the domestic industry requirement has been satisfied. Therefore, 3-A SSI is entitled to a summary determination that it has satisfied the domestic industry requirement.

PUBLIC VERSION

V. Recommended Determination on Remedy and Bonding

The Commission has broad discretion in selecting the form of the remedy in a section 337 proceeding. *See Fuji Photo Film v. Int'l Trade Comm'n*, 386 F.3d 1095, 1106–07 (Fed. Cir. 2004); *Certain Hydraulic Excavators and Components Thereof*, Inv. No. 337-TA-582, Comm'n Op. at 15 (Feb. 3, 2009), USITC Pub. No. 4115 (Dec. 2009). Where a violation is found, the Commission generally issues a limited exclusion order directed against products imported by persons found in violation of the statute.¹⁰ In certain circumstances, however, the Commission may issue a general exclusion order directed against all infringing products. 19 U.S.C. § 1337(d)(2).

3-A SSI argues:

Where, as here, no party has appeared to contest an investigation, a GEO is warranted when a violation is established by “substantial, reliable, and probative evidence” and the “requirements of subsection (d)(2) are met.” 19 U.S.C. § 1337(g)(2). Under Section (d)(2), a GEO may issue when “a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons” or “there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2)(A); 19 U.S.C. § 1337(d)(2)(B).

Corr. Mem. at 21.

The Staff argues:

Based on [the] undisputed evidence, the Staff submits that 3-A SSI has met its burden of showing that (i) a GEO is necessary to prevent circumvention of an exclusion order limited to products of named respondents, and (ii) there is a widespread pattern of violation of section 337 and it is difficult to identify the source of infringing products. Therefore, the circumstances of this particular industry are such that a GEO is necessary to provide 3-A SSI with an effective remedy.

¹⁰ 3-A SSI did not request cease and desist orders against any of the respondents. *See* Corr. Mem. at 27.

PUBLIC VERSION

Staff Resp. at 28.

A. General Exclusion Order

A GEO is warranted when “a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons” or “there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2)(A)-(B). Satisfaction of either criterion is sufficient for imposition of a GEO. *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm’n Op. at 24 (Oct. 1, 2009). The Commission “now focus[es] principally on the statutory language itself” when determining whether a GEO is warranted. *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25 (Mar. 27, 2009). In determining whether to issue a GEO, the Commission may look to the activities of non-respondents as well as respondents that have defaulted or been terminated from an investigation. *See, e.g., Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm’n Op. at 59 (Apr. 14, 2010).

3-A SSI argues that a GEO should issue because (i) it is necessary to prevent circumvention of a limited exclusion order, and (ii) there is a widespread pattern of violation where it is difficult to identify the source of products. *See* Corr. Mem. at 22–26.

In this investigation, each of the respondents has been found in default pursuant to section 337(g)(1) and Commission Rule 210.16. Section 337(g)(2) grants the Commission the authority to issue a GEO under default circumstances if:

(A) no person appears to contest an investigation concerning a violation of the provisions of this section,

PUBLIC VERSION

(B) such a violation is established by substantial, reliable, and probative evidence, and

(C) the requirements of subsection (d)(2) are met.

Section 337(d)(2) states in relevant part:

(d) Exclusion of articles from entry . . .

(2) The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that –

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2). “The standards for finding a violation of 337 under section 337(d)(2) are the same as those for finding a violation under 337(g)(2).” *Certain Digital Multimeters, and Products with Multimeter Functionality*, Inv. No. 337-TA-588, Comm’n Op. at 4 (June 3, 2008). In other words, a violation of section 337 under 337(d)(2) must be supported by “substantial, reliable, and probative evidence.” *Id.* (citing *Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof Such as Sildenafil Citrate, and Products Containing Same*, Inv. 337-TA-489, Comm’n Op. at 5 (Feb. 9, 2004).

1. Necessary to Prevent Circumvention of an LEO

Under section 337(d)(2)(A), the Commission considers whether conditions are ripe for circumvention of a limited exclusion order. See *Certain Electronic Paper Towel Dispensing Devices and Components Thereof*, Inv. No. 337-TA-718, Comm’n Op. at 8,

PUBLIC VERSION

15 (Dec. 1, 2011). In considering whether conditions are ripe for circumvention, the Commission has relied on “evidence [that] shows the following: (1) there is a strong demand for the [products]; (2) the importation and sale of infringing products can be extremely profitable...; (3) extensive domestic marketing and distribution networks already exist which allow foreign manufacturers to widely distribute infringing [products] throughout the United States...; (4) large online marketplaces ... have emerged which provide both foreign manufacturers and domestic retailers a dedicated, flexible way to sell to consumers; (5) it is difficult to identify the sources of infringing products because of the ability to package [infringing products] in unmarked, generic packaging, . . . and (6) manufacturers can easily evade a limited exclusion order by establishing shell offshore distribution companies with unclear ties to the original manufacturer.” *Certain Inkjet Ink Supplies and Components Thereof*, Inv. No. 337-TA-730, Comm’n Op. at 4–5 (Nov. 29, 2011).

As discussed below, 3-A SSI has presented substantial, reliable, and probative evidence that a GEO is necessary under section 337(d)(2)(A) to prevent circumvention of a LEO.

Regarding the first and second *Inkjet* factors, inasmuch as selling unlicensed products is potentially a profitable enterprise, respondents and non-respondents alike have a large financial incentive to circumvent any limited exclusion order that the Commission would impose upon them. See *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor* (“*Arrowheads*”), Inv. No. 337-TA-977, Comm’n Op. at 8–12 (Apr. 28, 2017) (noting the respondents’ extremely low prices induce would-be FeraDyne customers to purchase counterfeits instead); *Certain Electric*

PUBLIC VERSION

Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same (“*Skin Care Devices*”), Inv. No. 337-TA-959, Comm’n Op. at 15–16 (Feb. 13, 2017) (noting price comparisons and “demand for the infringing products is strong and profits are high” as support for general exclusion order). The fact that the respondents have ignored proceedings in this investigation (which resulted in them being found in default) suggests that they would not abide by the terms of any LEO order that the Commission may impose.

As to the third and fourth *Inkjet* factors, 3-A SSI has shown that unlicensed products are advertised and sold from multiple large online retailers and other specific websites, both of which allow respondents and other violating parties to sell directly to consumers and distributors. *See, e.g.*, Mem. Ex. 1 at 2 (High MPA products for sale on Alibaba.com); Mem. Ex. 2 at 3 (Wenzhou Fuchuang products for sale on made-in-china.com); *id.* Ex. 3 at 4–11 (Sinco Steel products for sale on Alibaba.com); Mem. Ex. 4 at 3–4 (products for sale through wzststeel.com); Mem. Ex. 5 at 3–7 (products for sale on ebay.com); Mem. Ex. 6 at 1–19 (Sinco Steel products advertised and for sale on sincosteel.com, alibaba.com, and eworldtrade.com); Mem. Ex. 7 at 1–13 (Wenzhou Fuchuang products advertised and for sale on 8613185861763.waimaotong.com, www.chinatruckmanufacturers.com, www.fuchuangvalve.com, brewingtanks.com, and aliexpress.com); Mem. Ex. 8 at 1–6 (Longva products for sale on alibaba.com); Mem. Ex. 9 at 1–18 (non-respondent violators advertising and selling on Alibaba.com).

Regarding the fifth *Inkjet* factor, as explained in further detail in the following section, 3-A SSI has also presented evidence that the products are shipped in unmarked, generic packaging.

PUBLIC VERSION

Turning to the sixth *Inkjet* factor, the evidence shows that the respondents use e-commerce websites such as eBay, Alibaba or made-in-china.com to sell their products in the United States. *See, e.g.*, Mem. Exs. 1–9. Respondents such as Wenzhou Fuchuang and Wenzhou Kasin Valve conduct operations using intermediaries while providing little or no information about the company behind the products. *See* Corr. Mem. at 25–26 (showing an order placed with Wenzhou Fuchuang was responded to by an individual from New Tek Industrial, Ltd., and sent by Hangzhou Bus Logistics, and that an order placed with Wenzhou Kasin Valve was responded to by an individual using the wzststeel.com domain).

Moreover, 3-A SSI also identified additional allegedly infringing products being sold on various online shopping sites. *See id.* at 23–24. Based on the lack of identifying information, it is clear that manufacturers of these products can easily change names and set up new online “storefronts” with retailers like made-in-china.com to circumvent any limited exclusion order. *See Arrowheads*, Comm’n Op. at 8 (noting that “counterfeit manufacturers of broadhead arrowheads conduct their operations anonymously via Amazon, eBay, Alibaba, and AliExpress, providing little or no information about the company behind the products” and “counterfeiters often change or repost the listing after the take-down in order to continue their activities.”).

All respondents obtain their products from factories in China. *See* Corr. Mem. at 22–26. The fact that factories exist that are prepared to manufacture additional infringing product for other companies if the named respondents in this case become subject to a limited exclusion order shows that a general exclusion order is necessary. *See Skin Care Devices*, Comm’n Op. at 16–17 (citing “low barriers to entry into the market” and

PUBLIC VERSION

prevalence of other companies in addition to named respondents producing infringing goods in support of general exclusion order).

Substantial, reliable, and probative evidence establishes that a general exclusion order is necessary to prevent circumvention of an exclusion order limited to products of named persons. Accordingly, the issuance of a general exclusion order under 19 U.S.C. § 1337(d)(2)(A) is appropriate with respect to the certification marks.

2. Widespread Pattern of Violation Where It Is Difficult to Identify the Source of Infringing Products

As discussed below, 3-A SSI has presented substantial, reliable, and probative evidence for the issuance of GEO under section 337(d)(2)(B) directed to the certification marks due to a widespread pattern of violation and the difficulty in identifying the source of infringing products.

“The Commission has found in other investigations that numerous online sales of infringing imported goods can constitute a pattern of violation of Section 337.” *Certain Loom Kits for Creating Linked Articles (“Loom Kits”)*, Inv. No. 337-TA-923, Comm’n Op. at 14 (June 26, 2015) (citing cases).

The record demonstrates that numerous foreign manufacturers engage in online marketplaces resulting in sales of infringing products. *See* Corr. Mem. at 23–26. 3-A SSI found many companies with too little identifying information to name them as respondents in this investigation. *See id.* at 24–25. There is evidence that these companies, which sell products under names such as OMSS, Longva and Wenzhou Yongda Light Industry Machinery Co. Ltd., import their products into the United States as well. *See id.* Wenzhou Fuchuang Machinery Co. Ltd. sells and advertises through

PUBLIC VERSION

fuchuangvalve.com, <http://newtekindustry.ruixiangmc.com/>, waimaotong.com, chinatruckmanufacturers.com, among others. *See* Mem. Ex. 7. Moreover, they operate under at least two names: Wenzhou Fuchuang Machinery Co. Ltd. and New Tek Industrial Company Ltd. *See id.* at 1 (compare company name at top with company name watermark on products); Mem. Ex. at 3 (compare company name at top left with company name on product image); Mem. Ex. 1 at 7 (showing High MPA also uses GZP Valve as a website and business name); 1st Suppl. Mot., Decl. (Rugh), ¶ 16.

Moreover, these unlicensed non-respondents are using the 3-A Certification Marks. For example, Longva sells products on Alibaba.com that display 3-A Certification Marks but is not a licensee. *See* Mem. Ex. 8. Similarly, OMSS and Wenzhou Yongda Light Industry Machinery Co. Ltd. are not licensees and yet list products displaying the 3-A Certification Marks on made-in-china.com. *See* Mem. Ex. 9. The Commission has found that this broad array of storefronts and products satisfies the widespread pattern requirement. *See, e.g., Loom Kits*, Comm'n Op. at 14 (citing *Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm'n Op. at 10 (July 10, 2014)).

3-A SSI notes that the business practices of the unlicensed sellers are unclear. For example, an order placed with Wenzhou Kasin Valve was responded to by an individual using the wzststeel.com domain, *see* Mem. Ex. 4 at 6, invoiced by Kasin Group Co., Limited, *see id.* at 7, paid to a bank account owned by the Kasin Group Co. Limited, *see id.* at 8, and fulfilled by Kasin Valve & Pipe Fitting Co. Ltd., *see id.* at 11. Due to the variations in names and companies involved, a GEO is necessary to prevent circumvention. Such evidence further supports a finding of a widespread pattern of

PUBLIC VERSION

unauthorized use. *See Arrowheads*, Comm'n Op. at 10–11; *Certain Mounting Apparatuses For Holding Portable Electronic Devices And Components Thereof* (“*Mounting Apparatuses*”), 337-TA-1086, Initial Determination Granting Complainant National Products Inc.’s Motion for Summary Determination of Violations by the Defaulting Respondents at 91–92 (Nov. 28, 2018) (unreviewed in relevant part), *see* Commission Determination to Review-In-Part an Initial Determination Granting-In-Part Complainant’s Motion for Summary Determination of Violation of Section 337 by the Defaulting Respondents; on Review, Reverse and Remand Portions of the Initial Determination; Extension of the Target Date (EDIS Doc. ID No. 670304) (Mar. 18, 2019).

Furthermore, 3-A SSI’s efforts to stop respondents’ and non-respondents’ infringement have been almost entirely unsuccessful. 3-A SSI sent multiple cease and desist letters before instituting this investigation but only more sites and products have appeared. *See* 2nd Am. Compl., Ex. 12 (containing cease and desist letters sent to all respondents); *see also Certain Water Filters and Components Thereof*, Inv. No. 337-TA-1126, Initial Determination Granting Motion for Summary Determination of Violation and Recommended Determination on Remedy and Bonding at 70 (July 11, 2019) (unreviewed in relevant part), *see* Commission Determination to Review-in-Part an Initial Determination Granting Complainants’ Motion for Summary Determination of Violation of Section 337 by the Defaulting Respondents, and on Review, to Modify Certain Portions of the Initial Determination; Request for Written Submissions on Remedy, Bonding and the Public Interest (EDIS Doc. ID 686089) (Aug. 23, 2019).

PUBLIC VERSION

Given the large number of importers importing the infringing products under a wide variety of names and aliases, it is difficult, if not impossible, for 3-A SSI to determine which of these companies have stopped importing allegedly infringing goods, and which have simply rebranded themselves and their products to continue importing the same goods under new aliases. *See Loom Kits*, Comm'n Op. at 13 (“[A] large number of anonymous infringing sales on the Internet [] supports a likelihood of circumvention under subparagraph (A) and also supports a determination that it is difficult to identify the source of infringing products under subparagraph (B).”). These business practices support the conclusion that the defaulting respondents would be highly capable of evading a limited exclusion order. *Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-861/867, Comm'n Op. at 9 (Jul. 10, 2014) (“[T]he Commission finds that the respondents have, or are capable of, changing names, facilities, or corporate structure to avoid detection.”); *see also Skin Care Devices*, Comm'n Op. at 15 (citing name changes to escape detection); *Arrowheads*, Comm'n Op. at 11 (same); *Mounting Apparatuses*, ID at 89 (same) (unreviewed in relevant part).

Such evidence shows that the identity of infringers is difficult to discern and that a limited exclusion order could easily be evaded. The availability of online retail and manufacturing sources creates low barriers to entry, allowing entities easily to replace respondents. *See Skin Care Devices*, Comm'n Op. at 16.

Furthermore, the evidence shows that companies import their products in small quantities and generic packaging making it difficult to identify the seller. *See Corr. Mem.* at 24. For example, 3-A SSI purchased the following products which arrived in packaging that contained little or no description of the seller or product origin:

PUBLIC VERSION



High MPA Valve (Mem. Ex. 1)



Wenzhou Fuchuang Mach. Co. (Mem. Ex. 2)

[]

[]

Wenzhou Sinco Steel (Mem. Ex. 3)

Wenzhou Kasin Valve Pipe Fitting (Mem. Ex. 4)

PUBLIC VERSION

[]

Wenzhou QiMing Stainless Co. (Mem. Ex. 5)

This evidence establishes that it would be difficult to identify the sources of the allegedly infringing products.

Based on the undisputed evidence presented, 3-A SSI has met its burden of establishing a pattern of infringement by respondents, and that it is difficult to identify the sources of infringing products. *See* 19 U.S.C. § 1337(d)(2)(B). Therefore, the circumstances of this particular industry are such that a GEO is necessary to provide 3-A SSI with an effective remedy.

A GEO is warranted in this investigation both to prevent circumvention of an exclusion order limited to products of named entities, and because there is a pattern of violation of section 337 and it is difficult if not impossible to identify the source of infringing products, as discussed above.

In the event the Commission does not issue a GEO, the administrative law judge finds that the default determination is sufficient to establish a violation for the purpose of

PUBLIC VERSION

issuing limited exclusion orders directed to the defaulting respondents.¹¹ See 19 C.F.R. § 210.16(c)(1).

B. Bond

Pursuant to section 337(j)(3), the administrative law judge and the Commission must determine the amount of bond to be required of a respondent, during the 60-day Presidential review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. The purpose of the bond is to protect the complainant from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii),

When reliable price information is available, the Commission has often set bond by eliminating the differential between the domestic product and the imported, infringing product. See *Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. See *Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41 (1995). A 100 percent bond has been required when no effective alternative existed. See *Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26–27 (July 1997) (a 100% bond imposed when price comparison

¹¹ “After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public [interest.]” 19 C.F.R. § 210.16(c)(1).

PUBLIC VERSION

was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimis* and without adequate support in the record).

A bond of 100% is appropriate in this investigation. Inasmuch as the evidence shows that the sales were made online at various price points and quantities, calculating an average price would be difficult. Given this state of the evidentiary record, and the fact that all of the respondents have defaulted rather than provide discovery, a bond value of 100% is appropriate. Under these circumstances, the administrative law judge recommends that the respondents be required to post a bond of 100% of entered value during the 60-day Presidential review period. This amount should be sufficient to prevent any harm to 3-A SSI during the period of Presidential review.

VI. Initial Determination and Order

It is the initial determination of the administrative law judge that 3-A SSI's Motion No. 1161-8 for summary determination of violation of section 337 by the respondents is granted.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

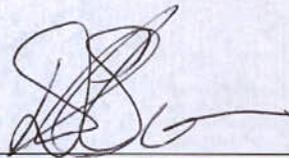
Further, it is recommended, subject to any public interest determination made by the Commission, that the Commission issue a general exclusion order with respect to the

PUBLIC VERSION

3-A SSI certification marks, and that a 100 percent bond be established for importation during the Presidential review period.

All issues delegated to the administrative law judge, pursuant to the notice of investigation, have been decided, with dispositions as to all respondents. Accordingly, this investigation is concluded in its entirety.

To expedite service of the public version, each party is hereby ordered to file with the Commission Secretary no later than February 26, 2020, a copy of this initial and recommended determination with brackets to show any portion considered by the party (or its suppliers of information) to be confidential, accompanied by a list indicating each page on which such a bracket is to be found. At least one copy of such a filing shall be served upon the office of the undersigned, and the brackets shall be marked in bold red. If a party (and its suppliers of information) considers nothing in the initial determination to be confidential, and thus makes no request that any portion be redacted from the public version, then a statement to that effect shall be filed.¹²



David P. Shaw
Administrative Law Judge

Issued: February 18, 2020

¹² Confidential business information (“CBI”) is defined in accordance with 19 C.F.R. § 201.6(a) and § 210.5(a). When redacting CBI or bracketing portions of documents to indicate CBI, a high level of care must be exercised in order to ensure that non-CBI portions are not redacted or indicated. Other than in extremely rare circumstances, block-redaction and block-bracketing are prohibited. In most cases, redaction or bracketing of only discrete CBI words and phrases will be permitted.

**CERTAIN FOOD PROCESSING EQUIPMENT AND PACKAGING MATERIALS
THEREOF**

INV. NO. 337-TA-1161

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 14 (Initial Determination)** has been served by hand upon the Commission Investigative Attorney, **Todd Taylor, Esq.**, and the following parties as indicated, on

MAR 05 2020



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, DC 20436

For complainant 3-A Sanitary Standards, Inc.:

Gregory L. Ewing, Esq.
POTOMAC LAW GROUP PLLC
1300 Pennsylvania Ave, NW, Suite 700
Washington, DC 20004

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: _____