

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN FOODSERVICE
EQUIPMENT AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1166

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER
REVIEW AND 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 to review in part the final initial determination (“final ID”) issued by the presiding administrative law judge (“ALJ”) on June 4, 2021, finding no violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 3, 2019, based on a complaint filed on behalf of Illinois Tool Works, Inc. of Glenview, Illinois; Vesta Global Limited of Hong Kong; Vesta (Guangzhou) Catering Equipment Co., Ltd. of China; and Admiral Craft Equipment Corp. of Westbury, New York (collectively, “Complainants”). 84 FR 31911 (Jul. 3, 2019). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation of articles into the United States, or in the sale of such articles by the owner,

importer, or consignee of certain foodservice equipment and components thereof by reason of misappropriation of trade secrets and unfair competition through tortious interference with contractual relationships, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id.* at 31911–12. The notice of investigation named as respondents Guangzhou Rebenet Catering Equipment Manufacturing Co., Ltd.; Zhou Hao; Aceplus International Limited (aka Ace Plus International Ltd.); Guangzhou Liangsheng Trading Co., Ltd.; and Zeng Zhaoliang, all of China. *Id.* at 31912. The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

On July 9, 2020, Order No. 52 granted a motion for summary determination of no substantial injury to a domestic industry. The Commission determined to review Order No. 52, and on December 14, 2020, reversed the grant of summary determination.

On June 4, 2021, the ALJ issued the final ID, which found that Respondents did not violate section 337, primarily based on a Complainants’ failure to establish a domestic industry. The final ID found that the Commission has *in rem* jurisdiction over the accused products, subject matter jurisdiction, and personal jurisdiction. ID at 99. The final ID also found that Respondents imported into the United States, sold for importation, or sold within the United States after importation the accused products. *Id.* The final ID further found that Respondents have misappropriated certain of Complainants’ trade secrets in the manufacture of certain accused products, but that Complainants have not shown that Respondents tortiously interfered with contractual relationships. *Id.* The final ID additionally found that Complainants have not shown that the importation and sale of accused products has the threat or effect of destroying or substantially injuring a domestic industry.

The RD issued on June 10, 2021. The RD recommended that, if the Commission finds a violation of section 337, the Commission should issue limited exclusion orders of various durations for each of the various categories of accused products. RD at 10. The durations of the recommended exclusion orders are all quite short, ranging from 1–17 months from issuance. *Id.* at 10–11. The RD further recommended that a cease and desist order would be unnecessary. *Id.* at 12. The RD additionally recommended that a bond of 1% of entered value be imposed during the period of Presidential review. The public interest was not delegated to the ALJ.

On June 21, 2021, Complainants and Respondents filed petitions for review and OUII filed a contingent petition for review. On June 29, 2021, the parties filed responses to the petitions.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined to review the following:

- (1) The final ID’s findings and conclusions as to the existence of a domestic industry and injury to a domestic industry.

- (2) The final ID’s findings and conclusions regarding the wrongful taking and use of the Bills of Materials (“BOM”) Trade Secrets and the Custom Components and Mold Trade Secrets.

The Commission has determined to not review the remainder of the final ID.

The parties are requested to brief their positions with reference to the applicable law and the evidentiary record regarding the questions provided below:

- (1) Regarding domestic industry:
 - (A) Please explain whether Complainants’ asserted expenditures for warranty services differ from those of a mere importer, including by discussing: (A) how the Commission and the Federal Circuit have considered such investments in prior investigations, and (B) how the facts of this investigation should be assessed in light of applicable precedent. Also address the extent to which the warranty servicing activities relied upon to show the existence of a domestic industry need to take place in the United States either as a legal or a practical matter, such that those activities would not distinguish a domestic industry from a mere importer.
 - (B) Are complainants required to allocate payments made to third-party service providers for warranty services to qualifying activities in an investigation under 19 U.S.C. 1337(a)(1)(A)? In answering this question, please discuss any relevant legal authority.
 - (C) Did Complainants sufficiently allocate their payments to third-party service providers for warranty services to qualifying activities.
 - (D) If the payments to third-party service providers are not sufficiently allocated, what qualifying expenditures remain?
 - (E) What evidence and argument were timely-presented regarding the nature and significance of those remaining qualifying expenditures?
 - (F) Assuming there is an industry in the United States within the meaning of 19 U.S.C. 1337(a)(1)(A), please discuss the evidence and arguments addressing whether the industry is substantially injured or threatened with substantial injury.
- (2) Regarding wrongful taking and use of the BOM Trade Secrets:
 - (A) To what extent are Vesta’s BOM Codes non-public information, and to

what extent did the final ID make findings on that point (particularly unpetitioned findings)?

(B) Is it contradictory for the final ID to consider the similarities in Vesta's BOM Codes and Rebenet's part numbers in its wrongful taking and use analysis, where the final ID finds that the BOM Codes are not themselves trade secrets? Please discuss any relevant legal authority.

(C) If evidence of the similarities between Vesta's BOM Codes and Rebenet's part numbers cannot be considered for determining wrongful taking and use of the BOM Trade Secrets, could Complainants still meet their burden of proof as to those elements of trade secret misappropriation?

(3) Regarding wrongful taking and use of the Custom Components and Mold Trade Secrets:

(A) Is it contradictory for the final ID to consider the similarities in Vesta's BOM Codes and Rebenet's part numbers, and Vesta's and Rebenet's drawings, where those codes and drawings were not found to be trade secrets? Please discuss any relevant legal authority.

(B) If evidence of the similarities between Vesta's BOM Codes and Rebenet's part numbers, and Vesta's and Rebenet's drawings cannot be considered for determining wrongful taking and use of the Custom Components and Mold Trade Secrets, could Complainants still meet their burden of proof as to those elements of trade secret misappropriation?

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are 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 and/or cease and desist orders would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers.

The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the questions identified in this notice. 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 written submissions should include views on the RD that issued on June 10, 2021.

Initial written submissions, limited to 60 pages, must be filed no later than the close of business on August 19, 2021. The following information is also requested in the initial written submissions and will not count against the above-mentioned page limitations. Complainants are requested to identify the form of the remedy sought. Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS subheadings under which the accused articles are imported, and to supply identification information for all known importers of the accused products.

Reply submissions, limited to 30 pages, must be filed no later than the close of business on August 26, 2021. 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 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1166") 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 at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). 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 Commission vote for this determination took place on August 5, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: August 5, 2021