

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BATTERIES AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-1244

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART AN INITIAL
DETERMINATION GRANTING IN PART COMPLAINANTS' MOTION FOR
SUMMARY DETERMINATION OF A VIOLATION OF SECTION 337; REQUEST
FOR WRITTEN SUBMISSIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (“ID”) (Order No. 15) of the presiding Administrative Law Judge (“ALJ”) granting-in-part the complainants’ motion for summary determination of a violation of section 337. The Commission also requests written submissions from the parties on the issue under review and from the parties, interested government agencies, and interested persons on the issues of remedy, bonding, and the public interest, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2392. 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 February 5, 2021, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by complainants One World Technologies, Inc. (“One World”) and Techtronic Power Tools Technology Ltd. (“TTT”) (collectively, “Complainants”). 86 FR 8379-80 (Feb. 5, 2021). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain batteries and products containing same by reason of infringement of the sole claims of U.S. Patent Nos.

D579,868 (“the ’868 patent”); D580,353 (“the ’353 patent”); and D593,944 (“the ’944 patent”). *Id.* at 8379. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation (“NOI”) names thirteen (13) respondents: Darui Development Limited (“Darui Development”); Dongguan Xinjitong Electronic Technology Co., Ltd. (“Dongguan Electronic”); Shenzhen Laipaili Electronics Co., Ltd. (“Shenzhen Laipaili”); Shenzhen MingYang Creation Electronic Co., Ltd. (“Shenzhen MingYang”); Shenzhen Rich Hao Yuan Energy Technology Co., Ltd. (“Shenzhen Rich Hao”); Shenzhen Runsensheng Trading Co., Ltd. (“Shenzhen Runsensheng”); Shenzhen Saen Trading Co., Ltd. (“Shenzhen Saen”); Shenzhen Shengruixiang E-Commerce Co., Ltd. (“Shenzhen E-Commerce”); Shenzhen Uni-Sun Electronics Co., Ltd. (“Shenzhen Uni-Sun”); and Shenzhen Vmartego Electronic Commerce Co., Ltd. (“Shenzhen Vmartego”) (collectively, the “Defaulted Respondents”); Shenzhen Liancheng Weiye Industrial Co., Ltd.; Shenzhen Ollop Technology Co. Ltd.; and Shenzhen Tuo Yu Technology Co., Ltd. *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.*

On May 17, 2021, Commission terminated the investigation based upon the withdrawal of the complaint with respect to respondents Shenzhen Liancheng Weiye Industrial Co., Ltd., Shenzhen Ollop Technology Co. Ltd., and Shenzhen Tuo Yu Technology Co., Ltd., after Complainants were unable to serve these respondents with copies of the Complaint and NOI. Order No. 7 (Apr. 21, 2021), *unreviewed by* Notice (May 17, 2021).

On April 20, 2021, Complainants filed a motion for an order to show cause why the remaining ten (10) named respondents (*i.e.*, the Defaulted Respondents) should not be found in default after failing to respond to the Complaint and NOI, which had been duly served upon them. On May 4, 2021, the motion was granted and an order to show cause was issued. Order No. 8 (May 4, 2021). On June 3, 2021, after they failed to respond to the order to show cause, ALJ issued an ID finding all ten Defaulted Respondents to be in default. Order No. 9 (June 3, 2021), *unreviewed by* Notice (June 23, 2021).

On June 21, 2021, Complainants moved for a summary determination of violation of Section 337 by the Defaulted Respondents and for a recommended determination recommending entry of a general exclusion order and a bond at the rate of 100 percent during the Presidential review period.

On July 16, 2021, OUII filed a response to Complainants’ motion supporting a finding of summary determination against only four (4) of the Defaulted Respondents: Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen. Specifically, OUII argued Complainants did not sufficiently connect the importation, sale, or sale after importation of certain of the Accused Products to the Defaulted Respondents. Otherwise, OUII stated it generally supports a finding that Complainants have satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B) (19 U.S.C. 1337(a)(3)(A), (B)) and also supports Complainants’ remedy requests.

On March 25, 2022, the presiding ALJ issued the subject ID (Order No. 15) granting in part and denying in part Complainants' motion for summary determination. The ID finds that Complainants have shown by reliable, probative, and substantial evidence that a violation of section 337 has occurred with respect to the Asserted Patents as to the following four Defaulted Respondents: Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen. The ID finds that no violation has been established as to any other respondent. The ALJ's recommended determination on remedy and bonding ("RD") recommends issuance of a general exclusion order with respect to the asserted patents. The RD does not recommend issuance of any cease and desist order.

On April 6, 2022, the IA petitioned for review of certain aspects of the subject ID. No other petitions or responses to petitions were filed.

Having examined the record in this investigation, including the final ID and the petition for review, the Commission has determined to review the ID's findings regarding the economic prong of the domestic industry requirement. In addition, the Commission has determined to review in part the ID with the limited purpose of modifying the ID on review by making certain corrections in the ID.

Specifically, the Commission has determined to modify the subject ID as follows: (1) on page 8 of the ID, to strike the specific identification of the "remaining six (6) Defaulted Respondents" from summary finding number thirteen (13); (2) on page 34 of the ID, to strike the sentence that reads "The model numbers of the Lasica batteries that Defaulted Respondent Shenzhen MingYang offered for sale on the Amazon website are among the DI Products identified in this investigation."; (3) on page 34 of the ID, to strike the sentence that reads "A Lasica battery that was purchased from the Defaulted Respondent Shenzhen MingYang Amazon website was received in the United States on July 23, 2018 and is clearly marked as 'Made in China.' (Memo. at 17; SMF No. 69)."; (4) on page 37 of the ID, to strike the sentence that reads "It is undisputed that Defaulted Respondent Shenzhen E-Commerce has sold for importation, imported, and/or sold in the United States after importation the accused FUZADEL Battery. (Memo. at 15-16; SMF No. 57; Staff Resp. at 33)."; (5) on page 38 of the ID, to strike the sentence that reads "The RYOBI™ battery pack model numbers that are offered for sale as a FUZADEL battery pack that Defaulted Respondent Shenzhen E-Commerce offers for sale on the Amazon website are among the DI Products identified in this investigation."; (6) on page 39 of the ID, to strike the sentence that reads "The RYOBI™ model numbers identified on the jolege battery pack that Defaulted Respondent Shenzhen Uni-Sun offers for sale on the Amazon website are among the DI Products identified in this investigation."; (7) on page 29 of the ID, to modify the last line to read "Dongguan Electronic" instead of "Darui Development;" (8) on page 30 of the ID, to modify the first line on page 30 of the ID by striking the word "Dongguan;" (9) to modify the last line to read "Shenzhen Rich Hao" instead of "Darui Development;" (10) on page 31 of the ID, to modify the first line to read "Shenzhen Saen" instead of "Dongguan Shenzhen Rich Hao;" (11) on page 31 of the ID, to modify the last line to read "Shenzhen Saen" instead of "Darui Development;" (12) on page 36 of the ID, to modify the fifth line from the top by striking the symbols "4."; (13) on page 37 of the ID, to modify the sixth line from the bottom

to read “Respondent Shenzhen Runsensheng, either alone or in association with Defaulted Respondent Vmartego, is the owner or seller of the Enegitech Accused Product” instead of “Respondent MingYang is the owner or seller of the Lasica Accused Product;” (14) on page 39 of the ID, to modify the fourth line from the bottom to read “Respondent Shenzhen Uni-Sun” instead of “Respondent Shenzhen E-Commerce”; (15) on page 47 of the ID, to strike the text “(Memo at 26 (citing SMF No. 102 and Fletcher Decl. at upper end chamfered and the extrusion of this surface to the Foot Platform....)” on lines eight and nine from the bottom; (16) on page 63 of the ID, to modify the citation on lines 9 and 10 to read “(Fletcher Decl. at ¶¶ 105-115 (’868 patent); ¶¶ 170-181 (’353 patent); ¶¶ 241-252 (’944 patent))” instead of “(Fletcher Decl. at ¶¶ 105- 114 (’868 patent); ¶¶ 133-142 (’353 patent); ¶¶ 161-170.)”); and (17) on page 65 of the ID, to insert “takes place” after “engineering” to read “engineering takes place in the United States.”

In connection with its review, the Commission requests responses to the following question. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. Please discuss what evidence of record supports a finding that complainants’ investments under Section 337(a)(3)(A) and (B), 19 U.S.C. 1337(a)(3)(A), (B), are quantitatively and qualitatively significant.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties’ existing filings.

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 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 a cease and desist 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 or disapprove the Commission's action. 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 issue 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 submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainants are also requested to identify the remedy sought and Complainants and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates on which the asserted patents expire, the HTSUS subheadings under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **May 25, 2022**. Reply submissions must be filed no later than the close of business on **June 1, 2022**. 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-1244") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/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. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of 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 May 11, 2022.

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.



Lisa R. Barton
Secretary to the Commission

Issued: May 11, 2022