

Mission-Herring Barn (Byre and Bluff Barns of Doniphan County TR), US 36, Highland vicinity, 86003535

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-486, Enforcement Proceedings]

In the Matter of Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof; Notice of Institution of Formal Enforcement Proceedings

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the remedial order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT:

Michael K. Haldenstein, Esq., telephone (202) 205-3041, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 10, 2003, based on a complaint and motion for temporary relief filed on behalf of New Holland North America, Inc. ("complainant") of New Holland, Pennsylvania. 68 FR 6772 (Feb. 10, 2003). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain tractors and components thereof by reason of infringement of New Holland's trade

dress. The notice of investigation identified three respondents: Beiqi Futian Automobile Co., Ltd. ("Futian") of Beijing, China; Cove Equipment, Inc. of Conyers Georgia; and Northwest Products, Inc. of Auburn, Washington.

On March 5, 2003, complainant moved pursuant to section 337(g) and Commission rule 210.16 for issuance of an order directing respondent Futian to show cause why it should not be found in default. On March 7, 2003, the presiding administrative law judge ("ALJ") issued Order No. 4, which ordered Futian to show cause why it should not be found in default. Order No. 4 noted Futian's failure to respond to the complaint and notice of investigation or otherwise to acknowledge the existence of this proceeding. Futian did not respond to the order to show cause. On March 19, 2003, the ALJ issued an initial determination ("ID") finding Futian in default pursuant to Commission rules 210.16(a) and (b), and ruling that it had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. On March 25, 2003, the Commission determined not to review that ID. On April 2, 2003, complainant filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking the immediate entry of permanent default relief against respondent Futian.

On May 2, 2003, after determining not to review an ID terminating the last respondent on the basis of a consent order, the Commission requested briefing on the issues of remedy, the public interest, and bonding as no respondents remained in the investigation. 68 FR 23497. Only the complainant and the Commission investigative attorney ("IA") submitted briefs on the issues of remedy, the public interest, and bonding.

The complainant and the IA agreed that a limited exclusion order was appropriate and the Commission issued a limited exclusion order. The complainant also sought a cease and desist order against the foreign respondent Futian, but the Commission declined to draw an adverse inference of commercially significant inventories in the United States and did not issue a cease and desist order.

On August 2, 2004, the complainant, now known as CNH America LLC, filed the instant petition for modification of the limited exclusion order and complaint seeking enforcement proceedings. The complainant asserts that Futian, now known as Beiqi Foton Motor Co., Ltd., continues to export infringing tractors to the United States.

The complainant contends that Beiqi Foton Motor Co. has circumvented the limited exclusion order by renaming and remarking infringing tractors. Complainant also alleged that Shandong Worldbest Shantou Co. (Shandong) is related to Futian, and therefore subject to the limited exclusion order. Complainant also requested that the Commission modify the limited exclusion order by replacing it with a general exclusion order and various cease and desist orders in order to prevent alleged circumvention of the limited exclusion order.

The Commission, having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission Rule 210.75, determined to institute formal enforcement proceedings to determine whether Beiqi Foton Motor Co. Ltd. and Shandong are in violation of the Commission's limited exclusion order issued in the investigation, and what if any enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainant CNH America LLC; (2) respondent Beiqi Foton Motor Co. Ltd.; (3) respondent Shandong Worldbest Shantou Co., Ltd., and (4) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

Having examined the petition for modification proceedings filed by CNH America LLC, and having found that the request does not comply with the requirements for institution of modification proceedings described in Commission Rule 210.76, in that the complaint provides no argument concerning the legal basis for the broad modification sought, the Commission has denied the petition for modification proceedings.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: November 15, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

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