

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 22, 1996, based on a complaint filed by The Procter & Gamble Company (P&G) concerning allegations of unfair acts in violation of section 337 in the importation and sale of certain toothbrushes covered by U.S. Letters Patent Des. 328,392. The complaint, as amended, also alleged copyright infringement by certain respondents, but those allegations were subsequently withdrawn from the investigation.

The complaint and notice of investigation were served on all respondents, but respondent Giftline failed to respond to the complaint and notice of investigation in the manner required by Commission rule 210.13(b). On March 7, 1997, complainant P&G filed a motion for an order for Giftline to show cause why it should not be found in default for failure to respond to the amended complaint and notice of investigation pursuant to Commission rule 210.16. The Commission investigative attorney filed a response in support of the motion, and respondents Shummi Enterprise Co., Ltd. and Shumei Industrial Co., Ltd. filed a response stating that they do not oppose the motion. On July 2, 1997, the presiding ALJ issued an order (Order No. 5) directing Giftline to show cause why it should not be found in default by July 14, 1997. Giftline failed to make such a showing. Accordingly, on July 23, 1997, the ALJ issued an ID (Order No. 9) finding Giftline in default pursuant to Commission rule 210.16 and ruling that Giftline had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. No party petitioned for review of the subject ID.

In connection with final disposition of this investigation, the Commission may issue (1) an 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 respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. 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 the Commission Opinion in *In the Matter of Certain*

Devices for Connecting Computers via Telephone Lines, Inv. No. 337-TA-360, USITC Pub. 2843 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The 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 President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a 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.

Written Submissions

The parties to the investigation (other than Giftline), interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the July 2, 1997, recommended determination of the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on September 8, 1997. Reply submissions must be filed no later than the close of business on September 15, 1997. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full

statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.42 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42 and 210.50).

Copies of the ID and all other 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, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810.

Issued: August 14, 1997.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 97-22056 Filed 8-19-97; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-376]

Certain Variable Speed Wind Turbines and Components Thereof; Notice of Commission Determinations Concerning Federal Circuit Remand Question and Respondents' Motion To Show Cause and Petition for Rescission of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, in response to an order issued by the U.S. Court of Appeals for the Federal Circuit ("the Federal Circuit") on April 24, 1997 (the "remand order"), the U.S. International Trade Commission determined that the requirement of section 337(a)(3), 19 U.S.C. § 1337(a)(3), regarding the presence of a domestic industry is satisfied by the domestic activities of Zond and the domestic activities of the companies licensed by Zond to practice the invention of claim 131 of U.S. Letters Patent 5,083,039.

Thus, the Commission determined that, by virtue of its ownership of the '039 patent and its licensing of significant domestic activities practicing that patent, Zond is part of the domestic industry. The Commission also determined that further proceedings are not necessary to resolve any factual issues presented by the question posed by the Court on remand, and to deny respondents' motion to show cause and their petition to rescind the limited exclusion order. The Commission will issue an opinion shortly concerning these issues.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3116.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was conducted by the Commission in 1995 and 1996 based on a complaint filed by Kenetech Windpower, Inc., of Livermore, California ("Kenetech") to determine whether there was a violation of section 337 in the importation, sale for importation, and/or the sale within the United States after importation, of certain variable speed wind turbines and components thereof by reason of infringement of claim 131 of U.S. Letters Patent 5,083,039 ("the '039 patent") and claim 51 of U.S. Letters Patent 5,225,712 ("the '712 patent"), both owned by Kenetech. Enercon GmbH of Aurich, Germany ("Enercon") and The New World Power Corporation of Lime Rock, Connecticut were named as respondents (collectively "respondents"). The Commission found a violation of section 337 had occurred and issued a limited exclusion order. Because Kenetech had filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Act by the time the exclusion order was issued, and had by then ceased manufacturing wind turbines, the Commission required Kenetech to submit quarterly reports detailing its domestic activities exploiting the '039 patent.

After the President declined to disapprove the Commission's determination, Enercon appealed to the Federal Circuit. Subsequently, in its March 31, 1997, quarterly report, Kenetech informed the Commission that it had sold the '039 patent to Zond Energy Systems, Incorporated ("Zond"). That quarterly report states that Kenetech continues to exploit the '039 patent, apparently under license from Zond.

Before any briefs were submitted in the appeal, but after the time for filing a motion to intervene had expired, Zond moved to intervene, asserting that it had

standing to intervene based on its ownership of the patent in issue. Enercon opposed Zond's intervention, arguing that Zond must first show that it qualifies as a domestic industry under section 337 in order to enter an appearance in the appeal, and that Zond had failed to show it had the requisite standing to participate in the appeal. On April 24, 1997, the Federal Circuit issued an order remanding the case to the Commission for the Commission to determine in the first instance: (1) "whether Zond should be substituted for Kenetech;" and (2) "whether Zond qualifies as a domestic industry."

The Commission reopened this investigation, reinstated the protective order issued in this investigation, and requested comments from the parties' counsel on the questions posed by the Federal Circuit remand. On June 12, 1997, Zond filed a motion to intervene in this investigation. On July 8, 1997, the Commission issued an order permitting Zond to intervene in the remand proceeding as a co-complainant. Zond's motion effectively presented the Commission with the same issue posed by the Federal Circuit's first remand question. The Commission has concluded that its decision on the motion to intervene is equally applicable to the first remand issue. Thus, in response to the first of the Federal Circuit's remand questions, the Commission has determined that, rather than substituting Zond for Kenetech, Zond should be permitted to intervene as a co-complainant. See Order Granting Motion to Intervene of Patent Owner Zond Energy Systems, Inc. (July 8, 1997).

On June 16, 1997, respondents and the Commission investigative attorney ("IA") filed comments on the remand issues, and on June 23, 1997, all parties filed reply comments.

On June 27, 1997, respondents filed a motion for an order to show cause why the law firm of Howrey & Simon should not be deemed continuing counsel to Kenetech. Howrey & Simon and the IA subsequently responded to that motion. On July 9, 1997, Howrey & Simon filed a notice of withdrawal as counsel to Kenetech.

On July 2, 1997, respondents filed a petition under Commission rule 210.76(a)(2) seeking rescission of the exclusion order issued by the Commission on August 30, 1996. Both Zond and the IA filed responses in opposition to that petition.

Copies of the Commission's order, the public version of the opinion in support of that order and all other 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, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

Issued: August 11, 1997.

By order of the Commission.

Donna R. Koehnke,
Secretary.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1859-97]

Form Numbers for American Indian and Northern Marianas Cards

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: In September 1997, the Immigration and Naturalization Service (INS or Service) will begin producing two versions of identification cards with new designs and form numbers. The new cards are Form I-872, the American Indian Card, for United States citizens who are members of the Texas Band of the Kickapoo Indian Tribe, as identified in Pub. L. 97-429, and Form I-873, the Northern Marianas Card, for United States citizens from the Commonwealth of the Northern Marianas, as identified in Public Law 94-241 or by Presidential Proclamation 5564. The card design changes are being implemented using the latest security technology in order to reduce the risk of fraud.

EFFECTIVE DATE: September 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Geoff Verderosa, Immigration and Naturalization Service, Benefits Division, Residence and Status Services, 425 I Street NW., Room 3214, Washington, DC 20536, Telephone 202-514-3156.