

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

**In the Matter of**

**CERTAIN RUBBER ANTIDEGRADANTS,  
COMPONENTS THEREOF, AND  
PRODUCTS CONTAINING SAME**

**Investigation No. 337-TA-533 (Remand)**

**NOTICE OF COMMISSION DETERMINATION (1) TO REVIEW AND NOT TAKE A  
POSITION ON CERTAIN ISSUES IN THE FINAL INITIAL DETERMINATION OF  
THE ADMINISTRATIVE LAW JUDGE AND (2) NOT TO REVIEW THE REMAINDER  
OF THE FINAL INITIAL DETERMINATION; 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 determined (1) to review and not take a position on certain issues in the final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation and (2) not to review the remainder of the ID finding no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”). This action terminates the investigation with a finding of no violation of section 337.

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential 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. 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) at <http://edis.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 March 29, 2005, based on a complaint brought by Flexsys America L.P. (“Flexsys”), alleging a violation of section 337 in the importation, the sale for importation, or the sale after importation of certain rubber antidegradants, components thereof, or products containing same with respect to claims 30 or 61 of U.S. Patent No. 5,117,063 (“the ‘063 patent”), claims 7 or 11 of U.S. Patent No. 5,608,111 (“the ‘111 patent”), or claims 1, 32, or 40 of U.S. Patent No. 6,140,538 (“the ‘538 patent”). 70 *Fed. Reg.* 15,855 (Mar. 29, 2005).

The complaint named as respondents Sinorgchem Co. (“Sinorgchem”) of Shandong, China, as well as Sovereign Chemical Company (“Sovereign”), Korea Kumho Petrochemical Co., Ltd. (“KKPC”), Vilax Corporation (“Vilax”), and Stolt-Nielson Transportation Group Ltd. (“Stolt-Nielson”). The investigation was terminated with regard to the ‘538 patent, and with regard to Vilax and Stolt-Nielson.

On February 16, 2006, the presiding administrative law judge issued his original final initial determination (“ID”), finding that Sinorgchem and Sovereign had violated section 337 with respect to the asserted claims of the ‘063 and ‘111 patents, but finding that KKPC had not. All parties petitioned for review of various parts of the final ID. The Commission reviewed the ALJ’s final ID in its entirety. 71 *Fed. Reg.* 20131 (April 19, 2006). On review, the Commission found a violation of section 337 with respect to the asserted claims, and issued a limited exclusion order. The limited exclusion order barred the unauthorized importation into the United States by Sinorgchem and Sovereign of 4-ADPA made by a process covered by claim 30 of the ‘063 patent or claim 7 of the ‘111 patent, and 6-PPD made by a process covered by claim 61 of the ‘063 patent or claim 11 of the ‘111 patent.

Sinorgchem appealed the Commission’s final determination to the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”). On December 21, 2007, the Federal Circuit issued its judgment vacating and remanding the Commission’s final determination for further proceedings consistent with the Court’s opinion. *Sinorgchem Co., Shandong v. International Trade Commission*, 511 F.3d 1132 (Fed. Cir. 2007) (“*Sinorgchem*”).

On June 3, 2008, the Commission issued notice of its determination to rescind the limited exclusion order relating to the importation of rubber antidegradant products. The Commission also determined to remand the investigation to the presiding ALJ for proceedings consistent with *Sinorgchem*, including issuance of a final initial determination on violation and a recommended determination on remedy and bonding.

On August 29, 2008, the Commission issued notice of its determination not to review an ID terminating the investigation as to Sovereign on the basis of a settlement agreement and consent order.

On December 3, 2008, the presiding administrative law judge issued his final initial determination on remand (“IDR”) finding no violation of section 337 in the above-identified investigation. In his IDR, the administrative law judge found no infringement of the asserted claims under the doctrine of equivalents. The administrative law judge further explained that under the remand instructions of the Federal Circuit, affirmative invalidity defenses need only be reached if the Commission finds infringement under the doctrine of equivalents. The administrative law judge nevertheless found that the asserted claims are not invalid by reason of alleged obviousness and that the complainant has satisfied the technical prong of the domestic industry requirement. All of the parties filed petitions for review.

Having examined the relevant portions of the record in this investigation, including the IDR, the petitions for review, and the responses thereto, the Commission has determined to (1) review and take no position on (a) the administrative law judge's finding of no infringement under the doctrine of equivalents to the extent it is based on argument-based prosecution history estoppel and (b) the administrative law judge's findings with respect to obviousness; and (2) not to review the remainder of the ID. Thus, the investigation is terminated with a finding of no violation of section 337.

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

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: February 2, 2009