

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

**In the Matter of**

**CERTAIN R-134a COOLANT  
(OTHERWISE KNOWN AS 1,1,1,2-  
TETRAFLUOROETHANE)**

**Investigation No. 337-TA-623**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW THE REMAND  
DETERMINATION OF THE PRESIDING ADMINISTRATIVE LAW JUDGE AND TO  
EXTEND THE TARGET DATE**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review the Remand Determination (“RID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation on April 1, 2009. The Commission has also determined to extend the target date for completion of the investigation to August 3, 2009.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. 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 at <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 December 31, 2007, based on a complaint filed by INEOS Fluor Holdings Ltd., INEOS Fluor Ltd., and INEOS Fluor Americas L.L.C. (collectively, “Ineos”). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain R-134a coolant (otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of various claims of United States Patent No. 5,744,658. Complainants subsequently added allegations of infringement with regard to United States Patent Nos. 5,382,722 and 5,559,276

(“the ‘276 patent”), but only claim 1 of the ‘276 patent remains at issue in this investigation. The complaint named two respondents, Sinochem Modern Environmental Protection Chemicals (Xi’an) Co., Ltd. and Sinochem Ningbo Ltd. Two additional respondents were subsequently added: Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. and Sinochem (U.S.A.) Inc. The four respondents are collectively referred to as “Sinochem.”

On December 1, 2008, the ALJ issued his final ID, finding that Sinochem had violated section 337. He concluded that respondents’ accused process infringed claim 1 of the ‘276 patent and that the domestic industry requirement had been met. He also found that claim 1 was not invalid and that it was not unenforceable. The Commission determined to review the ALJ’s final ID with regard to the effective filing date of the asserted claim, anticipation, and obviousness, to supplement the ALJ’s reasoning regarding the effective filing date, and to remand the investigation to the ALJ to conduct further proceedings related to anticipation and obviousness. To accommodate the remand, the Commission extended the target date to June 1, 2009 and instructed the ALJ to issue the RID by April 1, 2009.

The ALJ issued the RID on April 1, 2009. The RID concluded that Sinochem’s arguments concerning anticipation and obviousness were waived under the ALJ’s ground rules and, alternatively, that the arguments were without merit. Sinochem filed a petition for review of the RID. The Commission investigative attorney (“IA”) and Ineos opposed Sinochem’s petition. Subsequently, Sinochem filed a motion to strike and for leave to file a reply to Ineos’s and the IA’s oppositions.

Having examined the record of this investigation, including the ALJ’s RID and the submissions of the parties, the Commission has determined to review the RID in its entirety.

To assist in its review, and in order to more fully analyze Sinochem’s “admission”-based arguments, the Commission is interested in receiving further briefing on the following questions:

- (1) Based upon the undisputed scope and content of the prior art as set forth in the ‘276 patent specification and as presented by the expert witnesses at trial, what differences exist between the prior art and claim 1 of the ‘276 patent?
- (2) Based on your answer to question (1), would claim 1 have been obvious in light of the remand references to a person of ordinary skill in the art under *KSR International, Co. v. Teleflex Co.*, 550 U.S. 398 (2007)?
- (3) Are the ALJ’s conclusions regarding waiver consistent with Commission Rule 210.14(c)? If not, what is the effect on the ALJ’s conclusions in the remand determination?
- (4) Does the exception to the ALJ’s ground rule reciting that “contentions of which a party is not aware and could not be aware in the exercise of reasonable diligence at the time of filing the pre-hearing statements” apply to Respondents’

contentions regarding admissions elicited during the hearing? If so, what is the effect on the ALJ's conclusions in the remand determination?

The Commission has determined to extend the target date for completion of this investigation to August 3, 2009, in order to provide adequate time for review of the RID. The Commission has determined to deny as moot Sinochem's motion to strike and for leave to file a reply.

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. The written submissions must be filed no later than close of business on June 15, 2009. Reply submissions must be filed no later than the close of business on June 25, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document 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 by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: June 1, 2009