

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN RUBBER ANTIDEGRADANTS,
ANTIDEGRADANT INTERMEDIATES AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-652

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE GRANTING
SINORGCHEM'S SUMMARY DETERMINATION MOTION AND KUMHO'S
SUMMARY DETERMINATION MOTION; 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 not to review an initial determination of the presiding administrative law judge granting respondents' summary determination motions in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. This action terminates the investigation.

FOR FURTHER INFORMATION CONTACT: James 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 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: On July 10, 2008, the Commission instituted this investigation based upon a complaint filed on behalf of Flexsys America L.P. (St. Louis, Missouri) ("Flexsys"). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rubber antidegradants, antidegradant intermediates, and products containing the same that infringe claims 61-74 of U.S. Patent No. 5,453,541 ("the '541 patent") and claims 23-28 of U.S. Patent No. 5,608,111 ("the '111 patent"). 73 *Fed. Reg.* 39719 (July 10, 2008). The complaint

named as respondents Sinorgchem Co., Shandong (Shandong, China) (“Sinorgchem”), Korea Kumho Petrochemical Co., Ltd. (Seoul, South Korea), Kumho Tire USA, Inc. (Rancho Cucamonga, California), and Kumho Tire Co., Inc. (Seoul, South Korea). (The last three respondents are referred to collectively as “Kumho.”) The Commission in its notice of institution noted that the ALJ might wish to consider whether the claims asserted in this investigation were precluded by prior litigation. *73 Fed. Reg.* 39719.

On July 29, 2008, Sinorgchem moved for summary determination and dismissal of this investigation as to Sinorgchem, stating that Flexsys’s claims in the complaint for this investigation represent improper claim splitting as to the ‘111 patent and claim preclusion as to the ‘541 patent. On July 31, 2008, Kumho moved for summary determination that Flexsys is also precluded from re-litigating its ‘111 and ‘541 patents against Kumho. The Commission investigative attorney filed responses on August 4 and 5, 2008, respectively in support of Sinorgchem and Kumho. Flexsys filed a response in opposition on August 4, 2008. The ALJ heard argument at a preliminary conference on August 5, 2008.

On August 8, 2008, the ALJ issued Order No. 6, asking the parties to respond to certain questions. On August 15, 2008, Sinorgchem and Kumho each filed submissions. On August 22, 2008, Flexsys filed a response. On August 28, 2008, Sinorgchem filed a supplemental response. On August 29, 2008, the Commission investigative attorney filed a submission. On September 3, 2008, Flexsys filed a surreply.

On September 15, 2008, the ALJ issued the subject ID (Order No. 9), granting the motions for summary determination and terminating the investigation in its entirety.

On September 29, 2008, Flexsys filed a petition for review of the subject ID. On October 6, 2008, Sinorgchem, Kumho, and the Commission investigative attorney filed responses opposing the petition.

Having examined the relevant portions of the record in this investigation, including the ID, the petition for review, and the responses thereto, the Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42 - .46 of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.42 - .46).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: October 30, 2008