

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN TOBACCO HEATING
ARTICLES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1199

NOTICE OF COMMISSION DECISION 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 (“Commission”) has determined to extend the target date in the above-captioned investigation to September 29, 2021.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 May 15, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by RAI Strategic Holdings, Inc., R.J. Reynolds Vapor Company, and R.J. Reynolds Tobacco Company, all of Winston-Salem, North Carolina (collectively, “Complainants”). *See* 85 FR 29482-83. The complaint, as supplemented, alleges a violation of section 337 based upon the importation of certain tobacco heating articles and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,901,123 (“the ’123 patent”); 9,839,238 (“the ’238 patent”); and 9,930,915 (“the ’915 patent”). The complaint also alleges the existence of a domestic industry. The notice of investigation names the following respondents: Altria Client Services LLC, Altria Group, Inc. (“AGI”), and Philip Morris USA, Inc., all of Richmond, Virginia; Philip Morris International Inc. (“PMI”) of New York, New York; and Philip Morris Products S.A. of Neuchatel, Switzerland (collectively, “Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

The Commission previously terminated respondents AGI and PMI from the investigation based on Complainants' partial withdrawal of the complaint. *See* Order No. 24 (Dec. 14, 2020), *unreviewed by* Notice (Jan. 5, 2021).

The Commission previously affirmed that the economic prong of the domestic industry requirement is satisfied under 19 U.S.C. § 1337(a)(3)(A) with respect to the '238 and '915 patents and provided supplemental analysis. Order No. 35 (Jan. 19, 2021), *affirmed in part by* Notice (Feb. 18, 2021).

On May 14, 2021, the presiding ALJ issued the final initial determination on violation ("FID"), which finds a violation of section 337 based on infringement of the '123 patent and the '915 patent and finds no violation as to the '238 patent.

On July 27, 2021, the Commission determined to review the FID in part. 86 FR 41509-11 (Aug. 2, 2021). Specifically, the Commission determined to review: (1) as to the '915 patent, the ALJ's construction of the limitation "electrical energy source" recited in asserted claims 1 and 3 and the FID's infringement, technical prong, and invalidity findings to the extent they may be affected by a modified claim construction; (2) as to the '123 patent, the FID's obviousness and domestic industry findings; and (3) as to the '238 patent, the FID's infringement finding. *Id.* The Commission also asked the parties to address a question related to the issues under review regarding the '915 patent. *Id.* The Commission further requested briefing on remedy, bonding, and the public interest. *Id.*

On August 10, 2021, Complainants, Respondents, and OUII each filed an initial written response to the Commission's request for briefing. On August 17, 2021, Complainants and Respondents each filed a reply submission. On August 20, 2021, OUII filed its reply submission.

On August 5, 6, 9, and 10, 2021, twenty-nine members of the public submitted public interest submissions. On August 9, 2021, the Hispanic Leadership Fund and the National Minority Quality Form filed public interest submissions. On August 10, 2021, Nextera Healthcare filed a public interest submission. On August 11, 2021, Tom Miller, the Attorney General of Iowa, filed a public interest submission.

The Commission has determined to extend the target date for completing this investigation to September 29, 2021.

The Commission vote for this determination took place on August 30, 2021.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a circular flourish.

Lisa R. Barton
Secretary to the Commission

Issued: August 30, 2021