

On October 29, 2019, the CALJ conducted a *Markman* hearing. Thereafter, on January 7, 2020, the CALJ issued Order No. 15, which construed various terms in the asserted patents.

On March 5, 2020, the CALJ granted Ethicon's motion to terminate claim 1 of the '379 patent and all claims of the '749 patent from the investigation. See Order No. 21, *unreviewed by Comm'n Notice* (Mar. 25, 2020).

On April 21, 2020, Ethicon moved for leave to file a second amended complaint to include the Certificate of Correction for the '379 patent. The CALJ granted Ethicon's motion on May 6, 2020, and Ethicon filed its second amended complaint on May 7, 2020. See Order No. 36; Doc. ID 709878.

On June 8, 2021, the CALJ issued the subject ID on violation, which found a violation of section 337 based on infringement of the asserted claims of the '369 and '379 patents by Intuitive. The ID found no violation based on the '969 and '874 patents. Also, on June 8, 2021, the CALJ issued his recommended determination on remedy and bonding. The CALJ recommended, upon a finding of violation, that the Commission issue a limited exclusion order, issue cease and desist orders, and impose a bond in the amount of zero percent (0%) of the entered value of any covered products imported during the period of Presidential review.

On June 21, 2021, Ethicon and Intuitive submitted petitions seeking review of the subject ID. Intuitive's petition included a request for suspension of enforcement of any remedial orders directed to the '379 patent based on a Final Written Decision by the PTAB, in which the PTAB found all claims of the '379 patent unpatentable. See *Intuitive Surgical, Inc. v. Ethicon LLC*, IPR2020-00050, IPR2020-00051, Patent 9,844,379, Final Written Decision Determining All Challenged Claims Unpatentable (Mar. 26, 2021). On June 29, 2021, Ethicon and Intuitive submitted responses to the other's petitions.

On June 9, 2021, the Commission issued a notice soliciting public comments on the public interest factors, if any, that may be implicated if a remedy were to be issued in this investigation. 85 FR 30735 (May 20, 2020). The Commission received twelve submissions from the public in response to its notice.

On August 16, 2021, issued notice of its determination to review the ID in part with respect to (1) the ID's findings on claim construction, infringement, anticipation, obviousness, and enforceability for the '969 patent; and

(2) the ID's findings on claim construction, infringement, and obviousness for the '369 patent. The Commission determined not to review the remainder of the ID, including the ID's determination that a violation of section 337 had occurred with respect to the '379 patent and that no violation occurred with respect to the '874 patent. In connection with its review of the ID, the Commission sought briefing from the parties on several questions germane to the issues on review and on remedy, bonding, and the public interest.

The parties filed their initial response to the Commission's review questions on August 23, 2021, and their respective reply briefs on August 30, 2021.

Having considered the parties' submissions, the ID, and the record in this investigation, the Commission has determined that Intuitive has violated section 337 by importing into the United States, selling for importation, or selling in the United States after importation certain laparoscopic surgical staplers, reload cartridges, and components thereof that infringe claims 2 and 3 of the '379 patent. The Commission has further determined to affirm, reverse, and take no position on certain portions of the ID, as explained in the Commission's opinion issued concurrently herewith.

The Commission has determined that the appropriate remedy is: (a) A limited exclusion order prohibiting the importation of certain laparoscopic surgical staplers, reload cartridges, and components thereof that infringe claims 2 and 3 of the '379 patent; and (b) cease and desist orders against Intuitive. The Commission has determined that the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order or cease and desist orders. The Commission has also determined to set a bond in the amount of zero percent (0%) (*i.e.*, no bond) of the entered value of the excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)).

The Commission has also determined to suspend enforcement of its remedial orders, including the bond provision, pending final resolution of a Final Written Decision issued by the PTAB on March 26, 2021, finding all claims of the '379 patent to be unpatentable. See 35 U.S.C. 318(b); *Intuitive Surgical, Inc. v. Ethicon LLC*, IPR2020-00050, IPR2020-00051, Patent 9,844,379, Final Written Decision Determining All Challenged Claims Unpatentable (Mar. 26, 2021).

The Commission's orders and opinion were delivered to the President and United States Trade Representative on the day of their issuance.

The Commission vote for this determination took place on October 14, 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 210).

By order of the Commission.

Issued: October 14, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-22814 Filed 10-19-21; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-531-532 and 731-TA-1270-1273 (Review)]

Polyethylene Terephthalate (PET) Resin From Canada, China, India, and Oman; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the countervailing duty orders on polyethylene terephthalate ("PET") resin from China and India and the antidumping duty orders on PET resin from Canada, China, India, and Oman would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 14, 2021.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202-205-2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On July 7, 2021, the Commission determined that responses to its notice of institution of the subject

five-year reviews were such that full reviews should proceed (86 FR 37343, July 15, 2021); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the

Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on January 10, 2022, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 27, 2022.

Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>. Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 21, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 24, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 19, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 7, 2022. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before February 7, 2022. On March 4, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 8, 2022, but such final comments must not contain new factual

information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 14, 2021.

Lisa Barton,

Secretary to the Commission.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act and Other Statutes

On October 13, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Texas in the lawsuit entitled *United States and State of Texas v. E.I. du Pont de Nemours and Company and*