

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

**In the Matter of**

**CERTAIN OPAQUE POLYMERS**

**Investigation No. 337-TA-883**

**LIMITED EXCLUSION ORDER**

The Commission has found Respondents Organik Kimya San. ve Tic. A.Ş of Istanbul, Turkey; Organik Kimya Netherlands B.V. of Rotterdam-Botlek, Netherlands; and Organik Kimya US, Inc., of Burlington, Massachusetts (collectively, “Respondents”) in default as a sanction for discovery abuse pursuant to section 337(h) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(h)) and Commission rules 210.16 and 210.33 (19 C.F.R. §§ 210.16 & 210.33). The Commission has thereby determined that there is a violation of section 337 in the unlawful importation, sale for importation and sale after importation by Respondents of opaque polymers manufactured by or for Respondents using any of the 52 misappropriated trade secrets listed in Dow’s Disclosure of Misappropriated Trade Secrets (Jan, 29, 2014) (listing trade secrets A-ZZ) (the “Dow Trade Secrets”).

The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting the unlicensed entry of opaque polymers manufactured using any of the Dow Trade Secrets by or on behalf of Respondents, or their affiliated companies, parents, subsidiaries, licensees, contractors or other related business entities, or their successors or assigns.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order. Finally, the Commission has

determined that the bond during the period of Presidential review shall be zero.

Accordingly, the Commission hereby **ORDERS** that:

1. Opaque polymers manufactured using any of the Dow Trade Secrets by or on behalf of, or imported by or on behalf of, Respondents, or their affiliated companies, parents, subsidiaries, licensees, contractors or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for a period of twenty-five (25) years from the effective date of this order, except under license of the owner of the Dow Trade Secrets, or as provided by law.

2. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to opaque polymers that are imported by and for the use of the United States, or imported for, and to be used for, the United States with authorization or consent of the Government.

3. Prior to the importation of organic polymers that may be subject to this Order, any of the persons listed in paragraph 1 of this Order must seek a ruling from the Commission to determine whether the opaque polymers sought to be imported are covered by this Order.

4. After a Commission determination of admissibility under paragraph 3 of this Order, persons seeking to import opaque polymers may certify to U.S. Customs and Border Protection (“CBP”) that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not subject to this Order based on that Commission determination. CBP may require persons who have provided the certification described in this paragraph to provide such information necessary to substantiate that claim.

5. The Commission may modify this Order in accordance with the procedures

described in Rule 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon U.S. Customs and Border Protection.

7. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton  
Secretary to the Commission

Issued: April 17, 2015

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served upon the following parties as indicated, on **April 17, 2015**.



Lisa R. Barton, Secretary  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**On Behalf of Complainants Rohm and Haas Co., Rohm and Haas Chemicals LLC, and The Dow Chemical Company:**

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**On Behalf of Respondents Organik Kimya San. ve Tic. A.S, Organik Kimya Netherlands B.V., Organik Kimya US, Inc., Turk International LLC, and Aalborz Chemical LLC d/b/a All Chem:**

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**On Behalf of Respondents Intervenor Finnegan, Henderson, Farabow, Garrett & Dunner, LLP:**

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**On Behalf of Respondents Intervenor Omar Yarsuvat:**

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

**In the Matter of**

**CERTAIN OPAQUE POLYMERS**

**Investigation No. 337-TA-883**

**ORDER TO CEASE AND DESIST**

IT IS HEREBY ORDERED THAT Organik Kimya US, Inc., of 200 Wheeler Road, 2nd Floor, Burlington, Massachusetts 01803, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), soliciting United States agents or distributors, or aiding and abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of covered products in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

**I.**

**Definitions**

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Complainants" shall collectively refer to Rohm and Haas Company of 100 Independence Mall West, Philadelphia, Pennsylvania 19106; Rohm and Haas Chemicals LLC of 100 Independence Mall West, Philadelphia, Pennsylvania 19106; and The Dow Chemical Company of 2030 Dow Center, Midland, Michigan 48674.
- (C) "Respondent" shall mean Organik Kimya US, Inc., of 200 Wheeler Road, 2nd Floor, Burlington, Massachusetts 01803.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term "covered products" shall mean opaque polymers manufactured by or for Respondent using any of the 52 misappropriated trade secrets listed in Dow's Disclosure of Misappropriated Trade Secrets (Jan, 29, 2014) (listing trade secrets A-ZZ) (the "Dow Trade Secrets").

## **II.**

### **Applicability**

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

## **III.**

### **Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by the Order. For a period of twenty-five (25) years from the date of issuance of this Order, Respondent shall not:

(A) import or sell for importation into the United States any of the covered products;

- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV.**

##### **Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the Dow Trade Secrets licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V.**

##### **Reporting**

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2015. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the

reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-883”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures,

[http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.<sup>1</sup>

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

## VI.

### Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three

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<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

(3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

## **VII.**

### **Service of Cease and Desist Order**

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect for twenty-five (25) years from the date of issuance of this Order.

## VIII.

### **Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

## IX.

### **Enforcement**

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

## X.

### **Modification**

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

By Order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: April 17, 2015

CERTIFICATE OF SERVICE

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On Behalf of Respondents Organik Kimya San. ve Tic. A.S, Organik Kimya Netherlands B.V., Organik Kimya US, Inc., Turk International LLC, and Aalborg Chemical LLC d/b/a All Chem:

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