

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN RUBBER ANTIDEGRADANTS,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-533

**REMAND OF INVESTIGATION TO PRESIDING ADMINISTRATIVE LAW JUDGE;
RESCISSION OF LIMITED EXCLUSION ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-captioned investigation to the presiding administrative law judge ("ALJ") for proceedings consistent with the December 21, 2007 judgment of the U.S. Court of Appeals for the Federal Circuit in *Sinorgchem Co., Shandong v. International Trade Commission*, 511 F.3d 1132 (Fed. Cir. 2007). The Commission has also determined to rescind the limited exclusion order previously issued in this investigation.

FOR FURTHER INFORMATION CONTACT: James A. 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 (<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 March 29, 2005, based on a complaint brought by Flexsys America L.P. ("Flexsys"), alleging a violation of section 337 in the importation, the sale for importation, or the sale after importation of certain rubber antidegradants, components thereof, or products containing same by reason of infringement of claims 30 or 61 of U.S. Patent No. 5,117,063 ("the '063 patent"), or claims 7 or 11 of U.S. Patent No. 5,608,111 ("the '111 patent"), or claims 1, 32, or 40 of U.S. Patent No. 6,140,538 ("the '538 patent"). 70 *Fed. Reg.* 15,855 (Mar. 29, 2005). The patents teach processes for the production of 4-ADPA and alkylated derivatives of 4-ADPA. One of these alkylated derivatives, 6-PPD, is used to prevent the degradation of rubber.

The complaint named as respondents Sinorgchem Co. (“Sinorgchem”) of Shandong, China, as well as Sovereign Chemical Company (“Sovereign”), Korea Kumho Petrochemical Co., Ltd. (“KKPC”), Vilax Corporation (“Vilax”), and Stolt-Nielson Transportation Group Ltd. (“Stolt-Nielson”). It was alleged that the accused rubber antidegradant products were made using the patented processes. The investigation was terminated with regard to the ‘538 patent, and with regard to Vilax and Stolt-Nielson.

On February 16, 2006, the ALJ issued his final initial determination (“final ID” or “ID”). The ALJ found that Sinorgchem and Sovereign had violated section 337 by infringing the asserted claims of the ‘063 and ‘111 patents, but found that KKPC had not. All parties petitioned for review of various parts of the final ID.

The Commission reviewed the ALJ’s final ID in its entirety, and solicited further briefing from the parties on the issues on review, as well as the on the issues of remedy, the public interest, and bonding. 71 *Fed. Reg.* 20131 (April 19, 2006). On review, the Commission found the asserted claims to be infringed by Sinorgchem and Sovereign, made a determination of violation of section 337 by Sinorgchem and Sovereign, and issued a limited exclusion order. The limited exclusion order bars the unauthorized importation into the United States by Sinorgchem and Sovereign of 4-ADPA, made by a process covered by claim 30 of the ‘063 patent or claim 7 of the ‘111 patent, and 6-PPD, made by a process covered by claim 61 of the ‘063 patent or claim 11 of the ‘111 patent.

Sinorgchem appealed the Commission’s final determination to the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”). On December 21, 2007, the Federal Circuit issued its judgment vacating and remanding the Commission’s final determination for further proceedings consistent with the Court’s opinion. *Sinorgchem Co., Shandong v. International Trade Commission*, 511 F.3d 1132 (Fed. Cir. 2007). Intervenor Flexsys America L.P. (“Flexsys”) petitioned the Federal Circuit for rehearing and rehearing *en banc*. The Commission supported rehearing. On April 7, 2008, the Federal Circuit denied the petition for rehearing and rehearing *en banc*. The mandate of the Court issued on April 14, 2008.

Upon consideration of this matter, the Commission has determined to rescind the limited exclusion order relating to the importation of rubber antidegradants made by Sinorgchem and Sovereign. The Commission has also determined to remand the investigation to the presiding ALJ for proceedings consistent with *Sinorgchem Co., Shandong v. International Trade Commission*, 511 F.3d 1132 (Fed. Cir. 2007), including issuance of a final initial determination on violation and a recommended determination on remedy and bonding.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), the Administrative Procedure Act, and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: June 3, 2008