

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

In the Matter of

**CERTAIN R-134a COOLANT
(OTHERWISE KNOWN AS 1,1,1,2-
TETRAFLUOROETHANE)**

Investigation No. 337-TA-623

**NOTICE OF COMMISSION DETERMINATION TO REVIEW THE FINAL INITIAL
DETERMINATION IN PART AND TO REMAND THE INVESTIGATION; SCHEDULE
FOR WRITTEN SUBMISSIONS ON REMAND DETERMINATION AND ON REMEDY,
THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review a portion of the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 1, 2008, in the above-captioned investigation and to remand the investigation to the ALJ.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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: The Commission instituted this investigation on December 31, 2007, based on a complaint filed by INEOS Fluor Holdings Ltd., INEOS Fluor Ltd., and INEOS Fluor Americas L.L.C. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain R-134a coolant (otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of various claims of United States Patent No. 5,744,658. Complainants subsequently added allegations of infringement with regard to United States Patent Nos. 5,382,722 and 5,559,276 (“the ‘276 patent”), but only claim 1 of the ‘276 patent remains at issue in this investigation. The complaint

named two respondents, Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. and Sinochem Ningbo Ltd. Two additional respondents were subsequently added: Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. and Sinochem (U.S.A.) Inc. All four respondents are collectively referred to as "Sinochem."

On December 1, 2008, the ALJ issued his final ID, finding that Sinochem violated section 337. He concluded that respondents' "new" process infringed claim 1 of the '276 patent and that the domestic industry requirement had been met. He also found that claim 1 was not invalid and that it was not unenforceable. The ALJ recommended that the Commission issue a limited exclusion order prohibiting the importation into the United States of products made by the infringing process, but did not recommend issuing a cease and desist order. The ALJ also recommended that the bond to permit importation during the Presidential review period be set at 100% of the entered value of the products concerned.

On December 15, 2008, Sinochem filed a petition for review, challenging the findings of the ALJ's final ID. On December 23, 2008, complainants and the Commission investigative attorney ("IA") each filed a response to respondents' petition for review of the final ID. On January 5, 2009, respondents filed a motion for leave to file a reply in support of their petition for review of the final ID. On January 9, 2009, complainants filed an opposition to respondents' motion. On January 15, 2009, the IA also filed an opposition to respondents' motion.

Having examined the record of this investigation, including the ALJ's ID and the submissions of the parties, the Commission has determined to review the ALJ's determination regarding the effective filing date of claim 1 of the '276 patent and to affirm his determination with additional reasoning. In addition, the Commission has determined to review the ALJ's ID with regard to whether claim 1 of the '276 patent is invalid for anticipation or obviousness with respect to certain references and to issue an order remanding the investigation to the ALJ for further proceedings related to anticipation and obviousness with respect to those references. The Commission has determined not to review any other determination in the ALJ's ID.

To accommodate the remand proceedings, the Commission has extended the target date of the above-captioned investigation to June 1, 2009, and instructed the ALJ to make his determination on remand by April 1, 2009. The parties are invited to file written submissions on the ALJ's remand determination within fourteen days after service of the ALJ's determination and to file responses to the written submissions within seven days after service of the written submissions. The parties should also address remedy, the public interest, and bonding in their submissions. Finally, the Commission has determined to deny respondents' motion for leave to file a reply in support of their petition for review of the final ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that

address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business fourteen days after service of the ALJ's remand determination. Reply submissions must be filed no later than the close of business seven days after service of the written submissions. The written submissions may be no longer than 50 pages and the reply submissions may be no longer than 25 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R.

§ 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 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.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: January 30, 2009