

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

**In the Matter of**

**CERTAIN SUCRALOSE, SWEETENERS  
CONTAINING SUCRALOSE, AND  
RELATED INTERMEDIATE  
COMPOUNDS THEREOF**

**Investigation No. 337-TA-604**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AND VACATE AN  
INITIAL DETERMINATION DENYING A MOTION TO TERMINATE THE  
INVESTIGATION WITH REGARD TO THREE PATENTS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review and vacate an initial determination (“ID”) (Order No. 11) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation denying a motion to terminate the investigation as to United States Patent Nos. 4,980,463, 5,470,969, and 5,034,551.

**FOR FURTHER INFORMATION CONTACT:** James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2065. 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 May 10, 2007, based upon a complaint filed on behalf of Tate & Lyle Technology Ltd. of London, United Kingdom, and Tate & Lyle Sucralose, Inc. of Decatur, Illinois (collectively, “Tate & Lyle”). The complaint alleged a violation of section 337(a)(1)(B) 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 sucralose, sweeteners containing sucralose, and

related intermediate compounds thereof by reason of infringement of various claims of United States Patent Nos. 4,980,463 (“the ‘463 patent”), 5,470,969 (“the ‘969 patent”), 5,034,551 (“the ‘551 patent”), 5,498,709, and 7,049,435. The notice of investigation named twenty-five respondents.

On June 12, 2007, respondents Changzhou Niutang Chemical Plant Co., Ltd.; U.S. Niutang Chemical, Inc.; Garuda International Inc.; Guangdong Food Industry Institute; and L&P Food Ingredient Co., Ltd. (collectively, “Changzhou”) filed a motion to terminate the investigation with respect to the ‘463 patent, the ‘969 patent, and the ‘551 patent. Several other respondents joined Changzhou’s motion to terminate. Tate & Lyle opposed the motion. The Commission investigative attorney (“IA”) supported the motion with respect to the ‘551 patent, but not with respect to the ‘463 patent or the ‘969 patent.

On August 8, 2007, the ALJ issued an ID (Order No. 11), denying Changzhou’s motion to terminate the investigation with regard to the ‘463 patent, the ‘969 patent, and the ‘551 patent. The ALJ issued his order in the form of an ID under 19 C.F.R. § 210.42, pursuant to the notice of investigation. The complainants, certain respondents, and the Commission investigative attorney filed petitions for review of Order No. 11.

Having examined the record of this investigation, including the ALJ’s ID and the submissions of the parties, the Commission has determined to review and vacate the ALJ’s ID. The issues raised by Changzhou’s motion, including whether the importation of the finished product alone (sucralose) constitutes a violation of section 337 based on the ‘463, ‘969, and ‘551 patents, and the ID, including whether trace amounts of an intermediate product or catalyst in the imported product can constitute a violation of section 337, may be addressed in the final initial determination (or earlier, if appropriate).

In addressing these issues, the parties and the ALJ should consider the following:

1. The amount of any subject product which has been or is currently being imported.
2. Whether there is a difference in effective scope between 35 U.S.C. § 271(g) and 19 U.S.C. § 1337(a)(1)(B)(ii). Whether this question has been decided by *Kinik v. International Trade Commission*, 362 F.3d 1359, 1361-63 (Fed. Cir. 2004).
3. The language and legislative history of 19 U.S.C. § 1337(a)(1)(B)(ii) and the language and legislative history of former section 337a (former 19 U.S.C. § 1337a). The statements in *Amgen v. ITC*, 902 F.2d 1532 (Fed. Cir. 1990), as to “covered” and that former section 337a was reenacted as section 337(a)(1)(B)(ii) without a change in scope. Any special rule of statutory interpretation that should be applied given that former section 337a was enacted in response to *In re Amtorg Trading Corp.*, 75 F.2d 826 (CCPA 1935). The processes and patents in *In re Amtorg Trading Corp.* and in *In re Northern Pigment Co.*, 71 F.2d 447 (CCPA 1934), and the underlying Commission proceedings. The processes and patents in all Commission and related court proceedings involving process patents and section 337 before and after the enactment of former section 337a.

4. The Supreme Court's recent decision in *Microsoft Corp. v. AT&T Corp.*, 550 U.S. \_\_\_ (2007).
5. How the above cases may best be read in conjunction with each other.

The Commission has also determined to grant the investigative attorney's motion for leave to file its petition for review out of time and to deny Tate & Lyle's motion for oral argument on review as moot.

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 section 210.43-45 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.43-45).

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: September 24, 2007