

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WINDSHIELD WIPERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-928
Investigation No. 337-TA-937
(Consolidated) (Remand)

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW (1) AN INITIAL
DETERMINATION GRANTING COMPLAINANTS' MOTION TO TERMINATE THE
REMAND INVESTIGATION WITH RESPECT TO CERTAIN PRODUCTS, AND (2) A
REMAND INITIAL DETERMINATION; SETTING A SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING;
EXTENSION OF THE TARGET DATE FOR COMPLETION OF THE
INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review (1) an initial determination (“ID”) (Order No. 43) of the presiding administrative law judge (“ALJ”) granting complainants’ motion to terminate the remand investigation with respect to certain products and (2) a remand ID. The Commission has set a schedule for filing written submissions on remedy, the public interest, and bonding. The Commission has also determined to extend the target date for completion of this investigation to April 12, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. 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 investigation No. 337-TA-928, *Certain Windshield Wipers and Components Thereof*, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), on September 2, 2014, based on a complaint filed by Valeo North America, Inc. of Troy, MI, and Delmex de Juarez S. de R.L. de

C.V. of Mexico (collectively, “Valeo”). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,891,044 (“the ‘044 patent”); 7,937,798 (“the ‘798 patent”); and 8,220,106 by Federal-Mogul Corp. of Southfield, Michigan, Federal-Mogul Vehicle Component Solutions, Inc. of Southfield, Michigan, and Federal-Mogul S.A. of Aubange, Belgium (collectively, “Federal-Mogul”). 79 *Fed. Reg.* 52041-42 (Sep. 2, 2014).

On November 21, 2014, the Commission instituted a Section 337 investigation No. 337-TA-937, *Certain Windshield Wipers and Components Thereof*, based on a complaint filed by Valeo. The complaint alleges a violation of section 337 by reason of infringement of certain claims of the ‘044 patent and the ‘798 patent by Trico Products Corporation of Rochester Hills, Michigan, Trico Products of Brownsville, Texas, and Trico Componentes SA de CV of Tamaulipas, Mexico (collectively, “Trico”). 79 *Fed. Reg.* 69525-26 (Nov. 21, 2014).

On December 9, 2014, the ALJ consolidated investigations 337-TA-928 and 337-TA-937. See ALJ Order No. 8 in the investigation 337-TA-928. The Office of Unfair Import Investigations does not participate as a party in these consolidated investigations.

The evidentiary hearing on the question of violation of section 337 was held in July of 2015. On October 22, 2015, the ALJ issued his final ID finding a violation of section 337 with respect to certain claims of the ‘798 patent.

On December 21, 2015, the Commission issued a notice (“Commission Notice”) in which the Commission determined as follows:

- (1) To review the ALJ’s determination in Order No. 36 (Jul. 16, 2015) precluding arguments and evidence relating to Trico’s 618 and 596 connectors on the basis that they are obsolete and are irrelevant to the present investigation, see ALJ Order No. 36 at 1, and on review, to reverse this determination and to remand the investigation to the ALJ with respect to this issue, to make findings regarding whether Trico products with 618 and 596 connectors infringe either asserted patent and to make any necessary related findings, as set forth in the accompanying Remand Order.
- (2) To review the ALJ’s finding that Valeo’s indirect infringement claims are moot and, on review, to vacate it. The Commission finds it unnecessary to reach the issue of whether Trico induced infringement of the ‘798 patent with respect to the accused products considered by the ALJ because the Commission has determined not to review the ALJ’s finding that Trico directly infringes the ‘798 patent.

(3) To review the ALJ's finding that Valeo established quantitatively and qualitatively significant investment in plant and equipment and thus satisfies economic prong of the domestic industry requirement under subsection (A) of section 337(a)(3) and, on review, to take no position with respect to this finding.

(4) To review the final ID with respect to footnote 7 on page 17 and, on review, to modify the subject footnote by striking its second sentence.

Commission Notice at 2-3. The Commission determined not to review the remainder of the final ID.

On January 7, 2016, complainants Valeo moved to terminate the Remand Investigation with respect to Trico's products with 618 and 596 connectors. In its motion, Valeo states that it has withdrawn its assertion of infringement of the asserted patents against such products. On January 11, 2016, the ALJ issued an ID (Order No. 43) granting Valeo's unopposed motion.

On the same day, the ALJ issued a Remand ID. The ALJ stated that in view of Order No. 43 granting Complainants' motion to terminate the Remand Investigation with respect to Trico's products with the 618 and 596 connectors, the Commission's Remand Order dated December 21, 2015, directing the ALJ to: (1) make findings regarding whether Trico products with 618 and 596 connectors infringe the Asserted Patents; and (2) issue an ID within 30 days of the Remand Order extending the target date, is moot. Remand ID at 1. No party petitioned for review of any of the subject IDs, and the Commission has determined not to review them. The Commission's determination results in a finding of violation as to the '798 patent. The Commission has determined to extend the target date for completion of this investigation to April 12, 2016.

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 are 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 (Dec. 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 President has 60 days to approve or disapprove the Commission's action. 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.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. 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 on remedy and bonding issued on October 22, 2015, by the ALJ. Complainants are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the expiration date of the '798 patent and state the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on February 24, 2016. Reply submissions must be filed no later than the close of business on March 2, 2016. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons 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 section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-928/937") 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). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: February 10, 2016