

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)

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART AND, ON
REVIEW, TO REVERSE IN PART AND TO VACATE IN PART A FINAL INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337, AND TO REMAND
THE INVESTIGATION IN PART TO THE ADMINISTRATIVE LAW JUDGE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to review in part and, on review, to reverse in part and to vacate in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on October 22, 2015. The Commission has also determined to remand the investigation in part to the ALJ.

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 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 Nos. 337-TA-928 and 337-TA-937. *See* ALJ Order No. 8 in Inv. No. 337-TA-928. The Office of Unfair Import Investigations is not a party in these consolidated investigations.

On May 19, 2015, Valeo and Federal-Mogul reached a settlement agreement and filed a joint motion to terminate the Federal-Mogul Respondents from the consolidated investigations, which was granted on June 5, 2015. *See* ALJ Order No. 24, Inv. No. 337-TA-928 (June 5, 2015) (*not reviewed* June 29, 2015). The Trico respondents remained in the consolidated investigations.

The evidentiary hearing on the question of violation of section 337 was held in July of 2015. The final ID on violation was issued on October 22, 2015. The ALJ issued his recommended determination on remedy, the public interest and bonding on the same day. The ALJ found that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain windshield wipers and components thereof by reason of infringement of certain claims of the ‘798 patent. The ALJ recommended that the Commission issue a limited exclusion order directed to Trico’s accused products that infringe the ‘798 patent. The ALJ did not recommend that the Commission issue a cease and desist order in this investigation. Both parties to this investigation filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

Having examined the record in this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part and, on review, to take certain actions. In particular, the Commission has 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.

The Commission has determined not to review the remainder of the final ID. The Commission does not seek further briefing at this time.

In light of the remand, the ALJ shall set a new target date within thirty days of the date of this notice consistent with the Remand Order. The current target date for this investigation is February 23, 2016.

Any briefing on reviewed and remanded issues, and on remedy, bonding, and the public interest will follow Commission consideration of the remand ID.

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.

Lisa R. Barton
Secretary to the Commission

Issued: December 21, 2015