

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SILICON-ON-INSULATOR
WAFERS**

Investigation No. 337-TA-966

**NOTICE OF COMMISSION DETERMINATION TO ADOPT IN-PART
A RECOMMENDED DETERMINATION DENYING A MOTION FOR SANCTIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt in-part a recommended determination (“RD”) (Order No. 18) denying Respondent Soitec S.A.’s motion for sanctions.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-708-4716. 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 (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 September 24, 2015, based on a complaint filed by Silicon Genesis Corp. of San Jose, California (“Complainant” or “SiGen”). *See* 80 *Fed. Reg.* 57641 (Sept. 24, 2015). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain silicon-on-insulator wafers by reason of infringement of certain claims of U.S. Patent Nos. 5,985,742; 6,013,563; 6,103,599; 6,162,705; 6,180,496; 6,294,814; 6,790,747; 7,811,901. *See id.* The notice of investigation identified Soitec S.A. of Bernin, France (“Respondent” or “Soitec”). *See id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. *See id.*

On May 18, 2016, Complainant filed an unopposed motion to terminate the investigation in its entirety based on the withdrawal of the complaint. On May 20, 2016, the administrative law judge (“ALJ”) issued an initial determination (“ID”) granting the motion to terminate (Order

No. 16). The Commission determined not to review the ID. *See Certain Silicon-on-Insulator Wafers*, Inv. No. 337-TA-966, Comm'n Notice (U.S.I.T.C. June 15, 2016).

On June 8, 2016, Respondent Soitec filed a motion for sanctions under 19 U.S.C. § 1337(h), 19 C.F.R. § 210.33, and the Commission's inherent authority, in connection with Complainant SiGen's alleged discovery violations and misconduct related to its domestic industry case (Motion Docket No. 966-019C). Because the ALJ had issued the ID terminating the investigation at the time, Soitec's motion for sanctions was properly filed before the Commission.

On August 8, 2016, the Commission issued an Order assigning the motion for sanctions to the ALJ and directing the ALJ "to (1) consider the motion and responses thereto; and (2) issue a recommended determination." *See Certain Silicon-on-Insulator Wafers*, Inv. No. 337-TA-966, Comm'n Order at 2 (U.S.I.T.C. Aug. 8, 2016) (citing 19 C.F.R. § 210.25(c)).

Accordingly, on September 6, 2016, the ALJ issued Order No. 18 denying Soitec's motion for sanctions ("RD"). On September 19, 2016, Respondent Soitec filed Comments urging the Commission not to adopt the RD, and on September 26, 2016, Complainant SiGen filed a Response to Soitec's Comments.

The Commission has determined to adopt in-part the RD. Specifically, the Commission adopts the RD's factual findings and conclusion that monetary sanctions are not warranted in this investigation. In addition, the Commission clarifies the legal analysis with respect to sanctions under Commission Rules 210.33(c) and 210.27(g) as follows.

The Commission finds that Commission Rule 210.33(c) does not exclude scheduling orders and ground rules *per se*. *See* 19 C.F.R. § 210.33(c). However, only in limited circumstances, *e.g.*, outright failure to obey the discovery obligations in such orders, would monetary sanctions be warranted under Commission Rule 210.33(c). *See R.W. Intern. Corp. v. Welch Foods, Inc.*, 937 F.2d 11, 17 (1st Cir. 1991); *Prof'l Seminar Consultants, Inc. v. Sino Am. Tech. Exch. Council, Inc.*, 727 F.2d 1470, 1474 (9th Cir. 1984). In this investigation, the Commission adopts the RD's finding that Complainant's domestic industry evidence was untimely and/or insufficient (*see* RD at 18, 21). But the Commission does not find outright failure by SiGen to obey its discovery obligations under the scheduling order and/or ground rules to warrant monetary sanctions pursuant to Commission Rule 210.33(c).

The Commission also finds that SiGen's conduct does not warrant monetary sanctions under Commission Rule 210.27(g). The Commission adopts the RD's findings that Complainant's domestic industry evidence was "late" and "insufficien[t]" but that "a conclusion cannot be drawn unequivocally that any or all of Complainant's conduct constituted evidence of falsity and deliberate misrepresentation." *See* RD at 21. In addition, the Commission finds that SiGen's discovery responses were "[n]ot interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation" to warrant monetary sanctions under Commission Rule 210.27(g). *See* 19 C.F.R. § 210.27(g).

The Commission also adopts the RD's finding that SiGen's conduct does not "constitute th[e] type of misconduct that justifies additional sanctions in the form of an award of attorneys' fees or expenses." See RD at 22. The Commission finds that SiGen's conduct was not sufficiently egregious to warrant monetary sanctions under the Commission's inherent authority to regulate its adjudicative proceedings. See *Certain Concealed Cabinet Hinges (Certain Concealed Cabinet Hinges and Mounting Plates*, Inv. No. 337-TA-289, Comm'n Op., 1990 WL 10608981, *5 (U.S.I.T.C. Jan. 8, 1990) ("The Commission has inherent authority to regulate its adjudicative proceedings and . . . [to] impose[] a sanction . . . if the misconduct . . . [is] sufficiently egregious.").

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". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: December 2, 2016