UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN L-TRYPTOPHAN, L -TRYPTOPHAN PRODUCTS, AND THEIR METHODS OF PRODUCTION**	**Investigation No. 337-TA-1005**

NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL DETERMINATION FINDING NO SECTION 337 VIOLATION; SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW 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 final initial determination ("FID") of the presiding administrative law judge ("ALJ") finding no violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 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 SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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 Investigation No. 337-TA-1005 on June 14, 2016, based on a complaint filed by Complainants Ajinomoto Co., Inc. of Tokyo, Japan and Ajinomoto Heartland Inc. of Chicago, Illinois (collectively, "Ajinomoto" or "Complainants"). *See* 81 FR 38735-6 (June 14, 2016). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of

production, by reason of infringement of certain claims of U.S. Patent No. 7,666,655 ("the '655 patent") and U.S. Patent No. 6,180,373 ("the '373 patent"). *Id.* The notice of investigation identified CJ CheilJedang Corp. of Seoul, Republic of Korea; CJ America, Inc. of Downers Grove, Illinois; and PT CheilJedang Indonesia of Jakarta, Indonesia (collectively "CJ" or "Respondents") as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is not a party to the investigation.

On August 11, 2017, the ALJ issued his FID finding no violation of section 337. Specifically, the FID finds that: (1) Respondents' accused products do not infringe the asserted claims of the '373 or the '655 patents either literally or under the doctrine of equivalents; (2) claim 10 of the '373 patent is invalid for indefiniteness and lack of written description; (3) claim 20 of the '655 patent is invalid for lack of written description; and (4) Complainants' products do not satisfy the technical prong of the domestic industry requirement with respect to the '655 or the '373 patents. In addition, should the Commission find a violation of section 337, the RD recommends that the Commission issue: (1) a limited exclusion order against Respondents' accused products; and (2) a cease and desist order against Respondent CJ America.

The Commission has determined to review the FID in its entirety. In connection with its review, the parties are requested to brief their positions with reference to the applicable law and the evidentiary record regarding the questions provided below:

1. Please explain, with textual support from the McKitrick reference (JX-5), discussed at column 6, lines 29-37 of the '373 patent, whether McKitrick discloses measuring serine sensitivity via a forward assay, a reverse assay, or both.

2. Please explain whether and why the specific conditions and methods of McKitrick (JX-5) and Bauerle (JX-37), discussed in the '373 patent specification, were not closely followed to establish infringement of the '373 patent. Please provide factual as well as legal support to explain whether the methods employed provide adequate proof of infringement.

3. Assuming prosecution history estoppel arising from the amendment of the term a "protein that has several amino acid deletions, substitutions, insertions, or additions as compared to SEQ ID NO:2" during prosecution of the '655 patent, is relevant to the scope of the term "said protein consists of the amino acid sequence of SEQ ID NO: 2" in claim 9, please explain whether or not any estoppel presumption is rebutted.

4. Please explain the relevance of Exhibit CX-487 (Random House Dictionary definition of "replace") on the claim construction of the term "replacing the native promoter" in the '655 patent claims and include a copy of the CX-487 exhibit.

In addition, 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(s) 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 Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Comm'n Op.).

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 FR 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 questions 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 are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation.

Written submissions and proposed remedial orders must be filed no later than close of business on October 27, 2017. Reply submissions must be filed no later than the close of business on November 3, 2017. No further submissions on any of 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 eight (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 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1005") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://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 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel[1], solely for cybersecurity purposes. 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 CFR part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: October 12, 2017

[1] All contract personnel will sign appropriate nondisclosure agreements.