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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-883]

Certain Opaque Polymers; Commission Decision Affirming Grant of Default and Sanctions; Finding a Violation of Section 337; Issuing Remedial Orders and Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission affirmed, with modification, an initial determination ("ID") (Order No. 27) by the presiding Administrative Law Judge ("ALJ") granting a motion for default and sanctions. The Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting importation of certain opaque polymers manufactured using the Complainants' misappropriated trade secrets. The Commission has also issued a cease and desist order directed to one respondent. The Commission has affirmed the assessment and calculation of sanctions including joint and several liability as to U.S. counsel, but has reversed the ID to the extent that it imposed joint and several liability on Turkish counsel. The Commission has thereby terminated the investigation with a finding of violation of section 337.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C.

20436, telephone (202) 708-2532. 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 TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 21, 2013, based on a complaint filed by the Dow Chemical Company of Midland, Michigan, and by Rohm and Haas Company and Rohm and Haas Chemicals LLC, both of Philadelphia, Pennsylvania (collectively, "Dow"). 78 FR 37571 (June 21, 2013). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain opaque polymers that infringe certain claims of four United States patents. The notice of investigation named five respondents, three of whom remain in this investigation: Organik Kimya San. ve Tic. A.Ş of Istanbul, Turkey; Organik Kimya Netherlands B.V. of Rotterdam-Botlek, Netherlands; and Organik Kimya US, Inc., of Burlington, Massachusetts (collectively, "Organik Kimya"). 78 FR at 37571; Notice (Dec. 1, 2014) (termination as to two of the five originally-named respondents). The complaint and notice of investigation were amended to add allegations of misappropriation of trade secrets. 78 FR 71643 (Nov. 29, 2013). The allegations of patent infringement have been withdrawn from the

investigation. *See* Notice (Dec. 13, 2013) (withdrawal of two asserted patents); Notice (Dec. 1, 2014) (withdrawal of the remaining two asserted patents). The only remaining issues are Dow's claims based on trade secret misappropriation and sanctions for discovery abuse.

On May 19, 2014, Dow filed a motion for default and other sanctions against Organik Kimya for discovery abuse. On May 21, 2014, Organik Kimya filed a motion to terminate based upon a consent order stipulation. On July 8-9, 2014, the ALJ conducted a hearing on the pending motions. On October 20, 2014, the ALJ issued an ID (Order No. 27) ("the sanctions ID") finding Organik Kimya in default, under Commission Rule 210.42(c), and ordering monetary sanctions jointly and severally against Organik Kimya and its counsel. Organik Kimya is represented by Finnegan, Henderson, Farabow, Garrett & Dunner, LLP ("Finnegan"), a law firm in Washington, D.C., and by Ömür Yarsuvat, an attorney in Istanbul, Turkey. The ALJ denied Organik Kimya's motion to terminate the investigation based upon a consent order stipulation.

On October 28, 2014, Organik Kimya filed a petition for review of the sanctions ID. The same day, Finnegan and Yarsuvat filed separate motions before the Commission to intervene in the investigation for the purpose of contesting joint liability for the monetary sanction. Finnegan and Yarsuvat also filed provisional petitions for review of the sanctions ID. On November 10, 2014, Finnegan filed a motion for leave to file a reply in support of its motion to intervene, which Dow opposed.

On December 16, 2014, the Commission granted the motions to intervene and determined to review the sanctions ID. The Commission notice granting review solicited further briefing on two questions concerning sanctions and on remedy, the public interest, and bonding.

On December 30, 2014, the parties—Dow, Organik Kimya, Finnegan, and Yarsuvat—filed opening briefs in response to the Commission notice. (Organik Kimya filed two briefs.) On January 7, 2015, the parties filed replies. (Dow filed two replies.)

Having examined the record of this investigation, including the ALJ's sanctions ID, as well as the petitions to the Commission and their replies, and the briefs to the Commission and their replies, the Commission has determined to affirm the ID's finding of Organik Kimya in default. *See* 19 U.S.C. 1337(h); 19 CFR 210.16-.17, 210.33. The Commission has determined that the appropriate remedy is the issuance of a limited exclusion order prohibiting, for twenty-five years, the entry of opaque polymers manufactured using any of the misappropriated trade secrets identified in Dow's Disclosure of Misappropriated Trade Secrets (Jan. 29, 2014) (listing trade secrets A-ZZ). The Commission has also determined to issue a cease and desist order prohibiting Organik Kimya U.S., Inc. from, *inter alia*, importing or selling opaque polymers manufactured using any of the aforementioned misappropriated trade secrets. The Commission has also determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d) & (f), do not preclude the issuance of the limited exclusion order or the cease and desist order. The Commission has determined that no bonding is required during the period of Presidential review, 19 U.S.C. 1337(j).

The Commission has further determined to affirm the ALJ's assessment and calculation of attorneys' fees and costs against Organik Kimya. The Commission has determined to affirm, with modification, the ALJ's determination that Finnegan be held jointly and severally liable with Organik Kimya for those sanctions. The Commission has determined to reverse the sanctions ID to the extent that it imposed joint and several liability on Mr. Yarsuvat. The Commission's

reasoning in support of these determinations is provided in an accompanying Commission opinion. The investigation is terminated.

Commissioner Schmidtlein dissents, for the reasons to be set forth in her separate opinion, as to the Commission's determination on sanctions for Organik Kimya's counsel. She otherwise joins the Commission's determination as to Organik Kimya's default, the Commission remedial orders to be issued, and the liability of Organik Kimya for fees and costs.

The Commission's limited exclusion order and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

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.

Issued: April 17, 2015.

Lisa R. Barton,
Secretary to the Commission.

[FR Doc. 2015-09444 Filed: 4/21/2015 08:45 am; Publication Date: 4/22/2015]