



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-914]

Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone

Commission's Determination Not to Review in Part a Final Initial Determination Finding No Violation of Section 337, and, on Review, to Set Aside Findings on One Issue and Correct a Typographical Error; Termination 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 to review in part a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”). On review, the Commission determined to vacate the ALJ’s findings on one issue and to correct a typographical error. The Commission has found no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 (<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 this investigation on April 14, 2014, based on a complaint filed by FMC Corporation ("FMC") on March 5, 2014. *79 Fed. Reg.* 20907-08. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sulfentrazone active ingredient and formulated sulfentrazone compositions made by a process that infringes certain claims of U.S. Patent No. 7,169,952 ("the '952 patent"). The Commission's notice of investigation named as respondents Beijing Nutrichem Science and Technology Stock Co., Ltd., of Beijing, China ("Beijing Nutrichem"); Summit Agro USA, LLC, of Cary, North Carolina; Summit Agro North America, Holding Corporation of New York, New York; and Jiangxi Heyi Chemicals Co. Ltd. of Jiujiang City, China. *Id.* at 20908. The ALJ later granted FMC's motion to amend the complaint and notice of investigation to replace Beijing Nutrichem with Nutrichem Co., Ltd. ("Nutrichem"). Order No. 9 (May 29, 2014), *not reviewed* June 23, 2014. The Office of Unfair Import Investigations is also a party to the investigation.

On April 10, 2015, the ALJ issued her final ID finding no violation of section 337. She found that, under her claim constructions, there was insufficient evidence to conclude that the respondents infringed the asserted claims or that FMC satisfied either

the technical prong or the economic prong of the domestic industry requirement. She further found that the respondents showed by clear and convincing evidence that the asserted claims of the '952 patent are invalid under 35 U.S.C. § 102(g).

On April 22, 2015, FMC filed a timely petition for review challenging nearly all of the ID's findings. On April 30, 2015, the respondents and the Commission investigative attorney timely opposed FMC's petition.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined to review the final ID in part. The Commission has determined to review and set aside the ALJ's findings on the economic prong of the domestic industry requirement *See* 19 C.F.R. § 210.45(c).

The Commission has also determined to review the the ALJ's construction of "a temperature in the range of about 120°C to about 160°C" because it contains a typographical error. The ALJ cites the Commission's affirmance of her construction of the claim phrase during the temporary phrase of this investigation, but adds the word "about" to her quotation of the Commission's construction and to her final construction. Because the ID indicates the intent to be consistent with the Commission's construction, the Commission finds that the inclusion of the word "about" in the construction is a typographical error. On review, the Commission finds that "a temperature in the range of about 120°C to about 160°C" means "a temperature in the range of 120°C (+/-2.5°C) to 160°C (+/-2.5°C)." This minor change does not impact any of the ALJ's findings on infringement, invalidity, or the technical prong of the domestic industry requirement.

The Commission has determined not to review the remaining findings in the 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.

Issued: June 8, 2015.

Lisa R. Barton,
Secretary to the Commission.

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