

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN R-134a COOLANT
(OTHERWISE KNOWN AS 1,1,1,2-
TETRAFLUOROETHANE)

Investigation No. 337-TA-623

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**NOTICE OF DECISION NOT TO REVIEW AN INITIAL DETERMINATION
GRANTING A MOTION FOR PARTIAL TERMINATION OF THE INVESTIGATION
BASED ON THE ENTRY OF A CONSENT ORDER SPECIFIC TO RESPONDENTS'
"OLD" PROCESS; ISSUANCE OF CONSENT ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 25) granting respondents' motion for a partial termination of the above-referenced investigation based on the entry of a consent order specific to respondents' "OLD" process. The Commission has issued the subject consent order.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, 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 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 this investigation on December 31, 2007, based on a complaint filed by INEOS Fluor Holdings Ltd., INEOS Fluor Ltd., and INEOS Fluor Americas L.L.C. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain R-134a coolant

(otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of various claims of United States Patent No. 5,744,658. Complainants subsequently added allegations of infringement with regard to United States Patent Nos. 5,382,722 and 5,559,276. The complaint named two respondents, Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. and Sinochem Ningbo Ltd. Two additional respondents were subsequently added: Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. and Sinochem (U.S.A.) Inc.

On August 18, 2008, all four respondents moved for a partial termination of the investigation based on the entry of a consent order specific to respondents' "OLD" process. Complainants and the Commission investigative attorney did not oppose this motion.

On August 20, 2008, the ALJ issued the subject ID granting the motion to terminate the investigation with regard to the "OLD" process. The ALJ found that the motion complied with the requirements of Commission Rule 210.21 (19 C.F.R. § 210.21). The ALJ also concluded that, pursuant to Commission Rule 210.50(b)(2) (19 C.F.R. § 210.50(b)(2)), there is no evidence that termination of this investigation will prejudice the public interest. Accordingly, the ALJ terminated the investigation with respect to the "OLD" process. No petitions for review of this ID were filed.

The Commission has determined not to review the ID and to issue the subject consent order.

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 section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: September 11, 2008

IN THE UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

In the Matter of

Certain R-134a Coolant (otherwise known as
1,1,1,2-tetrafluoroethane)

Investigation No. 337-TA-623

CONSENT ORDER

The United States International Trade Commission ("Commission") has instituted this investigation under Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337), based upon the allegations contained in the Complaint filed by Ineos Fluor Holdings Limited, Ineos Fluor Limited, Ineos Fluor Americas, LLC (collectively "Complainants"), which alleges unfair acts in the importation into the United States, the sale for importation, and the sale within the United States after importation, of certain R-134a coolant by Respondents Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. ("Sinochem Xi'an"), Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. ("Sinochem Taicang"), Sinochem Ningbo Ltd. ("Sinochem Ningbo"), and Sinochem (U.S.A.), Inc. ("Sinochem USA") (collectively "Respondents").

The Respondents have executed a Consent Order Stipulation in which they agree to the entry of this Consent Order and to all waivers and other provisions as required by the Commission's Rules of Practice and Procedure, and have filed a Motion for Partial Termination of this Investigation with respect to the Old Process (as defined in the Consent Order Stipulation which is incorporated herein,) based on the Consent Order Stipulation. In particular, the Respondents have stipulated as follows:

(1) The Respondents stipulate to the entry of the Consent Order.

(2) The Commission has *in rem* jurisdiction over, *inter alia*, R-134a coolant made by the Respondents' Old Process, which is a subject of the Complaint in this Investigation, and the Commission has *in personam* jurisdiction over the Respondents for purposes of this Consent Order.

(3) Effective immediately upon entry of the Consent Order, the Respondents, including their officers, directors, employees, agents, and subsidiary entities that they control, agree that, upon entry of the Consent Order, that they will not directly or indirectly import into the United States, sell for importation into the United States, sell within the United States after importation or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of R-134a coolant manufactured by the Old Process without the consent or

agreement of Complainants.

(4) The Respondents expressly waive all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

(5) The Respondents will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

(6) Enforcement, modification, or revocation of the Consent Order will be carried out pursuant to subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210. In determining whether Respondents are in violation of the Consent Order, the Commission may infer facts adverse to Respondents if Respondents fail to provide adequate or timely information or cooperate in the inspection program as agreed between Complainants and Respondents. The Commission may impose upon any person who violates the Consent Order the penalties available in 19 U.S.C. § 1337(f)(2).

(7) The Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable.

(8) The Respondents will not seek to challenge the validity or enforceability of U.S. Letters Patent 5,382,722 ("the '722 patent"), U.S. Letters Patent 5,744,658 ("the '658 patent"), and U.S. Letters Patent 5,559,276 ("the '276 patent") in any administrative or judicial proceeding to enforce the Consent Order, but reserve their rights to do so in any other proceeding.

(9) The Respondents maintain and reserve their rights to contest infringement and to challenge the validity or enforceability of the '722, '658 and '276 patents insofar as claims of any of these patents have been or may be asserted against the Respondents Old Process, whether in this Investigation or elsewhere.

(10) The signing of the Consent Order Stipulation does not constitute an admission by the Respondents that an unfair act or act of infringement has been committed.

(11) Respondents expressly reserve the right to sell for importation to the United States, import, or sell after importation within the United States R-134a coolant manufactured by the Respondents' New Process (as defined in the Consent Order Stipulation). Respondents maintain and reserve their rights to contest infringement and to challenge the validity or enforceability of the '722, '658 and '276 patents insofar as claims of any of these patents have been or may be asserted against the Respondents New Process (or any future new process), whether in this Investigation or elsewhere.

(12) Respondents' commercial invoices relating to shipments to the United States of R-134a coolant manufactured and sold by Respondents shall indicate the facility that manufactured the R-134a coolant.

(13) Respondents agree to provide compliance reports to the Secretary of the U.S. International Trade Commission and outside counsel for Complainants, in English and under oath, for the period commencing on the date of issuance of the Consent Order, and extending through the remaining term of the '276, '722 and '658 patents. These reports shall be maintained in strict confidence as Respondents' Confidential Business Information, maintained according to the obligations set forth in the Protective Order entered in this Investigation for Confidential Business Information. Each report shall be provided within thirty (30) days of the last day of each of the second and fourth calendar quarters, and shall contain, for the prior six month period:

(A) A statement that each Respondent has complied with the requirements of this Consent Order;

(B) A statement specifying the manufacturing location(s) of R-134a imported into, sold for importation, and/or sold after importation into the United States by each Respondent during the period reported, and for each location identified, the approximate percentage of that location's production volume that was exported to the United States;

(C) A statement that none of the R-134a imported into, sold for importation, and/or sold after importation into the United States was manufactured using the "Old Process"; and

(D) A statement indicating the disposition of any R-134a manufactured using the "Old Process" that existed in any Respondent's inventory in the United States at the time of entry of the consent order during the period reported on.

(E) Neither Complainants nor their counsel may introduce information obtained from the reports in any present or future legal actions, other than actions before the Commission related to determining or securing compliance with the Consent Order. Respondents shall retain copies of all such reports and underlying data for a period of three (3) years after the date of filing of the report. For the purpose of determining or securing compliance with the Consent Order and for no other purpose, and subject to any privilege recognized by either the Commission or the Federal courts of the United States, during the period from filing the first report required herein up to and including three years following the date of filing of the last report required herein, duly authorized representatives of the Commission shall, upon reasonable notice, be permitted access to all the records relied on in preparing the reports, as well as the individuals involved with the preparation of the reports.

(14) Sinochem Xi'an and Sinochem Taicang shall make their plants in Xi'an and Taicang for the manufacture of R-134a coolant available for lawful inspections to approved third-party representative(s) of Complainants who have signed the confidentiality agreement

attached as Appendix III to the Consent Order Stipulation upon seven days prior notice to confirm the processes for the manufacture of R-134a coolant used at those plants. Approval of the third party representative(s) of Complainants will not be unreasonably withheld.

(15) There are no other agreements, written or oral, express or implied, between the Respondents and the Complainants concerning the subject matter of this Investigation.

NOW, THEREFORE, the Commission issues the following Consent Order:

(1) Effective immediately upon entry of this Consent Order, the Respondents shall not sell for importation, import into the United States, or sell in the United States after importation or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation R-134a coolant manufactured by the Old Process without the consent or agreement of the Complainants.

(2) The Respondents shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order.

(3) The Respondents shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

(4) In determining whether Respondents are in violation of the Consent Order, the Commission may infer facts adverse to Respondents if Respondents fail to provide adequate or timely information or cooperate in the inspection program as agreed between Complainants and Respondents.

(5) The Respondents shall not seek to challenge and are precluded from any challenges to the validity or enforceability of the claims of the '722, '658, or '276 patent in any administrative or judicial proceeding to enforce the Consent Order, but shall be entitled to do so in another proceeding.

(6) When the latest of the '722, '658, and '276 patents expires, this Consent Order shall become null and void.

(7) If claim 1 of the '722 patent, claims 1 and 2 of the '658 patent, and claim 1 of the '276 patent are all held invalid or unenforceable by a court or agency of competent jurisdiction in a final decision, no longer subject to appeal, this Consent Order shall become null and void..

(8) The entry of this Consent Order does not constitute a determination as to violation of section 337 by the Respondents.

(9) The entry of this Consent Order does not affect the ability of the Respondents to

contest infringement, or challenge the validity and enforceability of the '722, '658, or '276 patent insofar as claims of these patents have been or may be asserted against the Respondents Old Process whether in this Investigation or elsewhere.

(10) The entry of this Consent Order does not preclude sale for importation to the United States, importation, or sale after importation within the United States of R-134a coolant manufactured by the Respondents' New Process (as defined in the Consent Order Stipulation). The entry of this Consent Order does not affect the ability of the Respondents to contest infringement, or challenge the validity and enforceability of the '722, '658, or '276 patent insofar as claims of these patents have been or may be asserted against the Respondents' New Process (or any future new process) whether in this Investigation or elsewhere.

(11) Respondents' commercial invoices relating to shipments to the United States of R-134a coolant manufactured and sold by Respondents shall indicate the facility that manufactured the R-134a coolant.

(12) Respondents agree to provide compliance reports to the Secretary of the U.S. International Trade Commission and outside counsel for Complainants, in English and under oath, for the period commencing on the date of issuance of the Consent Order, and extending through the remaining term of the '276, '722 and '658 patents. These reports shall be maintained in strict confidence as Respondents' Confidential Business Information, maintained according to the obligations set forth in the Protective Order entered in this Investigation for Confidential Business Information. Each report shall be provided within thirty (30) days of the last day of each of the second and fourth calendar quarters, and shall contain, for the prior six month period:

(A) A statement that each Respondent has complied with the requirements of this Consent Order;

(B) A statement specifying the manufacturing location(s) of R-134a imported into, sold for importation, and/or sold after importation into the United States by each Respondent during the period reported, and for each location identified, the approximate percentage of that location's production volume that was exported to the United States;

(C) A statement that none of the R-134a imported into, sold for importation, and/or sold after importation into the United States was manufactured using the "Old Process"; and

(D) A statement indicating the disposition of any R-134a manufactured using the "Old Process" that existed in any Respondent's inventory in the United States at the time of entry of the consent order during the period reported on.

(E) Neither Complainants nor their counsel may introduce information obtained from the reports in any present or future legal actions, other than actions before the Commission related to determining or securing compliance with the Consent Order.

Respondents shall retain copies of all such reports and underlying data for a period of three (3) years after the date of filing of the report. For the purpose of determining or securing compliance with the Consent Order and for no other purpose, and subject to any privilege recognized by either the Commission or the Federal courts of the United States, during the period from filing the first report required herein up to and including three years following the date of filing of the last report required herein, duly authorized representatives of the Commission shall, upon reasonable notice, be permitted access to all the records relied on in preparing the reports, as well as the individuals involved with the preparation of the reports.

(13) This Investigation is hereby terminated with respect to the Old Process; provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

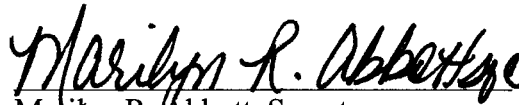


Marilyn R. Abbott
Secretary to the Commission

Issued: September 11, 2008

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF DECISION NOT TO REVIEW AN INITIAL DETERMINATION GRANTING A MOTION FOR PARTIAL TERMINATION OF THE INVESTIGATION BASED ON THE ENTRY OF A CONSENT ORDER SPECIFIC TO RESPONDENTS' "OLD" PROCESS; ISSUANCE OF CONSENT ORDER** has been served by hand upon the Commission Investigative Attorney, Thomas S. Fusco, Esq., and the following parties as indicated, on September 12, 2008.



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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ON BEHALF OF COMPLAINANTS INEOS FLUOR HOLDINGS LIMITED, INEOS FLUOR LIMITED AND INEOS FLUOR AMERICAS LLC:

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