

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SUCRALOSE, SWEETENERS
CONTAINING SUCRALOSE, AND
RELATED INTERMEDIATE
COMPOUNDS THEREOF**

Investigation No. 337-TA-604

**NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against eleven respondents in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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 May 10, 2007, based upon a complaint filed on behalf of Tate & Lyle Technology Ltd. of London, United Kingdom, and Tate & Lyle Sucralose, Inc. of Decatur, Illinois (collectively, "Tate & Lyle"). The complaint alleged violations of section 337(a)(1)(B) 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 sucralose, sweeteners containing sucralose, and

related intermediate compounds thereof by reason of infringement of various claims of United States Patent Nos. 4,980,463 (“the ‘463 patent”); 5,470,969 (“the ‘969 patent”); 5,034,551 (“the ‘551 patent”); 5,498,709 (“the ‘709 patent”); and 7,049,435 (“the ‘435 patent”). The notice of investigation named twenty-five respondents.

On August 15, 2007, the Commission issued notice of its determination not to review an ID allowing JK Sucralose, Inc. (“JK Sucralose”) to intervene as a respondent in the investigation. On August 30, 2007, the Commission issued notice of its determination not to review an ID terminating the investigation with respect to ProFood International Inc. on the basis of a consent order. On October 3, 2007, the Commission issued notice of its determination not to review an ID adding Heartland Sweeteners, LLC (“Heartland Sweeteners”) as a respondent in the investigation. The respondents who remain parties to the investigation are therefore: Changzhou Niutang Chemical Plant Co. (“Changzhou Niutang Chemical”); Guangdong Food Industry Institute and L&P Food Ingredient Co., Ltd. (“GDFII”); Hebei Sukerui Science and Technology Co., Ltd. (“Hebei Sukerui Science”); JK Sucralose; Beijing Forbest Chemical Co., Ltd.; Beijing Forbest Trade Co., Ltd.; Forbest International USA, LLC; U.S. Niutang Chemical, Inc.; Garuda International, Inc.; Heartland Packaging Corporation; Heartland Sweeteners; MTC Industries, Inc.; Nantong Molecular Technology Co., Ltd.; AIDP, Inc.; Fortune Bridge Co., Inc. (“Fortune Bridge”); Nu-Scaan Nutraceuticals (“Nu-Scaan”); CJ America, Inc. (“CJ America”); Vivion, Inc. (“Vivion”); Gremount International Co., Ltd. (“Gremount”); Hebei Province Chemical Industry Academe (“Hebei Academe”); Hebei Research Institute of Chemical Industry (“Hebei Research”); Lianyungang Natiprol (Int’l) Co., Ltd. (“Lianyungang Natiprol”); Ruland Chemistry Co., Ltd. (“Ruland”); Shanghai Aurisco Trading Co., Ltd. (“Shanghai Aurisco”); and Zhongjin Pharmaceutical (Hong Kong) Co. (“Zhongjin”). Some of these respondents have been found in default.

On September 22, 2008, the presiding administrative law judge issued a final initial determination (“final ID”) finding no violation of section 337 (with the exception of certain non-participating and defaulted respondents). On October 6, 2008, Tate & Lyle, four sets of respondents, and the Commission investigative attorney (“IA”) each filed petitions for review. On November 21, 2008, the Commission issued notice of its determination to review the final ID in its entirety and requested briefing on the issues on review and on remedy, the public interest, and bonding, including responses to certain questions.

On review, the Commission found no violation on the merits with respect to the ‘463, ‘969, and ‘551 patents, for the reasons set forth in the Commission opinion. As to the ‘969 patent, respondents Shanghai Aurisco and Zhongjin were previously found to have defaulted. Additionally, the Commission found CJ America, Inc. to have admitted infringement and to have agreed to the entry of an exclusion order as to the ‘969 patent. As to the ‘709 and ‘435 patents, respondents Gremount, Hebei Academe, Lianyungang Natiprol, Ruland, and Hebei Research were previously found to have defaulted with respect to the ‘709 and ‘435 patents, and Shanghai Aurisco and Zhongjin were previously found to have defaulted with respect to the ‘709 patent. Additionally, the Commission found CJ America to have admitted infringement and to have agreed to the entry of a remedial order as to the ‘709 patent, that non-participating respondents

Vivion and Fortune Bridge were subject to adverse inferences with respect to the '709 and '435 patents under Commission Rule 210.17, and that non-participating respondent Nu-Scaan was subject to adverse inferences with respect to the '709 patent under Commission Rule 210.17.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain sucralose and sweeteners containing sucralose by reason of infringement of one or more of claims 20, 21-26, 28, and 29 of the '969 patent by Shanghai Aurisco, Zhongjin, and CJ America; of claims 8, 9, and 13 of the '709 patent by Gremount, Hebei Academe, Lianyungang Natiprol, Hebei Research, Ruland, Shanghai Aurisco, Zhongjin, CJ America, Nu-Scaan, Vivion, and Fortune Bridge; and of claim 1 of the '435 patent by Gremount, Hebei Academe, Lianyungang Natiprol, Ruland, Hebei Research, Vivion, and Fortune Bridge, with the caveat that the order not apply to sucralose supplied to these respondents by the manufacturing respondents who were found to either not infringe or against whom infringement allegations were withdrawn as to the patents asserted in the investigation. These manufacturing respondents are Changzhou Niutang Chemical, GDFII, Hebei Sukerui Science, and JK Sucralose. The Commission further determined that the public interest factors enumerated in section 337(d)(1),(g)(1), 19 U.S.C. § 1337(d)(1),(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance.

The Commission has therefore terminated this investigation. 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 sections 210.16(c) and 210.41-.42, 210.50 of the Commission's Rules of Practice and Procedure (19 CFR § 210.16(c) and § 210.41-.42, 210.50).

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: April 6, 2009

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

**In the Matter of
CERTAIN SUCRALOSE, SWEETENERS
CONTAINING SUCRALOSE, AND
RELATED INTERMEDIATE
COMPOUNDS THEREOF**

Inv. No. 337-TA-604

LIMITED EXCLUSION ORDER

Respondents Shanghai Aurisco Trading Co., Ltd. (“Shanghai Aurisco”) and Zhongjin Pharmaceutical (Hong Kong) Co. (“Zhongjin”) were previously found to have defaulted with respect to U.S. Patent No. 5,470,969 (“the ‘969 patent”). Additionally, the Commission found CJ America, Inc. (“CJ America”) to have admitted infringement and to have agreed to the entry of an exclusion order as to the ‘969 patent. Respondents Gremount International Co., Ltd. (“Gremount”), Hebei Province Chemical Industry Academe (“Hebei Academe”), Hebei Research Institute of Chemical Industry (“Hebei Research”), Lianyungang Natiprol (Int’l) Co., Ltd. (“Lianyungang Natiprol”), and Ruland Chemistry Co., Ltd. (“Ruland”) were previously found to have defaulted with respect to U.S. Patent No. 5,498,709 (“the ‘709 patent”) and U.S. Patent 7,049,435 (“the ‘435 patent”), and Shanghai Aurisco and Zhongjin were previously found to have defaulted with respect to the ‘709 patent. Additionally, the Commission found CJ America to have admitted infringement and to have agreed to the entry of an

exclusion order as to the '709 patent, that non-participating respondents Vivion, Inc. ("Vivion") and Fortune Bridge Co., Inc. ("Fortune Bridge") were subject to adverse inferences with respect to the '709 and '435 patents under Commission Rule 210.17, and that non-participating respondent Nu-Scaan Nutraceuticals ("Nu-Scaan") was subject to adverse inferences with respect to the '709 patent under Commission Rule 210.17.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain sucralose and sweeteners containing sucralose by reason of infringement of one or more of claims 20, 21-26, 28, and 29 of the '969 by Shanghai Aurisco, Zhongjin, and CJ America; of claims 8, 9, and 13 of the '709 patent by Gremount, Hebei Academe, Lianyungang Natiprol, Hebei Research, Ruland, Shanghai Aurisco, Zhongjin, CJ America, Nu-Scaan, Vivion, and Fortune Bridge; and of claim 1 of the '435 patent by Gremount, Hebei Academe, Lianyungang Natiprol, Ruland, Hebei Research, Vivion, and Fortune Bridge, with the caveat that the order not apply to sucralose supplied to these respondents by the manufacturing respondents who were found to either not infringe or against whom infringement allegations were withdrawn as to the patents asserted in the investigation. These manufacturing respondents are Changzhou Niutang Chemical Plant Co. ("Changzhou Niutang Chemical"), Guangdong Food Industry Institute and L&P Food Ingredient Co., Ltd. ("GDFII"), Hebei Sukerui Science and Technology Co.,

Ltd. (“Hebei Sukerui Science”), and JK Sucralose, Inc. (“JK Sucralose”).

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d)(1),(g)(1) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100% of entered value of the sucralose and sweeteners containing sucralose that are subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. The Commission has determined that sucralose and sweeteners containing sucralose of or obtained from Shanghai Aurisco, Zhongjin, CJ America, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or any of their successors or assigns, that is made by a process covered by one or more of claims 20, 21-26, 28, and 29 of U.S. Patent No. 5,470,969 shall be excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law, with the caveat that this exclusion shall not apply to sucralose supplied to these respondents by Changzhou Niutang Chemical, GDFII, Hebei Sukerui Science, and JK Sucralose.

2. The Commission has determined that sucralose and sweeteners containing sucralose of or obtained from Gremount, Hebei Academe, Lianyungang Natiprol, Hebei Research, Ruland, Shanghai Aurisco, Zhongjin, CJ

America, Nu-Scaan, Vivion, and Fortune Bridge, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or any of their successors or assigns, that is made by a process covered by one or more of claims 8, 9, and 13 of U.S. Patent No. 5,498,709 shall be excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law, with the caveat that this exclusion shall not apply to sucralose supplied to these respondents by Changzhou Niutang Chemical, GDFII, Hebei Sukerui Science, and JK Sucralose.

3. The Commission has determined that sucralose and sweeteners containing sucralose of or obtained from Gremount, Hebei Academe, Lianyungang Natiprol, Ruland, Hebei Research, Vivion, and Fortune Bridge, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or any of their successors or assigns, that is made by a process covered by claim 1 of U.S. Patent 7,049,435 shall be excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law, with the caveat that this exclusion shall not apply to sucralose supplied to these respondents by Changzhou Niutang Chemical, GDFII, Hebei Sukerui Science, and

JK Sucralose.

4. Sucralose and sweeteners containing sucralose that are excluded by paragraphs 1-3 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100% of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this action is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this action.

5. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import sucralose and sweeteners containing sucralose containing same that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraphs 1 through 9 of this Order. At its discretion, Customs may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the

certification.

6. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to sucralose and sweeteners containing sucralose that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

7. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

8. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Bureau of Customs and Border Protection.

9. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

A handwritten signature in black ink, appearing to read "Marilyn R. Abbott". The signature is fluid and cursive, with a large initial "M" and "A".

Marilyn R. Abbott
Secretary

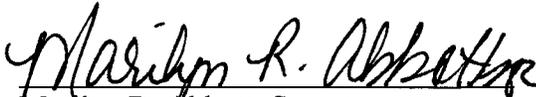
Issued: April 6, 2009

**CERTAIN SUCRALOSE, SWEETENERS CONTAINING
SUCRALOSE, AND COMPONENTS THEREOF**

337-TA-604

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION
ISSUANCE OF A LIMITED EXCLUSION ORDER; TERMINATION OF
INVESTIGATION** Investigative Attorney, Christopher G. Paulraj, Esq., and the
following parties as indicated, on April 7th 2009.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
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**ON BEHALF OF COMPLAINANTS TATE & LYLE
TECHNOLOGY LIMITED AND TATE & LYLE
SUCRALOSE, INC.:**

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AND U.S. NIUTANG CHEMICAL, INC.**

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**ON BEHALF OF RESPONDENTS HEBEI SUKERUI
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