

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Investigation No. 337-TA-894**

**ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND DESIST  
ORDERS AGAINST RESPONDENTS FOUND IN DEFAULT;  
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 (1) a limited exclusion order against infringing products of respondents previously found in default, *i.e.*, WestKY Customs, LLC of Benton, Kentucky (“WestKY”); Tire & Wheel Master, Inc. of Stockton, California (“Tire & Wheel Master”); Vittore Wheel & Tire of Asheboro, North Carolina (“Vittore”); RTM Wheel & Tire of Asheboro, North Carolina (“RTM”); Turbo Wholesale Tires, Inc. of Irwindale, California (“Turbo”); Lexani Tires Worldwide, Inc. of Irwindale, California (“Lexani”); WTD Inc. of Cerritos, California (“WTD”); and Simple Tire of Cookeville, Tennessee (“Simple Tire”) (collectively, “Defaulting Respondents”); and (2) cease and desist orders directed against each of the Defaulting Respondents. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. 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 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on September 20, 2013, based on a complaint filed by Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire

U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia (collectively, “Toyo”). The complaint, as supplemented, alleges violation of section 337 by reason of infringement of certain claims of U.S. Design Patent Nos. D487,424 (“the ‘424 patent”); D610,975; D610,976 (“the ‘976 patent”); D610,977 (“the ‘977 patent”); D615,031; D626,913 (“the ‘913 patent”); D458,214 (“the ‘214 patent”); and D653,200 by numerous respondents. 78 *Fed. Reg.* 57882-83 (Sept. 20, 2013). Subsequently, the complaint and notice of investigation were amended to add Shandong Hengyu Science & Technology Co., Ltd. (“Shandong Hengyu”) as a respondent. Several respondents were terminated from the investigation based on settlement agreements and consent orders.

On November 18, 2013, the ALJ ordered certain respondents, including WestKY, Tire & Wheel Master, Vittore, and RTM, to show cause by December 4, 2013, why they should not be held in default for failing to respond to the Complaint and Notice of Investigation. *See* Order No. 10 (Nov. 18, 2013). No submissions were filed on behalf of WestKY, Tire & Wheel Master, Vittore, or RTM in response to ALJ Order No. 10. On December 5, 2013, the ALJ issued an ID finding respondents WestKY, Tire & Wheel Master, Vittore, and RTM to be in default. *See* ALJ Order 17 (Dec. 5, 2013) (not reviewed on December 27, 2013).

On December 24, 2013, the ALJ ordered respondents Turbo, Lexani, and WTD to show cause by January 10, 2014, why they should not be held in default for failing to respond to the Complaint and Notice of Investigation. *See* Order No. 24 (Dec. 24, 2013). No submissions were filed in response to ALJ Order No. 24. On February 3, 2014, the ALJ issued an ID finding respondents Turbo, Lexani, and WTD to be in default. *See* ALJ Order 30 (Feb. 3, 2014) (not reviewed on March 6, 2014).

On January 28, 2014, the ALJ ordered respondent Simple Tire to show cause by February 12, 2014, why it should not be held in default for failing to respond to the Complaint and Notice of Investigation. *See* Order No. 29 (Jan. 28, 2014). No submissions were filed in response to ALJ Order No. 29. On February 18, 2014, the ALJ issued an ID finding respondent Simple Tire to be in default. *See* ALJ Order 34 (Feb. 18, 2014) (not reviewed on March 20, 2014).

The Commission found that the statutory requirements of section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission rule 210.16(a) (19 C.F.R. § 210.16(a)) are met with respect to the Defaulting Respondents. 79 *Fed. Reg.* 21484-86 (Apr. 16, 2014). Accordingly, pursuant to section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission rule 210.16(c) (19 C.F.R. § 210.16(c)), the Commission presumes the facts alleged in the complaint to be true and finds that Defaulting Respondents are in violation of section 337.

The Commission requested briefing from the parties and the public on the issues of remedy, the public interest, and bonding. 79 *Fed. Reg.* at 21484-85. Complainant Toyo and the Commission investigative attorney (“IA”) filed timely opening submissions. The IA further filed a timely responsive submission on May 2, 2014. Also, two submissions, both dated May 2, 2014, were filed on behalf of certain of Defaulting Respondents: a “Reply Submission Of Katana Racing, Inc d/b/a WTD Respecting Remedy, the Public Interest and Bonding,” and a “Reply

Submission of Turbo Tire Corporation Respecting Remedy, the Public Interest, and Bonding.” On May 7, 2014, complainant Toyo filed “Complainants’ Response to the Reply Submissions of Katana Racing, Inc. d/b/a WTD, TURBO Tire Corp., and LEXANI, Inc.” No other submissions in response to the Commission notice were received.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain tires and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of, the Defaulting Respondents by reason of infringement of one or more of the ‘424 patent; the ‘976 patent; the ‘977 patent; the ‘913 patent; and the ‘214 patent. The Commission has also determined to issue cease and desist orders directed against each of the Defaulting Respondents which prohibit, *inter alia*, the importation, sale, advertising, marketing, and distribution of covered products in the United States by the Defaulting Respondents. The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) do not preclude issuance of the remedial orders. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of the Defaulting Respondents. The Commission’s orders 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 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**LIMITED EXCLUSION ORDER**

The Commission has found Respondents WestKY Customs, LLC of Benton, Kentucky; Tire & Wheel Master, Inc. of Stockton, California; Vittore Wheel & Tire of Asheboro, North Carolina; RTM Wheel & Tire of Asheboro, North Carolina; Turbo Wholesale Tires, Inc. of Irwindale, California; Lexani Tires Worldwide, Inc. of Irwindale, California; WTD Inc. of Cerritos, California; and Simple Tire of Cookeville, Tennessee (collectively, “Respondents”) in default pursuant to section 337(g)(1) and 19 C.F.R. § 210.16 for failing to respond to the Notice of Investigation and a Complaint that alleged a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 337, with respect to the unlawful importation, sale for importation, and sale after importation into the United States of certain tires and products containing same by reason of infringement of one or more of U.S. Design Patent No. D487,424 (“the ’424 patent”); U.S. Design Patent No. D610,976 (“the ’976 patent”); U.S. Design Patent No. D610,977 (“the ’977 patent”); U.S. Design Patent No. D626,913 (“the ’913 patent”); and U.S. Design Patent No. D458,214 (“the ’214 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited

exclusion order prohibiting the unlicensed entry of covered tires and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliate companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(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 percent of the entered value of the tires and products containing same that are subject to this Order.

Accordingly, the Commission hereby ORDERS that:

1. Tires and products containing same covered by the '424 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of Tire & Wheel Master, Inc. of Stockton, California; Turbo Wholesale Tires, Inc. of Irwindale, California; Lexani Tires Worldwide, Inc. of Irwindale, California; WTD Inc. of Cerritos, California; and Simple Tire of Cookeville, Tennessee, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are 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.
2. Tires and products containing same covered by one or more of the '976 patent and the '977 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of WestKY Customs, LLC of Benton, Kentucky, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors

or assigns, are 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 respective terms of the patents, except under license of the patent owner or as provided by law.

3. Tires and products containing same covered by the '913 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of Vittore Wheel & Tire of Asheboro, North Carolina or RTM Wheel & Tire of Asheboro, North Carolina, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are 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.
4. Tires and products containing same covered by the '214 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of Simple Tire of Cookeville, Tennessee, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are 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.
5. Notwithstanding paragraphs 1-4 of this Order, the aforesaid tires and products containing same are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of the entered value of such

articles pursuant to subsection (j) of section 337 and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43,251), 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 sixty days after the date of receipt of this Order.

6. At the discretion of U.S. Customs and Border Patrol (“CBP”) and pursuant to procedures that it establishes, persons seeking to import tires and products 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 one or more of paragraphs 1-4 of this Order. At its discretion, CBP 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.
7. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to tires and products containing the same 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.
8. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.76.

9. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.
10. 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 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton  
Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** WestKY Customs, LLC of Benton, Kentucky, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by one or more of U.S. Design Patent No. D610,976 (“the ’976 patent”) and U.S. Design Patent No. D610,977 (“the ’977 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean WestKY Customs, LLC of Benton, Kentucky.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by one or more of the ’976 patent and the ’977 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the relevant one or more of the ’976 patent and the ’977 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the relevant '976 patent and/or '977 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-894") in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

## **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the latest expiration date of the '976 patent and the '977 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized with a large initial "L" and "B".

Lisa R. Barton

Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Tire & Wheel Master, Inc. of Stockton, California, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by U.S. Design Patent No. D487,424 (“the ’424 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean Tire & Wheel Master, Inc. of Stockton, California.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by the ’424 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the ’424 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the '424 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-894") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration date of the '424 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton

Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Vittore Wheel & Tire of Asheboro, North Carolina, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by U.S. Design Patent No. D626,913 (“the ’913 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean Vittore Wheel & Tire of Asheboro, North Carolina.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by the ’913 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the ’913 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the '913 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-894") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration date of the '913 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton

Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** RTM Wheel & Tire of Asheboro, North Carolina, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by U.S. Design Patent No. D626,913 (“the ’913 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean RTM Wheel & Tire of Asheboro, North Carolina.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by the ’913 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the ’913 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the '913 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-894") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration date of the '913 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized with a large initial "L" and "B".

Lisa R. Barton

Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Turbo Wholesale Tires, Inc. of Irwindale, California, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by U.S. Design Patent No. D487,424 (“the ‘424 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean Turbo Wholesale Tires, Inc. of Irwindale, California.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by the ‘424 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the ‘424 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the '913 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-894") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration date of the '424 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton

Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Lexani Tires Worldwide, Inc. of Irwindale, California, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by U.S. Design Patent No. D487,424 (“the ’424 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean Lexani Tires Worldwide, Inc. of Irwindale, California.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by the ’424 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the ’424 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the '424 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-894”) in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants’ counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration date of the '424 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton

Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** WTD Inc. of Cerritos, California,

cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by U.S. Design Patent No. D487,424 (“the ’424 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean WTD Inc. of Cerritos, California.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by the ’424 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the ’424 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the '424 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-894") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration date of the '424 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton

Secretary to the Commission

Issued: July 24, 2014

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

**In the Matter of**

**CERTAIN TIRES AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-894**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Simple Tire of Cookeville, Tennessee, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for tires and products containing same that are covered by one or more of U.S. Design Patent No. D487,424 (“the ’424 patent”) and U.S. Design Patent No. D458,214 (“the ’214 patent”), in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia.

- (C) “Respondent” shall mean Simple Tire of Cookeville, Tennessee.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean tires and products containing same covered by one or more of the ’424 patent and ’214 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III. Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this order. For the remaining term of the relevant one or more of the ’424 patent and the ’214 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the relevant '424 patent and/or '214 patent authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period,

and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-894") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://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). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain for three (3) years from the close of the fiscal year to which they pertain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual course of business.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

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<sup>1</sup> Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the latest expiration date of the '424 patent and the '214 patent.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to sections V-VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all information for which confidential treatment is sought, Respondent must provide a public version of a document containing such information with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

### **X. Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

### **XI. Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 26, 2005)), subject to Respondent's posting

of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order.

Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (See 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an

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<sup>2</sup> See Footnote 1.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton

Office of the Secretary

Issued: July 24, 2014

**CERTAIN TIRES AND PRODUCTS CONTAINING SAME**

**337-TA-894**

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **NOTICE, LIMITED EXCLUSION ORDER, AND CEASE AND DESIST ORDERS** have been served by hand upon the Commission Investigative Attorney, **Peter J. Sawert, Esq.**, and the following parties as indicated, on **July 24, 2014**.



Lisa R. Barton, Secretary  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**On Behalf of Complainants Toyo Tire & Rubber Co., Ltd., Toyo Tire Holdings of Americas Inc., Toyo Tire U.S.A. Corp., Nitto Tire U.S.A. Inc., and Toyo Tire North America Manufacturing Inc.:**

V. James Adduci, II, Esq.  
**ADDUCI, MASTRIANI & SCHAUMBERG LLP**  
1133 Connecticut Avenue, NW  
Washington, DC 20036

( ) Via Hand Delivery  
( ) Express Delivery  
( x ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**Respondents:**

West KY Customs, LLC  
380 Chapel Lane  
Benton, KY 42025

( ) Via Hand Delivery  
( ) Express Delivery  
( x ) Via First Class Mail  
( ) Other: \_\_\_\_\_

Tire & Wheel Master, Inc.  
3745 Petersen Road  
Stockton, CA 95215

( ) Via Hand Delivery  
( ) Express Delivery  
( x ) Via First Class Mail  
( ) Other: \_\_\_\_\_

Simple Tire  
3313 Williams Enterprise Drive  
Cookeville, TN 38501

( ) Via Hand Delivery  
( ) Express Delivery  
( x ) Via First Class Mail  
( ) Other: \_\_\_\_\_

WTDinc.  
16201 Commerce Way  
Cerritos, CA 90703

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Turbo Wholesale Tires, Inc.  
5793 Martin Rd.  
Irwindale, CA 91706

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Lexani Tires Worldwide, Inc.  
5793 Martin Road  
Irwindale, CA 91706

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Vittore Wheel & Tire  
502 Industrial Park Ave.  
Asheboro, NC 27203

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

RTM Wheel & Tire  
162 North Cherry Street  
Asheboro, NC 27203

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_