

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ROAD CONSTRUCTION
MACHINES AND COMPONENTS
THEREOF**

**Investigation No. 337-TA-1088
(Modification Proceeding)**

**NOTICE OF COMMISSION DETERMINATION CONCERNING
SCHEDULING AND PROCEDURE FOR THE MODIFICATION PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to delegate the modification proceeding in the above-captioned investigation to the Chief Administrative Law Judge to designate a presiding Administrative Law Judge (“ALJ”) to make all necessary factual and legal findings and to issue a recommended determination. The Commission has further determined to set the date for the ALJ to issue a recommended determination to four months from issuance of this notice.

FOR FURTHER INFORMATION CONTACT: Megan Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202-708-2301. 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 SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2017, based on a complaint, as supplemented, filed by Caterpillar Inc. of Peoria, Illinois and Caterpillar Paving Products, Inc. of Minneapolis, Minnesota (collectively, “Complainants”). *See* 82 Fed. Reg. 56625-26 (Nov. 29, 2017). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain road construction machines and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,140,693 (“the ’693 patent”); 9,045,871; and 7,641,419. *See id.* The notice of investigation identified the following

respondents: Wirtgen GmbH of Windhagen, Germany; Joseph Vögele AG of Ludwigshafen, Germany; Wirtgen Group Holding GmbH (“Wirtgen Group”) of Windhagen, Germany; and Wirtgen America, Inc. (“Wirtgen America”) of Antioch, Tennessee. *See id.* The Office of Unfair Import Investigations was not a party to this investigation. *See id.*

On February 14, 2019, the Administrative Law Judge (“ALJ”) issued a final initial determination (“FID”) finding a violation of section 337 with respect to claim 19 of the ’693 patent. On June 27, 2019, the Commission affirmed with modification the FID’s findings. *See* 84 Fed. Reg. 31910 (July 3, 2019). The Commission issued a limited exclusion order (“LEO”) against the infringing products of respondents Wirtgen GmbH, Wirtgen Group, and Wirtgen America (collectively, “Wirtgen”), and a cease and desist order (“CDO”) against Wirtgen America. *See id.* In particular, the LEO covers certain of Wirtgen’s series 1810 road-milling machines which infringe claim 19 of the ’693 patent but explicitly does not cover Wirtgen’s series 1310 road-milling machines, which do not to infringe that claim. *See* Comm’n Op. at 46, 50; LEO at ¶ 2 (including an explicit exemption for Wirtgen’s series 1310 machines).

On August 9 and 27, 2019, respectively, Wirtgen filed a first motion with the Commission and the Federal Circuit requesting a stay of the remedial orders (*i.e.*, the LEO and CDO) pending appeal. *See* ECF No. 2 (Appeal No. 19-2320). On September 12, 2019, the Commission denied Wirtgen’s motion. On October 10, 2019, the Federal Circuit denied Wirtgen’s motion. After Customs excluded its redesigned series 1810 machines on December 18, 2019, Wirtgen filed renewed motions to stay the remedial orders with the Commission and the Federal Circuit on December 31, 2019, and January 6, 2020, respectively. Wirtgen also requested clarification that the remedial orders do not cover its redesigned series 1810 machines. On January 31, 2020, the Commission denied Wirtgen’s renewed motion to stay.

On January 23, 2020, the Commission determined to institute a modification proceeding under 19 U.S.C. § 1337(k) and 19 C.F.R. § 210.76 to adjudicate Wirtgen’s claim that the remedial orders do not cover Wirtgen’s redesigned series 1810 machines. *See* 85 Fed. Reg. 3944 (Jan. 23, 2020). The Commission requested briefing from the parties concerning delegation to the ALJ and scheduling. *See id.* In response to the Commission’s notice, the parties filed initial submissions on January 31, 2020, and reply submissions on February 7, 2020.

The Commission has determined to delegate the modification proceeding in the above-captioned investigation to the Chief ALJ to designate a presiding ALJ to make all necessary factual and legal findings and to issue a recommended determination as to whether the Commission shall modify the remedial orders to explicitly exempt Wirtgen redesigned series 1810 machines. The Commission has also determined to set the date for the ALJ to issue a recommended determination to four months from issuance of this notice. The Commission has further determined to deny Caterpillar’s request to treat this modification proceeding as an enforcement proceeding. If Caterpillar seeks for the Commission to institute an enforcement proceeding, Caterpillar may file an enforcement complaint so requesting in accordance with Commission Rule 210.75, 19 CFR 210.75.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

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: February 27, 2020