

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

**In the Matter of**

**CERTAIN ROAD CONSTRUCTION  
MACHINES AND COMPONENTS  
THEREOF**

**Investigation No. 337-TA-1088**

**NOTICE OF COMMISSION DECISION TO INSTITUTE A RESCISSION  
PROCEEDING; TEMPORARY RESCISSION OF THE SEIZURE AND FORFEITURE  
ORDER; TERMINATION OF THE RESCISSION PROCEEDING**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to institute a proceeding to determine whether to temporarily rescind the Commission's seizure and forfeiture order ("SFO") of January 14, 2020 (corrected January 23, 2020) issued against Wirtgen America, Inc. ("Wirtgen America"). The SFO is temporarily rescinded. The rescission proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). 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, "Caterpillar"). *See* 82 *Fed. Reg.* 56625-26 (Nov. 29, 2017). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337"), 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 identifies the following respondents: Wirtgen GmbH of Windhagen, Germany; Joseph Vögele AG of

Ludwigshafen, Germany; Wirtgen Group Holding GmbH of Windhagen, Germany; and Wirtgen America of Antioch, Tennessee (collectively, “Wirtgen”). *See id.* The Office of Unfair Import Investigations is not a party to this investigation. *See id.*

On June 27, 2019, the Commission found a violation of section 337 in the above-identified investigation based on the infringement of claim 19 of the '693 patent and issued a limited exclusion order against the infringing articles and a cease and desist order against Wirtgen America (collectively, “the remedial orders”). The U.S. Customs and Border Protection (“Customs”) subsequently excluded six Wirtgen machines in December 2019. Based on such exclusion, the Commission issued the subject SFO on January 14, 2020 (corrected January 23, 2020).

On January 30, 2020, Wirtgen filed a civil action against Customs and related government parties in the Court of International Trade (“CIT”) under 28 U.S.C. 1581(a) and (i). The Commission moved to intervene to contest the CIT’s exercise of jurisdiction, and the CIT denied the Commission’s motion. The CIT exercised jurisdiction under section 1581(a) over Customs’ objections and granted summary judgment for Wirtgen as to the excluded machines. The CIT also ordered Customs to release the machines for entry into the United States no later than Thursday, May 21, 2020. Arguing that the predicate for the SFO has been invalidated by the CIT, on May 21, 2020, Wirtgen filed an emergency motion to stay or to temporarily rescind the SFO pending appeal of the CIT’s decision. On May 29, 2020, Caterpillar filed a response in opposition to Wirtgen’s emergency motion.

For the reasons discussed in the Commission Opinion issued concurrently herewith, the Commission has determined to deny in part and to grant in part Wirtgen’s motion. Specifically, the Commission has determined to deny Wirtgen’s motion with respect to staying the SFO but has determined to grant it with respect to temporarily rescinding the SFO in order to suspend its operation. This suspension applies prospectively to articles that arrive in the United States on or after the date of the accompanying Order and until such time as the CIT’s decision is modified, stayed, or overturned. This suspension does not apply to the specific entries that were at issue under 28 U.S.C. § 1581(a) in the CIT civil action (which were excluded, not seized, and released for entry into the United States), and this suspension does not affect or modify in any way the Commission’s remedial orders issued in this investigation.

Accordingly, the Commission has determined to institute a rescission proceeding and to temporarily rescind the SFO pending appeal of the CIT’s decision. The rescission proceeding is hereby terminated.

The Commission’s vote for this determination took place on June 10, 2020.

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". The signature is fluid and cursive, with the first name "Lisa" and the last name "Barton" clearly distinguishable.

Lisa R. Barton  
Secretary to the Commission

Issued: June 10, 2020