

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

**In the Matter of**

**CERTAIN COMPOSITE WEAR  
COMPONENTS AND WELDING PRODUCTS  
CONTAINING SAME**

**Investigation No. 337-TA-644**

**NOTICE OF COMMISSION DETERMINATION TO TEMPORARILY RESCIND ITS  
LIMITED EXCLUSION ORDER AND CEASE AND DESIST ORDER ENTERED ON  
NOVEMBER 24, 2009 PENDING RESOLUTION OF FEDERAL CIRCUIT APPEAL**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to temporarily rescind its exclusion order and cease and desist order entered on November 24, 2009 against respondents AIA Engineering Limited and Vega Industries Ltd. ("AIA") in the subject investigation, pending resolution of the validity of United States Patent No. RE39,998 by the United States Court of Appeals for the Federal Circuit.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 21, 2008, based on a complaint filed by Magotteaux International S/A and Magotteaux Inc. ("Magotteaux"). 73 *Fed. Reg.* 22431 (Apr. 25, 2008). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain composite wear components and products containing the same that infringe certain claims of U.S. Patent No. RE39,998. The complaint named Fonderie Acciaiere Rioale S.P.A. ("FAR") and AIA as respondents. FAR was subsequently terminated from the investigation on the basis of a settlement agreement, leaving AIA as the remaining respondent.

On November 24, 2009, the Commission issued a limited exclusion order and a cease and desist order against AIA, who was found by the ALJ to be in default. The limited exclusion order prohibits the unlicensed entry for consumption of composite wear components and products containing the same that are covered by one or more of claims 12-13 and 16-21 of the '998 patent and that are manufactured abroad by or on behalf of, or are imported by or on behalf of, AIA or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. 74 *Fed. Reg.* 62814 (Dec. 1, 2009). The cease and desist order covers products that infringe claims 12-13 and 16-21 of the '998 patent and is directed to domestic respondent Vega Industries and any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled and majority owned business entities, successors, and assigns. *Id.*

On September 3, 2010, the '998 patent was declared invalid by the District Court for the Middle District of Tennessee in a declaratory judgment action filed by AIA against Magotteaux. On September 28, 2010, Magotteaux noticed an appeal of the district court's decision to the Court of Appeals for the Federal Circuit. On October 5, 2010, AIA filed a petition under 19 U.S.C. § 1337(k) and 19 C.F.R. § 210.76 asking the Commission to rescind its November 24, 2009 exclusion order and cease and desist order in light of the district court's holding invalidating the '998 patent. Complainant Magotteaux opposed the petition on October 15, 2010 and requested that the Commission hold a public hearing. The Commission investigative attorney did not file a formal response, but did provide copies of certain Commission opinions referenced by Magotteaux in its opposition that were unavailable to the parties via the Commission's EDIS database. On October 21, 2010, Magotteaux filed a motion for leave to supplement its October 15, 2010 response. On October 27, 2010, AIA filed a motion for leave to file a reply to Magotteaux's response and supplement response. On November 1, 2010, the Commission granted both motions for leave. On November 11, 2010, Magotteaux moved for leave to file a sur-reply in response to AIA's Reply. On November 19, 2010, AIA opposed the motion. On November 29, 2009, the Commission granted Magotteaux's motion for leave to file a sur-reply, but indicated that no further briefing was expected.

After consideration of the petition and the responses and replies thereto, the Commission has determined to temporarily rescind its limited exclusion order and cease and desist order entered on November 24, 2009 against AIA pending resolution on appeal of the district court's decision by the Federal Circuit. The Commission's remedial orders will become permanently rescinded if the Federal Circuit affirms the district court's judgment with respect to claims 12-13 and 16-21 of the '998 patent, *i.e.*, the claims covered by the Commission's remedial orders, and will be reinstated if the Federal Circuit reverses the district court's judgment with respect to those claims. The Commission has determined to deny Magotteaux's request for a public hearing.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.76(b) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76(b)).

By order of the Commission.

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Marilyn R. Abbott  
Secretary to the Commission

Issued: January 18, 2011