

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

In the Matter of

CERTAIN ROAD MILLING MACHINES  
AND COMPONENTS THEREOF

Investigation No. 337-TA-\_\_\_\_\_

Docket No. 3238

COMPLAINANT'S REPLY TO PROPOSED RESPONDENTS' COMMENTS  
RELATING TO THE PUBLIC INTEREST

Caterpillar's<sup>1</sup> comments reveal nothing indicating that a remedial order in this Investigation would be contrary to the public interest. Instead, Caterpillar makes vague assertions about the general importance of roads and infrastructure, without providing any nexus between a generalized public interest in improving infrastructure and the effect of any remedial order in this case.

First, Caterpillar identifies itself as the world's leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines, and diesel-electric locomotives. The accused products, however, are road milling machines. The requested remedial order has nothing to do with mining equipment, engines, turbines, or locomotives. Tellingly, Caterpillar does not mention that it only recently launched its infringing road milling machines in an attempt to revitalize its meager sales in the road milling market segment. There is no reason to believe that excluding Caterpillar's infringing road milling machinery from the market now would harm the public interest. Put simply, the market was supplying sufficient road milling machinery before Caterpillar's new infringing machines entered the market; it can continue to do so if Caterpillar's new infringing machines are excluded.

In fact, Caterpillar does not—and cannot—contend that Wirtgen America *alone* would be unable to readily replace any articles excluded by a remedial order. As Wirtgen America is by far

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<sup>1</sup> Proposed respondents are Caterpillar Inc., Caterpillar Paving Products, Inc., Caterpillar Bitelli SpA, Caterpillar Prodotti Stradali S.r.L., and Caterpillar Americas CV (collectively, "Caterpillar").

the largest supplier of road milling equipment, there is every reason to believe that Wirtgen America could readily replace the loss of the accused products.

More broadly, Caterpillar cannot identify *any* actual public harm that would result from the requested remedial order. Caterpillar largely makes general observations about the importance of transportation infrastructure to society, and it speculates about a broad government interest in improving that infrastructure. Neither observation has anything to do with Caterpillar’s road milling machinery. Even if a major highway renewal project were imminent, Caterpillar gives no reason to believe that any harm would come to the public as a result of Caterpillar’s inability to contribute the infringing road milling machinery to that effort.

Caterpillar contends that its road milling machines are “critical” to “help” meet the challenges of improving transportation infrastructure. But it provides no explanation, however, as to why *its* road milling machines are so “critical” when it does not dispute that Wirtgen America could satisfy all of the public demand. Moreover, Caterpillar’s worries about the need for infrastructure—taken to their logical conclusion—would mean that the Commission could never issue a remedial order against any product used in transportation infrastructure, from asphalt to shovels.

The only concrete harm that Caterpillar identifies as a result of the requested remedy is a speculative disruption of already-scheduled equipment deliveries, service, and repairs that might potentially burden an undisclosed number of unidentified third parties. But this assertion is so lacking in facts and specifics that it cannot raise a genuine public interest concern. Even if true, the fact that a third party might not obtain the product of their choice does not harm the public at large—it is true of *every* remedial order issued by the Commission. *See Certain Personal Data & Mobile Commc’ns Devices and Related Software*, Inv. No. 337-TA-710, Comm’n Op. at 69 (Dec. 29, 2011) (“[E]xclusion necessarily affects consumer choice. Accordingly, the mere constriction of choice cannot be a sufficient basis for denying the issuance of an exclusion order”).

Finally, Caterpillar does not suggest that any discovery into the public interest would reveal any evidence to support its vague claims. Therefore, there is simply no reason to delegate the public interest to the ALJ. And there is no reason to withhold issuance of a permanent exclusion order and cease and desist order against Caterpillar's infringing road milling machinery due to the public interest. *See Certain Mobile Devices, Associated Software, & Components Thereof*, Inv. No. 337-TA-744, Comm'n Op. at 31 (U.S.I.T.C. June 5, 2012) ("the public interest favors the protection of U.S. intellectual property rights").

August 7, 2017

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, DuVon O. Floyd, hereby certify that on this day, August 7, 2017, a true and correct copy of the foregoing **COMPLAINANT'S REPLY TO PROPOSED RESPONDENTS' COMMENTS RELATING TO THE PUBLIC INTEREST** was filed and served upon the following as indicated:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street, S.W., Room 112 Washington, DC 20436	<input checked="" type="checkbox"/> Via Electronic filing (EDIS) <input checked="" type="checkbox"/> Via Hand Delivery (8 copies) <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Overnight Courier
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**On Behalf of Proposed Respondents Caterpillar Inc., Caterpillar Paving Products, Inc., Caterpillar Bitelli SpA, Caterpillar Prodotti Stradali S.r.L., and Caterpillar Americas CV**

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/s/ DuVon O. Floyd  
**DuVon O. Floyd**  
**Litigation Paralegal**