

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN WINDSHIELD WIPERS
AND COMPONENTS THEREOF**

Inv. No. 337-TA-928

Inv. No. 337-TA-937

(Consolidated)

**ORDER No. 24: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE THE FEDERAL-MOGUL RESPONDENTS BASED
ON SETTLEMENT AGREEMENT AND GRANTING JOINT
MOTION TO LIMIT SERVICE OF SETTLEMENT AGREEMENT**

(June 5, 2015)

INTRODUCTION

On May 19, 2015, Complainants Valeo North America, Inc. and Delmex de Juarez S. de R.L. de C.V. (collectively, “Valeo”) and Respondents Federal-Mogul Corp., Federal-Mogul Vehicle Motorparts Corporation (formerly known as Federal-Mogul Vehicle Component Solutions, Inc.), and Federal-Mogul S.A. (collectively, “Federal-Mogul”)¹ filed a joint motion pursuant to 19 C.F.R. § 210.21(a)(2) and (b) to terminate by settlement the Federal-Mogul Respondents. (Motion Docket No. 928-025.) Concurrently, the moving parties also filed a joint motion to limit service of the settlement agreement to the settling parties.² (Motion Docket No. 928-027.) Respondents Trico Products Corporation and Trico Componentes SA de CV (collectively, “Trico”) did not file a response in opposition to the motion to terminate or to the motion to limit service.

STANDARDS OF LAW

Under Commission Rule 210.21(a)(2),

¹ Valeo and Federal-Mogul are hereinafter referred to as “the moving parties.”

² The Office of Unfair Import Investigations does not participate as a party in this investigation.

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[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement.

19 C.F.R. § 210.21(a)(2). Commission Rule 210.21(b)(1) further specifies that the motion to terminate must include: (1) copies of the licensing or other settlement agreement; (2) any supplemental agreements; and (3) a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. 19 C.F.R. § 210.21(b)(1). In addition, the Rule requires that the motion must include a public version of any licensing or other settlement agreement containing confidential business information. *Id.* Commission Rule 210.21(b)(1) also provides that, “on motion for good cause shown,” the ALJ may limit the service of the settlement agreement and any supplemental agreements to the settling parties and the Commission Investigative Attorney. *Id.*

Pursuant to Commission Rule 210.50(b)(2), I must also consider and make appropriate findings regarding the effect of the proposed termination on the public interest. 19 C.F.R. § 210.50(b)(2).

DISCUSSION

The moving parties filed a confidential version of the motion to terminate that includes a confidential version of the Settlement Agreement (Exhibit A, hereto). Additionally, the moving parties filed a public version of the motion to terminate that includes a redacted version (*i.e.*, public version) of the Settlement Agreement (Exhibit B, hereto). The moving parties also have represented that “[t]here are no other agreements, written or oral, express or implied, regarding the subject matter of this investigation” between Valeo and Federal-Mogul. (*See* Joint Motion to Terminate at 2.) Accordingly, I find that the requirements of Commission Rule 210.50(b)(1) have been met.

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In addition, I find that good cause exists for limiting service of the confidential Settlement Agreement to the moving parties. First, the Settlement Agreement includes Confidential Business Information as defined in Commission Rule 201.6(a). Second, there is no need for Trico or its outside counsel to see the confidential version of the Settlement Agreement as it has little relevance to the issues in this investigation, as they relate to Trico. Accordingly, service of the confidential Settlement Agreement shall be limited to the moving parties.

With regard to the public interest, I have reviewed the pleadings filed in connection with the motion to terminate and do not find any information indicating that termination of this investigation on the basis of the Settlement Agreement is contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. To the contrary, I find that termination of Federal-Mogul is in the public interest and will conserve public and private resources. *See, e.g., Certain Consumer Elecs., Including Mobile Phones and Tablets*, Inv. No. 337-TA-839, Order No. 35, 2013 WL 453756, *2 (Feb. 4, 2013) (“[T]ermination of litigation under these circumstances as an alternative method of dispute resolution is generally in the public interest and will conserve public and private resources.”).

Accordingly, for the reasons above, it is my Initial Determination to GRANT the joint motion to terminate (Motion Docket No. 928-025), and the Federal-Mogul Respondents are hereby terminated from this investigation. Additionally, the joint motion to limit service is GRANTED (Motion Docket No. 928-027), and service of the confidential version of the Settlement Agreement shall be limited to the moving parties.³

³ As noted above, the Office of Unfair Import Investigations does not participate as a party in this investigation.

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This Initial Determination, along with any supporting documentation, is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.

A handwritten signature in black ink, reading "Thomas B. Pender". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas B. Pender
Administrative Law Judge

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EXHIBIT A

(Confidential Settlement Agreement - Redacted)

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EXHIBIT B

CONFIDENTIAL SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered into as of the Effective Date, by and between FEDERAL-MOGUL CORPORATION, a Delaware corporation, having an office at 27300 West 11 Mile Road, Southfield, Michigan, 48034; FEDERAL-MOGUL MOTORPARTS CORPORATION (formerly known as FEDERAL-MOGUL VEHICLE COMPONENT SOLUTIONS, INC.), a Delaware corporation, having an office at 27300 West 11 Mile Road, Southfield, Michigan, 48034; FEDERAL-MOGUL S.A., a corporation organized under the laws of Belgium, having an office at Avenue Champion, n°1, Aubange, Belgium, B-6790; BVBA FEDERAL-MOGUL GLOBAL AFTERMARKET EMEA; NV FEDERAL-MOGUL; BVBA FEDERAL-MOGUL EMEA DISTRIBUTION SERVICES; VALEO [SA], a French company, 43 Rue Bayen, Paris, 75017 France.

REDACTED

DEFINITIONS

The following definitions shall apply to this Settlement Agreement:

1. "Effective Date" means the date upon which this Settlement Agreement is executed by both VALEO and FEDERAL-MOGUL.

REDACTED

3. "FEDERAL-MOGUL" means Federal-Mogul Corporation, Federal-Mogul Motorparts Corporation (formerly known as Federal-Mogul Vehicle Component Solutions, Inc.), Federal-Mogul S.A., Federal-Mogul Global Aftermarket EMEA, NV Federal-Mogul, BVBA Federal-Mogul EMEA Distribution Services, and each of its subsidiaries, heirs, successors, assigns, and legal representatives of any of the foregoing.

REDACTED

6. "Suits" means all patent infringement suits, nullity actions, and other procedures in federal court, before the U.S. International Trade Commission, and European courts and agencies between FEDERAL-MOGUL and VALEO.

REDACTED

12. "Withdraw", "Withdrawal", and "Withdrawn" means withdraw, withdrawal and withdrawn in the context of the referenced Suits initiated in Europe and dismissed with prejudice in the context of the Suits initiated in U.S. District Courts and the U.S. International Trade Commission and further means a permanent or final determination on the merits which precludes another lawsuit based on the same grounds.

CH

INTRODUCTION

FEDERAL-MOGUL and VALEO have participated in Suits, including numerous patent infringement suits, nullity actions, and other administrative procedures in federal court, before the U.S. International Trade Commission ("ITC"), and European courts and agencies.

REDACTED

WITHDRAWAL / DISMISSAL OF THE SUITS

Within ten (10) business days after the execution of this Settlement Agreement, FEDERAL-MOGUL shall take all actions required to withdraw any Suits in the U.S. and in Germany, Belgium, and France initiated by FEDERAL-MOGUL.

Within ten (10) business days after the execution of this Settlement Agreement, VALEO shall take all actions required to withdraw any Suits in the U.S. and in Germany, Belgium, and France initiated by VALEO, with the exceptions of the pending investigation at the ITC which will only be withdrawn as to FEDERAL-MOGUL and continue with respect to Trico Products Corporation, Trico Products, and Trico Componentes SA de CV (collectively, "Trico").

REDACTED

REDACTED

This Settlement Agreement shall be *res judicata* to the Suits as per local laws, including, but not limited to, Articles 2044 et. Seq. of the French Civil Code, or of the Belgian Civil Code or Section 779 of the German Civil Code.

REDACTED

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REDACTED

A

REDACTED

REDACTED

DISCLAIMER

Nothing contained in this Settlement Agreement shall be construed as:

a warranty or representation that any manufacture, sale, lease, use or other disposition of any product based on any information contained in the Settlement Agreement, Asserted Patent Families, or any information exchanged between VALEO and FEDERAL-MOGUL will be free from infringement of any patents or similar rights of any third party; or

an agreement to bring or prosecute actions or suits against third parties for infringement or conferring any rights to bring or prosecute actions or suits against third parties for infringement; or

conferring any right to use in advertising, publicity, or otherwise, any trademark, trade name(s), or any abbreviation or simulation thereof, of either party; or

REDACTED

MISCELLANEOUS

REDACTED

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REDACTED

VALEO and FEDERAL-MOGUL must mutually agree on any press release relative to the withdrawal of the Suits and/or the terms and conditions of this Settlement Agreement.

Prior to the execution thereof, VALEO and FEDERAL-MOGUL shall each obtain the consent of its counsel of record in the Suits to the terms and conditions of this Settlement Agreement.

REDACTED

This Settlement Agreement may be modified (1) only in writing, and (2) when both VALEO and FEDERAL-MOGUL sign the modification.

This Settlement Agreement and all of its terms and conditions are to be interpreted in accordance with the laws of the United States and the State of Michigan and venue for any action under this Agreement would be proper only in Michigan unless both VALEO and FEDERAL-MOGUL consent otherwise in writing prior to such action being filed.

Should any portion of this agreement be found to be invalid, unenforceable, or illegal, that portion of the agreement shall be severed and inoperable and shall not affect the validity, enforceability, or legality of any other provision of this agreement, which shall remain operative and binding upon VALEO and FEDERAL-MOGUL.

This Settlement Agreement is a binding contract between VALEO and FEDERAL-MOGUL and may be executed in separate parts and that shall not affect its validity or enforceability. Facsimile signatures are acceptable and binding.

Nothing in this Settlement Agreement shall diminish or eliminate the rights of VALEO or FEDERAL-MOGUL in law or equity, including but not limited to all such remedies that may be

available for breach of contract in the event that either FEDERAL-MOGUL or VALEO fail to perform or observe or otherwise breach any of their obligations under this Settlement Agreement.

All written notices or communications which FEDERAL-MOGUL or VALEO may desire or may be required to give pursuant to this Settlement Agreement shall be made by facsimile and mail. Such written notices shall be addressed to:

For VALEO:

For FEDERAL-MOGUL:

REDACTED

IN WITNESS WHEREOF, the authorized representatives of VALEO and FEDERAL-MOGUL have executed this Settlement Agreement, which shall become effective as of the Effective Date.

The signatories below are authorized representatives of the parties and sign below on behalf of all the FEDERAL-MOGUL or VALEO entities listed above, respectively.

FEDERAL-MOGUL CORPORATION,

VALEO (SA)

By: [Signature]

REDACTED

Title: SVP General Counsel

Date: 5/18/2015

Date: May 28, 2015

FEDERAL-MOGUL MOTORPARTS
CORPORATION

[Signature]

By: [Signature]

Title: SVP, GC & Secretary

Date: 5/18/15

FEDERAL-MOGUL S.A.

By: [Signature]

Title: VP, Tax and Treasury, Treasurer

Date: 18-5-2015

EXHIBIT A
THE SUITS

REDACTED

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EXHIBIT B

REDACTED

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EXHIBIT C

REDACTED

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EXHIBIT D

REDACTED

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**IN THE MATTER OF CERTAIN WINDSHIELD WIPERS
AND COMPONENTS THEREOF**

**337-TA-928
337-TA-937
(Consolidated)**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 24** have been served upon, **The Office of Unfair Import Investigations** and the following parties on

JUN -5 2015



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, S.W., Room 112A
Washington, DC 20436

**FOR COMPLAINANTS VALEO NORTH AMERICA, INC. & DELMEX de JUAREZ S.
de R.L. de C.V.:**

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() Via Hand Delivery
() Via Express Delivery
() Via First Class Mail
() Other: _____

**FOR RESPONDENTS FEDERAL-MOGUL
CORPORATION, FEDERAL-MOGUL VEHICLE
COMPONENT SOLUTIONS, INC., & FEDERAL-MOGUL
S.A.:**

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**FOR RESPONDENT TRICO PRODUCTS CORPORATION, TRICO PRODUCTS &
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