

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

In the Matter of

**CERTAIN CIGARETTES AND
PACKAGING THEREOF**

Investigation No. 337-TA-643

**ORDER: DENIAL OF RESPONDENT ALCESIA SRL'S REQUEST FOR
RECONSIDERATION**

The Commission instituted this investigation on April 4, 2008, based on a complaint filed by Philip Morris USA Inc. of Richmond, Virginia ("PM USA"), naming Alcesia SRL of the Republic of Moldova ("Alcesia") along with twelve other entities as respondents. *73 Fed. Reg.* 18561 (April 4, 2008). The complaint 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 into the United States, or the sale after importation into the United States of certain cigarettes and packaging thereof that infringe fourteen registered trademarks owned by PM USA, including Marlboro®, Parliament®, and Virginia Slims®.

On February 3, 2009, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (Order No. 19) granting a motion for summary determination filed by PM USA that Alcesia has violated section 337 of the Tariff Act by reason of infringement of PM USA's Marlboro®, Parliament®, and Virginia Slims® trademarks. On April 9, 2009, the Commission determined to review the subject summary ID in its entirety and asked for briefing on particular questions as well as on the issues of remedy, the public interest, and bonding. *73 Fed. Reg.* 17512 (April 15, 2009). On September 21, 2009, the Commission issued its final

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determination, affirming the ALJ's summary determination finding of violation of section 337 by Alcesia. 74 *Fed. Reg.* 49891 (September 29, 2009). The Commission issued an opinion specifically upholding the ALJ's findings that (1) the gray market cigarettes are materially different from the U.S. market cigarettes, (2) PM USA has not authorized the gray market cigarettes sold by Alcesia, and (3) PM USA is entitled to relief. Commission Opinion (September 21, 2009). After determining that the public interest factors set forth in section 337(d) did not preclude a remedy, the Commission issued a general exclusion order.

On October 2, 2009, Alcesia filed a petition for reconsideration requesting reconsideration of certain findings that form the basis for the Commission's conclusion that Alcesia has violated section 337. On October 9, 2009, PM USA filed an answer in opposition to Alcesia's petition for reconsideration. On October 13, 2009, the Commission investigative attorney also opposed Alcesia's petition for reconsideration. On October 16, 2009, Alcesia filed a motion for leave to reply to PM USA's answer and the Commission investigative attorney's response to Alcesia's petition for reconsideration.

Commission Rule 210.47 provides in pertinent part:

Within 14 days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments....

19 C.F.R. § 210.47.

Alcesia's petition for reconsideration of the Commission's final determination neither raises new questions nor presents arguments that Alcesia has not made in previous briefing

before the ALJ and the Commission. As such, we find that Alcesia's petition for reconsideration does not satisfy the requirements of Commission Rule 210.47.

Upon consideration of the record and the submissions on this matter, the Commission hereby ORDERS that:

1. Alcesia's motion for leave to reply is DENIED.
2. Alcesia's petition for reconsideration of the Commission's final determination is DENIED.
3. The Secretary will serve this Order on all parties to the investigation.

By order of the Commission.


A handwritten signature in black ink, appearing to read "Marilyn R. Abbott". The signature is fluid and cursive, with a large initial "M" and "A".

Marilyn R. Abbott
Secretary to the Commission

Issued: October 28, 2009

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER: DENIAL OF RESPONDENT ALCESIA SRL'S REQUEST FOR RECONSIDERATION** has been served by hand upon the Commission Investigative Attorney Rett V. Snoterly, Esq., and the following parties as indicated, on October 28, 2009.


Marilyn R. Abbott, Secretary *enc*
U.S. International Trade Commission
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