

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

In the Matter of

**CERTAIN INTERMEDIATE BULK
CONTAINERS**

Investigation No. 337-TA-638

**NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER
AGAINST INFRINGING PRODUCTS OF RESPONDENT FOUND IN DEFAULT;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against infringing products of Shanghai Kingtainer Packaging Container Co., Ltd., which was previously found in default, and has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3116. 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 March 10, 2008, based on a complaint filed by Schütz Container Systems Inc. of North Branch, New Jersey and Protechna, S.A. of Switzerland (collectively, "Schütz"), alleging 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, and the sale within the United States after importation of certain intermediate bulk containers by reason of infringement of certain claims of United States Patent Nos. 4,909,387; 5,253,777; and 5,673,630. 73 Fed. Reg. 13919 (March 14, 2008). The

complaint named Shanghai Kingtainer Packaging Container Co., Ltd. of China (“Kingtainer”) and Novus International, Inc. of St. Louis, Missouri (“Novus”) as respondents.

Novus was terminated from the investigation on the basis of a settlement.

Schütz moved, pursuant to Commission Rule 210.16(b), for an order to show cause why Kingtainer should not be found in default, and for a finding of default upon the failure to show cause. The ALJ ordered Kingtainer to show cause, no later than the close of business on May 16, 2008, why it should not be found in default for failure to respond to the Complaint and Notice of Investigation (Order No. 4). No response to Order No. 4 was filed, and Kingtainer was found in default. On June 21, 2007, Kingtainer filed with the Commission (but did not serve) a letter that failed to comply with the order to show cause or the requirements of 19 C.F.R. § 210.13(b) (response to complaint and notice of investigation), and that did not demonstrate any intention by Kingtainer to participate as a respondent in this investigation. Having adjudged Kingtainer in default, the Commission requested briefing from interested parties and the public on remedy, the public interest, and bonding. *73 Fed. Reg.* 36356 (June 26, 2008).

Schütz and the Commission investigative attorney submitted briefing responsive to the Commission’s request on July 11, 2008. Each proposed a limited exclusion order directed to Kingtainer’s accused products, and recommended allowing entry under bond of 100 percent of entered value during the period of Presidential review.

The Commission found that the statutory requirements of section 337(g)(1)(A)-(E) (19 U.S.C. § 1337(g)(1)(A)-(E)) were met with respect to the defaulting respondent. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission rule 210.16(c) (19 C.F.R. § 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain intermediate bulk containers by reason of infringement of claims 13, 14, 16, 17, and 31 of U.S. Patent No. 4,909,387; claims 1, 6, 12, and 15 of U.S. Patent No. 5,253,777; and claim 1 of U.S. Patent No. 5,673,630; and that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondent Kingtainer. The Commission further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission’s order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. 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 sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR § 210.16(c) and § 210.41).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: September 11, 2008