

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ROLLED-EDGE RIGID
PLASTIC FOOD TRAYS**

Inv. No. 337-TA-1203

**NOTICE OF A COMMISSION DETERMINATION TO ISSUE A LIMITED
EXCLUSION ORDER AGAINST THE DEFAULTING RESPONDENT; TERMINATION
OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to issue a limited exclusion order against defaulted respondent Ningbo Linhua Plastic Co., Ltd. (“Ningbo”), the last remaining respondent. The Commission has also determined to impose a bond equal to one hundred percent (100%) of the entered value of the infringing products imported during the period of Presidential review. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 23, 2020, based on a complaint filed by Clearly Clean Products, LLC of South Windsor, Connecticut and Converter Manufacturing, LLC of Orwigsburg, Pennsylvania (“Complainants”). 85 FR 37689-90 (June 23, 2020). The complaint alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), by reason of infringement of certain claims of U.S. Patent Nos. 9,908,281 and 10,562,680. The notice of investigation named the following respondents: Eco Food Pak (USA), Inc. of Chino, California (“Eco”) and Ningbo Linhua Plastic Co., Ltd. of Fenghua, China (“Ningbo”). The Commission’s Office of Unfair Import Investigations (“OUII”) also was named as a party.

Eco was terminated from the investigation on October 20, 2020, on the basis of a consent order and consent order stipulation. Comm'n Notice (Oct. 20, 2020).

Also on October 20, 2020, the Commission determined not to review an initial determination ("ID") (Order No. 7) granting Complainants' unopposed motion to find respondent Ningbo in default. Order No. 7 (Oct. 6, 2020), *unreviewed*, Comm'n Notice (Oct. 20, 2020). At that time, the Commission requested briefing on the issues of remedy, bonding, and the public interest with respect to Ningbo. 85 FR 67566-67 (Oct. 23, 2020).

On November 3, 2020, Complainants and OUII filed responses to the Commission's request for briefing. Both parties also filed reply submissions on November 10, 2020. No other submissions were received.

Upon review of the record, and in the absence of any response from Ningbo or from other interested persons or government agencies, and having concluded that it would not be contrary to the public interest to do so, the Commission has determined to issue a limited exclusion order against Ningbo pursuant to Section 337(g)(1), 19 U.S.C. 1337(g)(1). However, the Commission declines to issue the requested cease and desist order against Ningbo because Complainants have not established that Ningbo maintains a commercially significant inventory in the U.S. or engages in significant commercial business operations in the United States, taking the allegations in the complaint as true, and as supported by the available circumstantial evidence. *See Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. 337-TA-997, Comm'n Op. at 16, 17-20 (Apr. 28, 2017). Exhibits 19 and 20 to the Complaint reflect shipments of "trays" to terminated Respondent Eco, which has entered into a consent order in this investigation, and thus do not suggest ongoing commercial operations necessitating a CDO. Even assuming the shipments to non-parties reflected in Exhibit 19 included infringing products, the latest arrival of said shipments occurred in May 2018, and likewise do not support the inference that Ningbo or its agents *maintain* any, much less commercially significant, inventory in the U.S. *See* Compl., Ex. 19 at 9; *cf. Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. at 32 (Feb. 13, 2017) (evidence of "short lead times between order placement and delivery" and low shipping costs supported the inference that "U.S. purchases of the foreign respondents' infringing products were made from U.S. inventories"). The Commission has determined to set a bond in the amount of one hundred percent (100%) of the entered value of the covered products.

Commissioner Karpel and Commissioner Schmidlein would issue both an LEO and a CDO directed to defaulting respondent Ningbo pursuant to Section 337(g)(1) because all requirements of this provision are met. Ningbo was named in the complaint and was served with the complaint and notice of investigation. *See* Order No. 7 (Oct. 6, 2020), *unreviewed*, Comm'n Notice (Oct. 20, 2020). The ALJ issued a show cause order ordering Ningbo to show cause why it should not be held in default for failing to respond to the complaint and notice of investigation. *See id.* Ningbo did not file a response to the show cause order. *Id.* These findings satisfy subsections 337(g)(1)(A)-(D). Complainants requested an LEO and a CDO limited to Ningbo thus satisfying subsection 337(g)(1)(E). Given that subsections 337(g)(1)(A)-(E) are satisfied and Complainants requested these remedies, the statute directs the Commission

to issue the requested LEO and CDO, subject to consideration of the public interest. Commissioner Karpel and Commissioner Schmidlein find that the public interest factors set forth in Section 337(g)(1) do not support a finding that these remedies would be contrary to the public interest.

The investigation is hereby terminated.

The Commission vote for this determination took place on February 25, 2021.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainants complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: February 25, 2021