

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

**Inv. No. 337-TA-1203
(Rescission)**

**NOTICE OF COMMISSION DETERMINATION TO INSTITUTE
A RESCISSION PROCEEDING AND TO TEMPORARILY
SUSPEND A LIMITED EXCLUSION ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding and to temporarily suspend enforcement of a limited exclusion order (“LEO”) issued in the underlying investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5468. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 23, 2020, the Commission instituted this investigation based on a complaint filed on behalf of Clearly Clean Products, LLC of South Windsor, Connecticut, and Converter Manufacturing, LLC of Orwigsburg, Pennsylvania (together, “Complainants”). 85 FR 37689-90 (Jun. 23, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rolled-edge rigid plastic food trays that infringe claim 9 of U.S. Patent No. 9,908,281 (“the ’281 patent”) and claims 1, 12, 20, and 21 of U.S. Patent No. 10,562,680 (“the ’680 patent”). *Id.* at 37689-90. The complaint also alleged that a domestic industry exists. *Id.* at 37689. The Commission’s notice of investigation names as respondents Eco Food Pak (USA), Inc. of Chino, California (“Eco Food Pak”), and Ningbo Linhua Plastic Co., Ltd. of Xiwu, China (“Ningbo Linhua Plastic”). *Id.* at 37690. The Office of Unfair Import Investigations participated in this investigation. *Id.*

The investigation was terminated with respect to Eco Food Pak based on the entry of a consent order. Order No. 6 (Oct. 1, 2020), unreviewed by Comm’n Notice (Oct. 20, 2020).

On October 6, 2020, the Commission found Ningbo Linhua Plastic in default for failing to respond to the complaint, the notice of investigation, and an order to show cause why it should not be found in default. Order No. 7 (Oct. 6, 2020), *unreviewed by* Comm'n Notice (Oct. 20, 2020). On February 25, 2021, the Commission issued a LEO against Ningbo Linhua Plastic with respect to claims claim 9 of the '281 patent and claims 1, 12, 20, and 21 of the '680 patent, and terminated the investigation.

On December 4, 2024, Ningbo Linhua Plastic filed a petition to rescind the LEO because the subject patent claims were found unpatentable by the United States Patent and Trademark Office's ("USPTO") Patent Trial and Appeal Board ("PTAB"). Ningbo Linhua Plastic provided the PTAB's final written decisions that found, *inter alia*, that claim 9 of the '281 patent and claims 1, 12, 20, and 21 of the '680 patent are unpatentable, as well as the U.S. Court of Appeals for the Federal Circuit's affirmances of those final written decisions and denials of en banc review. Ningbo Linhua Plastic asserts that the unpatentability of the patent claims in the limited exclusion order is now final and unappealable, and constitutes a changed circumstance that warrants rescission of the limited exclusion order pursuant to 35 U.S.C. 1337(k)(1) and 19 CFR 210.76.

On December 13, 2024, Complainants filed a response opposing the rescission of the LEO. Complainants argue that patent claims are valid until the USPTO cancels the claims, which cannot occur until after the time of filing for a writ of certiorari expires or the completion of a U.S. Supreme Court appeal. Complainants state that Converter Manufacturing LLC intends to seek a writ of certiorari for U.S. Supreme Court review of the appeal prior to the February 10, 2025 deadline.

Having reviewed Ningbo Linhua Plastic's petition seeking to rescind the LEO and Complainants' response, the Commission has determined to institute a rescission proceeding. Based on the Federal Circuit's summary affirmance of the PTAB's final written decisions regarding the invalidity of the LEO's subject claims and its denial of Complainant's petition for rehearing en banc, the Commission finds that the conditions which led to the LEO no longer exist, and are unlikely to be reinstated, under 19 U.S.C. 1337(k)(1) and (2)(B). The Commission also finds that the requirements of Commission Rule 210.76(a) (19 CFR 210.76(a)) are satisfied. Because the LEO's patent claims are still subject to U.S. Supreme Court appeal, the Commission has determined to grant partial relief and to temporarily suspend enforcement of the LEO pending the cancellation of its subject patent claims or the reversal or vacatur of the Federal Circuit's decisions. The Commission Order issued concurrently herewith temporarily suspends enforcement of the LEO.

The Commission has determined that no other actions are necessary at this time, so the rescission proceeding remains pending, and the parties are instructed to keep the Commission apprised of any significant developments on appeal or at the USPTO.

The Commission vote for this determination took place on January 3, 2025.

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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: January 3, 2025