

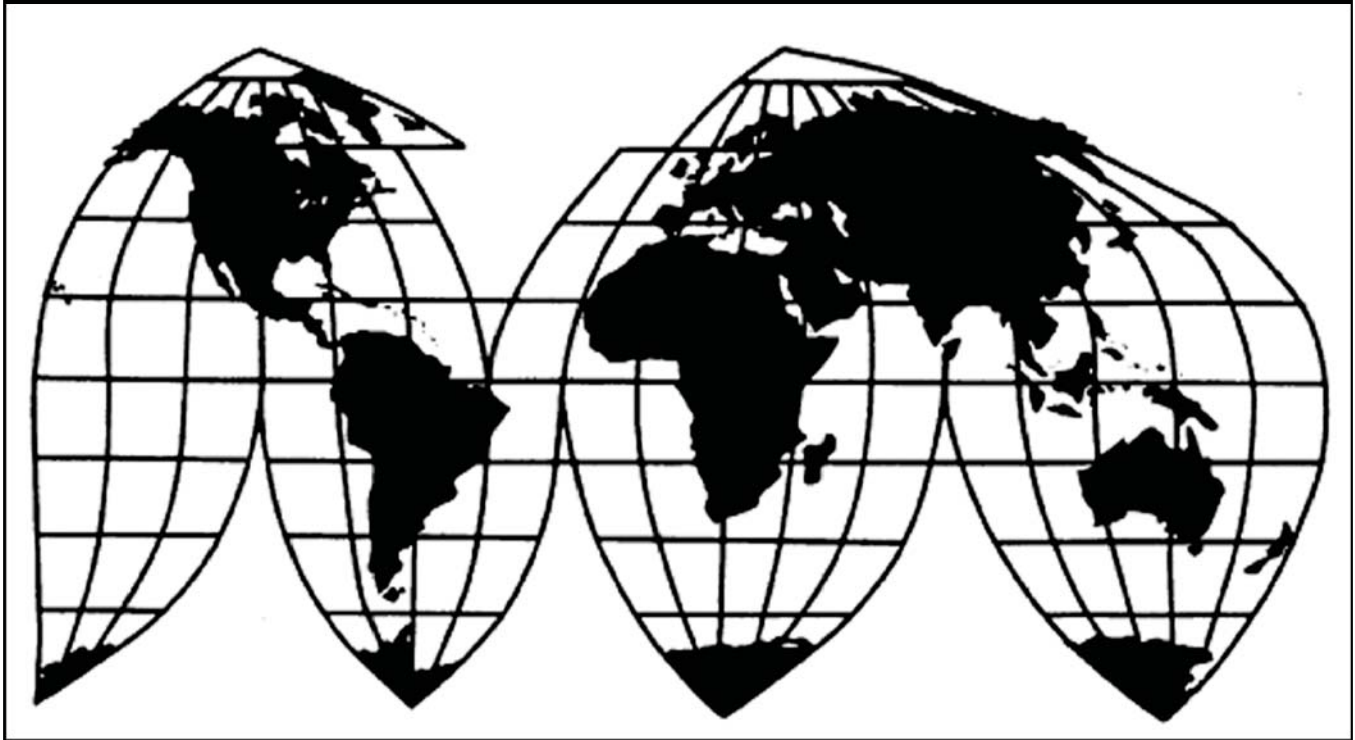
In the Matter of
**Certain Intermediate
Bulk Containers**

Investigation No. 337-TA-638

Publication 4205

December 2010

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436
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In the Matter of
**Certain Intermediate
Bulk Containers**

Investigation No. 337-TA-638



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.

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

Marilyn R. Abbott
Secretary to the Commission

Issued: September 11, 2008

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

In the Matter of

**CERTAIN INTERMEDIATE BULK
CONTAINERS**

Inv. No. 337-TA-638

LIMITED EXCLUSION ORDER

The Commission has previously found Shanghai Kingtainer Packaging Container Co., Ltd. of China in default for failing to respond to the Notice of Investigation and Complaint that alleged a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain intermediate bulk containers by reason of infringement of U.S. Patent Nos. 4,909,387 (“the ‘387 patent”); 5,253,777 (“the ‘777 patent”); and 5,673,630 (“the ‘630 patent”). 73 *Fed. Reg.* 36356 (June 26, 2008).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief as to the defaulting respondent is a limited exclusion order prohibiting the unlicensed entry of intermediate bulk containers that are covered by one or more of claims 13, 14, 16, 17, and 31 of the ‘387 patent, claims 1, 6, 12, and 15 of the ‘777 patent, and claim 1 of the ‘630 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Shanghai Kingtainer Packaging Container Co., Ltd. of China.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100% of entered value of intermediate bulk containers that are subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Intermediate bulk containers that are covered by one or more of claims 13, 14, 16, 17, and 31 of the '387 patent, claims 1, 6, 12, and 15 of the '777 patent, and claim 1 of the '630 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Shanghai Kingtainer Packaging Container Co., Ltd. of China, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or any of their successors or assigns, shall be excluded from entry for use or consumption into the United States, entry for use or consumption from a foreign trade zone, or withdrawal from a warehouse for use or consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.
2. Intermediate bulk containers that are excluded by paragraph 1 of this Order are entitled to entry for use or consumption into the United States, entry for use or consumption from a foreign trade zone, or withdrawal from a warehouse for use or consumption, under bond in the amount of 100% of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day this Order is

received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this action is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection (“CBP”) and pursuant to procedures it establishes, persons seeking to import intermediate bulk containers that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to intermediate bulk containers that are imported by and for use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rule of Practice and Procedure (19 C.F.R. § 210.76).
6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the

Department of Justice, the Federal Trade Commission, and the U.S. Bureau of
Customs and Border Protection.

7. Notice of this Order shall be published in the *Federal Register*.

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: September 11, 2008

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER AGAINST INFRINGING PRODUCTS OF RESPONDENT FOUND IN DEFAULT; TERMINATION OF INVESTIGATION has been served by hand upon the Commission Investigative Attorney, T. Spence Chubb, Esq., and the following parties as indicated, on September 11, 2008.

Marilyn R. Abbott (handwritten signature)
Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Edward T. Hand, Chief
Foreign Commerce Section
Antitrust Division
U.S. Department of Justice
601 Street, NW, Room 10023
Washington, DC 20530

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() Via Overnight Mail
(x) Via First Class Mail
() Other:

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Intellectual Property Rights Branch
U.S. Bureau of Customs and Border Protection
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Dept. of Health & Human Services
National Institutes of Health
Building 31, Room 2B50
9000 Rockville Pike
Bethesda, MD 20892-2111

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- Other: _____

ON BEHALF OF COMPLAINANTS SCHUTZ
CONTAINER SYSTEMS, INC., AND PROTECHNA,
S.A.:

Ric Macchiaroli, Esq.
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001-2113
P-202-879-3939
F-202-626-1700

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

In the Matter of

**CERTAIN INTERMEDIATE BULK
CONTAINERS**

Investigation No. 337-TA-638

**NOTICE OF DECISION NOT TO REVIEW AN INITIAL DETERMINATION FINDING
THE SOLE REMAINING RESPONDENT IN DEFAULT; REQUEST FOR WRITTEN
SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 6) issued by the presiding administrative law judge ("ALJ") finding the last remaining respondent in this investigation in default. Accordingly, the Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding.

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.

On April 2, 2008, Schütz and Novus jointly moved to terminate the investigation with respect to Novus based on a settlement agreement between them, which motion was allowed in an unreviewed ID.

On April 18, 2008, Schütz moved, pursuant to Commission Rule 210.16(b), for an order to show cause why Kingtainer should not be found in default and, upon failure to show cause, for the issuance of an ID finding Kingtainer in default. On May 2, 2008, 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.

On May 22, 2008, the ALJ issued the subject ID (Order No. 6) finding Kingtainer in default under Commission Rule 210.16(c). No petitions for review of this ID were filed. The Commission has determined not to review the ALJ's ID.

Kingtainer is the last remaining respondent in this investigation, the investigation having been terminated with respect to the only other respondent based on a settlement agreement.

Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against a respondent found in default unless, after consideration of the public-interest factors, it finds that such relief should not issue. Schütz did not file a declaration stating that it was seeking a general exclusion order as provided in Commission Rule 210.16(c).

In conjunction with the final disposition of this investigation, therefore, the Commission may: (1) issue an order that could result in the exclusion of articles manufactured or imported by the defaulting respondent; and/or (2) issue a cease and desist order that could result in the defaulting respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. 2843 (Dec. 1994) (Comm'n Op.).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties, are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the asserted patents expire and the HTSUS numbers under which the accused products are imported. Main written submissions and proposed remedial orders must be filed no later than the close of business on July 11, 2008. Reply submissions must be filed no later than the close of business on July 18, 2008. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof with the Office of the Secretary on or before the aforementioned deadlines. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.16 and 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16, 210.42-46).

By order of the Commission.

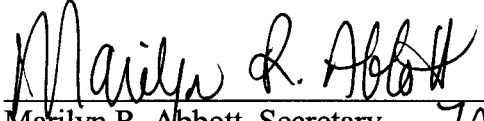

Marilyn R. Abbott
Secretary to the Commission

Issued: June 20, 2008

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF DECISION NOT TO REVIEW AN INITIAL DEERMINATION FINDING THE SOLE REMAINING RESPONDENT IN DEFAULT; REQUEST FOR WRITTEN SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING** has been served by hand upon the Commission Investigative Attorney, T. Spence Chubb, Esq. and the following parties as indicated, on

June 23, 2008


Marilyn R. Abbott, Secretary *JNB*
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**ON BEHALF OF COMPLAINANTS SCHUTZ
CONTAINER SYSTEMS, INC., AND PROTECHNA,
S.A.:**

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Mark V. Campagna, Esq.
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RESPONDENT:

Shanghai Kingtainer Packaging Container
Co., Ltd.
5265 HUTAI ROAD
SHANGHAI, China
201907

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- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN INTERMEDIATE BULK CONTAINERS

Inv. No. 337-TA-638

**ORDER NO. 6: INITIAL DETERMINATION GRANTING COMPLAINANT'S MOTION
FOR AN ENTRY OF DEFAULT AGAINST RESPONDENT KINGTAINER**

(May 22, 2008)

On April 18, 2008, Complainants Schütz Container Systems, Inc. and Protechna, S.A. (collectively "Schütz") filed a motion (638-003) for an order to show cause, pursuant to Commission Rule 210.16(b), why Respondent Shanghai Kingtainer Packaging Container Co., Ltd. ("Kingtainer") should not be found in default, and upon failure to show cause, for the issuance of an initial determination finding Kingtainer in default. Order No. 4, issued on May 2, 2008, ordered Kingtainer to show, by 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 pursuant to Rule 210.16 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.16. No response to Order No. 4 was filed by the deadline date.

Commission Rule 210.16 provides in pertinent part, as follows:

A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in §210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.¹


¹ 19 C.F.R. § 210.16(a)(1).

The Commission's Rules further provide that “[a] party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.”²

Accordingly, it is the INITIAL DETERMINATION of the Administrative Law Judge that Respondent Kingtainer Packaging Container Co., Ltd. be found to be in default. Consequently, Kingtainer has waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

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 contained herein.

SO ORDERED.

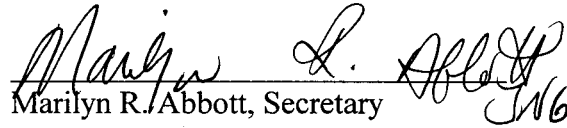


Charles E. Bullock
Administrative Law Judge

² 19 C.F.R. § 210.16(b)(3).

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon, **T. Spence Chubb, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on May 22, **2008**.


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

FOR COMPLAINANT SCHUTZ CONTAINER SYSTEMS INC.

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RESPONDENT:

SHANGHAI KINGTAINER PACKAGING CONTAINER CO., LTD.
5265 Hutai Road
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PUBLIC MAILING LIST

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