

**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 long, sweeping underline.

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
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

- ( ) Via Hand Delivery
( ) Via Overnight Mail
(x) Via First Class Mail
( ) Other:

George F. McCray, Chief
Intellectual Property Rights Branch
U.S. Bureau of Customs and Border Protection
Mint Annex Building
1300 Pennsylvania Avenue, NW
Washington, DC 20229

- ( ) Via Hand Delivery
( ) Via Overnight Mail
(x) Via First Class Mail
( ) Other:

Elizabeth Kraus, Deputy Director
International Antitrust
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580

- ( ) Via Hand Delivery
( ) Via Overnight Mail
(x) Via First Class Mail
( ) Other:

Richard Lambert, Esq.  
Office of General Counsel  
Dept. of Health & Human Services  
National Institutes of Health  
Building 31, Room 2B50  
9000 Rockville Pike  
Bethesda, MD 20892-2111

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- 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

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_