



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1203 (Rescission)]

Certain Rolled-Edge Rigid Plastic Food Trays; Notice of Commission Determination to Permanently Rescind a Limited Exclusion Order; Termination of the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to permanently rescind a limited exclusion order (“LEO”) issued in the underlying investigation. The rescission proceeding is terminated.

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 named 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 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 asserted that the unpatentability of the patent claims in the limited exclusion order was final and unappealable and constituted a changed circumstance that warranted 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 argued that the patent claims are valid until the USPTO cancels the claims, which cannot occur until after the time for filing a petition for writ of certiorari expires or the completion of a U.S. Supreme Court appeal.

On January 3, 2025, the Commission instituted a rescission proceeding and temporarily suspended enforcement of the LEO pending the outcome of Complainants' appeal. On May 27, 2025, the U.S. Supreme Court denied Complainants' petition for writ of certiorari. On June 26, 2025, the USPTO issued an Inter Partes Review Certificate canceling, *inter alia*, claims 1, 12, 20, and 21 of the '680 patent. On July 8, 2025, the USPTO issued an Inter Partes Review Certificate canceling, *inter alia*, claim 9 of the '281 patent.

The Commission has determined to permanently rescind the LEO. Commission LEOs continue until the conditions that led to the LEO no longer exist or the respondent is no longer in violation of section 337. 19 U.S.C. 1337(k)(1) and (2). Here, the Commission issued the LEO based on the presumption that claim 9 of the '281 patent and claims 1, 12, 20, and 21 of the '680 patent were valid, but the USPTO's cancellation of those claims demonstrates that the condition of validity no longer exists and that Ningbo Linhua Plastic no longer violates section 337. The Commission also finds that the requirements of Commission Rule 210.76(a) (19 CFR 210.76(a)) are satisfied. The rescission proceeding is hereby terminated.

The Commission vote for this determination took place on September 26, 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.

Issued: September 26, 2025.

Lisa Barton,

Secretary to the Commission.

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