

**INTERNATIONAL TRADE COMMISSION**

[Inv. No. 337-TA-545; Consolidated Enforcement and Advisory Opinion Proceedings]

**In the Matter of Certain Laminated Floor Panels; Notice of Institution of Consolidated Formal Enforcement and Advisory Opinion Proceedings**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has instituted consolidated enforcement and advisory opinion proceedings relating to the general exclusion order issued at the conclusion of the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:**

James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3065. Copies of all nonconfidential 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, SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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 the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted the above-identified investigation on August 3, 2005, based on a complaint filed by Unilin Beheer B.V. of the Netherlands, Flooring Industries Ltd. of Ireland, and Unilin Flooring N.C. L.L.C. of North Carolina. 70 FR 44694 (August 3, 2005). The complaint, as amended, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laminated floor panels by reason of infringement of one or more of claims 1, 14, 17, 19-21, 37, 52, 65, and 66 of U.S. Patent No. 6,006,486 ("the '486 patent"); claims 1, 2, 10, 13, 18, 19, 22-24, and 27 of U.S. Patent No. 6,490,836 ("the '836 patent"); claims 1-6 of U.S. Patent No. 6,874,292 ("the '292 patent");

and claims 1, 5, 13, 17, 27 and 28 of U.S. Patent No. 6,928,779 ("the '779 patent"). The investigation was subsequently terminated with respect to the '486 patent.

On July 3, 2006, the ALJ issued his final initial determination ("ID"), finding infringement of claims 10, 18, and 23 of the '836 patent with respect to certain accused products. However, he found no infringement of claims 1 and 2 of the '836 patent or claims 3 and 4 of the '292 patent, except that he did find infringement of claim 1 of the '836 patent by several respondents who had previously been found in default. The ALJ further held claims 5 and 17 of the '779 patent invalid for lack of written description. However, the ALJ stated that if valid, those claims were infringed by some of respondents' products. The ALJ recommended a general exclusion order directed to infringing products and cease and desist orders against defaulting domestic respondents.

The Commission received petitions for review from multiple parties. It determined to review several conclusions in the ID, and after further briefing reversed the ALJ on certain of the issues on review. The Commission found that certain accused products did in fact infringe claims 1 and 2 of the '836 patent and claims 3 and 4 of the '292 patent, as construed. The Commission also held on review that there was no new matter in the '779 patent and thus claims 5 and 17 of the '779 patent met the written description requirement. On January 5, 2007, the Commission determined that there was a violation of section 337 and issued a general exclusion order under 19 U.S.C. 1337(d)(2) with regard to products covered by claims 1, 2, 10, 18, or 23 of the '836 patent; claims 3 or 4 of the '292 patent; or claims 5 or 17 of the '779 patent. The Commission also issued cease and desist orders to certain domestic respondents. The United States Trade Representative did not disapprove the Commission's determination.

Respondents Power Dekor Group Co., Ltd. ("Power Dekor"), Yingbin-Nature (Guandong) Wood Indus. Co., Ltd., and Jiangsu Lodgi Wood Indus. Co., Ltd. appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit. Power Dekor has since withdrawn from this appeal. The appeal with respect to infringement is limited to claims 1 and 2 of the '836 patent and claims 3 and 4 of the '292 patent. The appellants also challenge the Commission's determination that claims 5 and 17 of the '779 patent satisfy the written description requirement. The Court has

held oral argument but has not issued a decision.

Unilin Beheer B.V. of the Netherlands, Flooring Industries Ltd. sarl of Luxembourg, and Unilin Flooring N.C. LLC of North Carolina (collectively, "Unilin") filed a complaint on March 24, 2008, and filed a corrected complaint on April 30, 2008, requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75 to investigate violations of the general exclusion order. The complaint named as respondent Uniboard Canada, Inc. (Quebec, Canada) ("Uniboard"). On April 15, 2008, Uniboard filed a request for an initial advisory opinion that its products would not violate the general exclusion order. Uniboard requested that the advisory opinion proceeding be consolidated with any enforcement proceeding concerning Uniboard.

Having examined Unilin's complaint seeking a formal enforcement proceeding and having found that the complaint complies with the requirements for institution of formal enforcement proceedings in Commission rule 210.75, the Commission has determined to institute a formal enforcement proceeding to determine whether Uniboard is in violation of the Commission's general exclusion order in the above-captioned investigation, and what, if any, enforcement measures are appropriate.

The following entities were named as parties to the formal enforcement proceeding: (1) Complainants Unilin Beheer B.V., Flooring Industries Ltd. sarl, Unilin Flooring N.C. LLC, (2) respondent Uniboard Canada Inc., and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

Having examined Uniboard's request for an advisory opinion and having found that the request complies with the requirements for institution of an advisory opinion proceeding in Commission rule 210.79, the Commission has determined to institute an advisory opinion proceeding to determine whether the floor panels sought to be imported by Uniboard are covered by the general exclusion order issued in the above-captioned investigation. The following were named as parties to the advisory opinion proceeding: Unilin Beheer B.V., Flooring Industries Ltd. sarl, Unilin Flooring N.C. LLC, Uniboard Canada Inc., and a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The Commission has determined to consolidate the formal enforcement and

advisory opinion proceedings and has certified the consolidated proceedings to administrative law judge Paul J. Luckern. The administrative law judge may conduct such proceedings as appropriate for the issuance of an enforcement initial determination and an initial advisory opinion.

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 210.75 and 210.79 of the Commission's Rules of Practice and Procedure (19 CFR 210.75, 210.79).

By order of the Commission.

Issued: June 20, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-638]

### In the Matter of Certain Intermediate Bulk Containers; 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, SW., Washington, DC 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, SW., Washington, DC 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 FR 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 FR 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