

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LITHIUM ION BATTERIES,
BATTERY CELLS, BATTERY
MODULES, BATTERY PACKS,
COMPONENTS THEREOF, AND
PROCESSES THEREFOR**

Inv. No. 337-TA-1159

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A LIMITED
EXCLUSION ORDER AND CEASE AND DESIST ORDERS;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the presiding administrative law judge's ("ALJ's") initial determination ("ID") (Order No. 34) finding a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a limited exclusion order and cease and desist orders prohibiting importation of certain lithium ion batteries, battery cells, battery modules, battery packs, and components thereof. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-2532. 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 <http://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 4, 2019, based on a complaint filed on behalf of LG Chem, Ltd. of Seoul, Republic of Korea and LG Chem Michigan, Inc. of Holland, Michigan. 84 FR 25858 (June 4, 2019). As discussed further below, the complainants, as of the date of this Notice, are LG Chem, Ltd. of Seoul, Republic of Korea, LG Energy Solution, Ltd. of Seoul, Republic of Korea, and LG Energy Solution Michigan, Inc. (collectively, "complainants" or "LG"). The complaint, as supplemented, alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation and sale of certain lithium ion batteries, battery cells, battery modules, battery packs, components thereof,

and processes therefor by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States, under subsection (a)(1)(A) of Section 337. The complaint, as supplemented, names SK Innovation Co., Ltd. of Seoul, Republic of Korea and SK Battery America, Inc. of Atlanta, Georgia as the respondents (collectively, “respondents” or “SK”). The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation.

On November 5, 2019, LG moved for an order entering default judgment against the respondents due to contempt of Order No. 13, which granted in part complainants’ motion to compel forensic examination of respondents’ computer system due to alleged spoliation of evidence. Respondents opposed the motion and OUII supported the motion.

On February 14, 2020, the ALJ issued the subject ID (Order No. 34) finding that the respondents spoliated evidence, and that the appropriate remedy is to find the respondents in default. The ID noted that complainants do not seek a general exclusion order, and therefore no issues remain to be litigated, and terminated the investigation. ID at 131.

On March 3, 2020, SK filed a petition for Commission review of the ID. On March 11, 2020, LG and OUII filed oppositions thereto.

On April 17, 2020, the Commission determined to review the ID in its entirety. 85 FR 22,753 (Apr. 23, 2020) (“Notice of Review”). The Notice of Review requested the parties to brief certain issues under review. The Notice of Review also sought briefing from the parties, interested government agencies, and any other interested parties on remedy, the public interest, and bonding.

On May 1, 2020, the parties filed their opening briefs on the issues under review, and on remedy, the public interest and bonding. SK also filed a short submission seeking a hearing before the Commission on remedy, the public interest, and bonding. *See* 19 CFR 210.50(a)(v). The Commission also received a number of comments from non-parties on remedy and the public interest. On May 12, 2020, the parties filed reply briefs on the issues under review, and on remedy, the public interest and bonding. Certain non-parties also submitted reply comments on remedy and the public interest.

On June 26, 2020, LG filed a motion for leave to file a supplemental submission on remedy, the public interest, and bonding. On July 8, 2020, SK opposed the motion. On July 13, 2020, SK filed a notice of new developments related to issues raised in the remedy, public interest, and bonding briefing. On July 28, 2020, SK moved for leave to file a reply in support of its notice. On September 1, 2020, LG filed a notice of supplemental facts. On November 25, 2020, SK filed a motion for leave to file a supplemental submission in connection with remedy and the public interest. The Commission has determined to grant the motions for leave and to make all of the foregoing submissions and responses thereto part of the administrative record. On December 1, 2020, Complainants filed a motion to amend the complaint and NOI to reflect a reorganization of LG Chem, Ltd. in which (i) certain business functions were transferred to a newly created subsidiary named LG Energy Solution, Ltd., and (ii) LG Chem Michigan, Inc. was renamed LG Energy Solution Michigan, Inc. (EDIS Doc. ID 726833). The Commission has

determined to grant that motion, has added LG Energy Solution, Ltd. as a complainant, and has changed the name of LG Chem Michigan Inc. to LG Energy Solution Michigan, Inc.

The Commission has determined not to conduct a hearing pursuant to 19 CFR 210.50. The Commission finds that the parties and non-parties have failed to demonstrate why a hearing would be warranted. The Commission has been mindful of the public interest submissions in fashioning an appropriate remedy.

Having reviewed the record of the investigation, including the parties' submissions to the ALJ, Order No. 34, and the parties' and non-parties' submissions to the Commission, the Commission has determined to affirm the ID's finding of default, with modified reasoning clarifying the distinct bases for sanctions under (i) 19 U.S.C. § 1337(h) and Commission Rule 210.33, 19 CFR 210.33 and (ii) inherent authority under *Micron Technology, Inc. v. Rambus Inc.*, 645 F.3d 1311 (Fed. Cir. 2011). The Commission finds that both bases apply here. The Commission thereby affirms the ID's finding of violation of section 337.

The Commission has further determined that the appropriate remedy is: (1) a limited exclusion order prohibiting the entry of certain lithium ion batteries, battery cells, battery modules, battery packs, and components thereof; and (2) cease and desist orders directed to respondents. The remedial orders will expire ten years from their issuance, and cover the trade secrets that LG elected on January 22, 2020. The Commission has determined that, although the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d), (f), do not preclude the issuance of the limited exclusion order or the cease and desist orders, tailoring of its orders is appropriate in view of the public interest considerations discussed in the Commission's opinion. The orders permit SK to import components for domestic production of lithium ion batteries, battery cells, battery modules, and battery packs for Ford Motor Co.'s EV F-150 program for four years, and for Volkswagen of America, Inc.'s America's MEB line for the North America Region for two years to permit these third parties to transition to new domestic suppliers for these programs. The orders also permit SK to import articles for repair and replacement of EV batteries for Kia vehicles that had been sold to U.S. customers as of the date of the orders and were originally equipped with SK batteries. The investigation is terminated.

The Commission's reasons for its determinations are set forth more fully in the Commission's opinion.

The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The Commission vote for these determinations took place on February 10, 2021.

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: February 10, 2021

**CERTAIN LITHIUM ION BATTERIES, BATTERY CELLS,
BATTERY MODULES, BATTERY PACKS, COMPONENTS
THEREOF, AND PROCESSES THEREFOR**

Inv. No. 337-TA-1159

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, **Claire Comfort**, and the following parties as indicated, on **February 10, 2021**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Complainants LG Chem, Ltd. and LG Chem
Michigan, Inc.:**

Bert C. Reiser, Esq.
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
Email: bert.reiser@lw.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification
of Availability to Download

**On Behalf of Respondents SK Innovation Co., Ltd. and SK
Battery America, Inc.:**

Sturgis M. Sobin, Esq.
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001
Email: ssobin@cov.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification
of Availability to Download