

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN POUCH-TYPE BATTERY
CELLS, BATTERY MODULES, AND
BATTERY PACKS, COMPONENTS
THEREOF, AND PRODUCTS
CONTAINING THE SAME**

Investigation No. 337-TA-1179

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING COMPLAINANTS' MOTION FOR SUMMARY
DETERMINATION THAT THE ECONOMIC PRONG OF DOMESTIC INDUSTRY IS
SATISFIED AND ON REVIEW TO AFFIRM**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to review an initial determination ("ID") (Order No. 51) of the presiding chief administrative law judge ("CALJ") granting complainants' motion for summary determination that the economic prong of domestic industry is satisfied. On review, the Commission affirms with modified reasoning.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2392. 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: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") on October 9, 2019, based on a complaint filed by SK Innovation Co., Ltd. of Seoul, Republic of Korea and SK Battery America, Inc. of Atlanta, Georgia (collectively, "SK"). 84 FR 54173-74 (Oct. 9, 2019). The complaint alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pouch-type battery cells, battery modules, and battery packs, components thereof, and products containing the same by reason of infringement of claims 1-36 of U.S. Patent No. 10,121,994

(“the ’994 patent”). The complaint named as respondents LG Chem, Ltd. of Seoul, Republic of Korea, and LG Chem Michigan, Inc. of Holland, Michigan (collectively, “LG”). The Commission’s Office of Unfair Import Investigations (“OUII”) also was named as a party. Subsequently, the investigation was terminated in part based on withdrawal of the complaint as to claims 8, 9, 17, 26, 27, and 35 of the ’994 patent. Order No. 23 (March 25, 2020), *unreviewed by Notice* (Apr. 22, 2020).

On October 30, 2020, SK moved for summary determination that the economic prong of the domestic industry requirement is satisfied. On November 12, 2020, LG opposed the motion. On November 18, 2020, OUII filed a response in support of the motion.

On December 14, 2020, the CALJ issued the subject ID granting complainants’ motion. The ID notes that SK seeks summary determination for an “industry in the process of being established under Section 337(a)(2), as reflected by its investment in plant and equipment pursuant to Section 337(a)(3)(A).” ID at 1 (citing Mot. at 2). The ID finds that, based on the record evidence, SK demonstrated that a domestic industry is in the process of being established. *Id.* at 3-9. No party petitioned for review of the ID.

The Commission has determined to review the subject ID. On review, the Commission affirms the ID’s finding that Complainants have satisfied the economic prong of the domestic industry requirement by showing Complainants’ industry “is in the process of being established.” *See* 19 U.S.C. 1337(a)(2). The Commission vacates the ID’s conclusion and related discussion that “it is appropriate to consider post-complaint information” because Respondents argued “it is speculative as to whether the domestic industry requirement will be satisfied in the future.” ID at 5-6 n.1. Upon review of the undisputed evidence of Complainants’ investments in plant and equipment at the time the complaint was filed—as urged by the non-moving party—there is no genuine issue of material fact and Complainants are entitled to summary determination that a domestic industry is in the process of being established. Chair Kearns does not join the decision to vacate that portion of the ID. The Commission also clarifies in affirming the ID’s findings that Complainants’ industry is “in the process of being established,” the Commission does not intend to imply that the plant and equipment investments made at the time the complaint was filed are not significant or could not show the existence of a domestic industry under section 337(a)(3)(A). The Commission has determined not to review the remainder of the ID.

The Commission vote for this determination took place on January 13, 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'.

Lisa R. Barton
Secretary to the Commission

Issued: January 14, 2021