

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

**ORDER NO. 34: INITIAL DETERMINATION GRANTING COMPLAINANTS LG
CHEM LTD. AND LG CHEM MICHIGAN INC.'S MOTION FOR
DEFAULT JUDGMENT, CONTEMPT, AND SANCTIONS**

(February 14, 2020)



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I. INTRODUCTION

On November 5, 2019, complainants LG Chem Ltd. and LG Chem Michigan Inc. (“LG Chem” or “Complainants”) moved (1159-013) for an order entering default judgment against respondents SKI Innovation Co., Ltd. and SK Battery America, Inc. (“Respondents” or “SKI”) due to contempt of Order No. 13 and spoliation of evidence (hereafter, “CMD”). Specifically, LG Chem contends “SKI began a document-deletion campaign in anticipation of the claims made in this investigation,” and which continued well into this investigation, and then defied the terms of Order No. 13, which had ordered discovery into this allegation. *See* CMD at 1. LG Chem argues these acts constitute spoliation and contempt of Order No. 13, respectively, justifying a remedy of default or, in the alternative, the taking of various elements of LG Chem’s claims as established. *Id.* at 59, 62.

On November 15, 2019, the Commission Investigative Staff (“Staff”) filed a response in support of LG Chem’s motion (hereafter, “SRD”). On November 18, 2019, the Staff filed a letter informing me of one sentence in its response which required clarification. EDIS Doc. ID 694853. Also on November 15, 2019, LG Chem submitted a notice of supplemental evidence regarding the motion for default and sanctions (hereafter, “CSE1”). EDIS Doc. ID 694668.

On November 20, 2019, with leave granted by Order No. 19, SKI filed its response to LG Chem’s motion for default and sanctions (hereafter, “RRD”). Specifically, SKI opposed the motion, while also acknowledging that some relevant documents were lost, and, as a consequence, a narrow, “closely linked” adverse determination was warranted. RRD at 1. SKI also stated that a hearing on the matter was not necessary. *Id.* at 84.

On November 26, 2019, LG Chem moved (1159-023) for leave to file a reply in support of its motion for default and sanctions. As is typical, LG Chem attached the proposed reply to the motion (hereafter, “CPR”).

[REDACTED]

On November 27, 2019, and through a corrected version on November 29, 2019, I entered Order No. 28, which granted LG Chem’s motion for leave to file a reply (1159-023) and ordered supplemental briefing in connection with the original motion for default and sanctions from all parties. The order identified several topics the parties were to discuss and set deadlines and page limits for each response. Order No. 28 at 2-4.

On December 6, 2019, SKI filed a letter, effectively informing me of supplemental evidence, recently produced and relevant to LG Chem’s motion for default and sanctions (hereafter, “RSE1”). EDIS Doc. ID 696552. Also on December 6, 2019, the Staff filed its supplemental response pursuant to Order No. 28 (hereafter, “SSR”), and LG Chem did the same (hereafter “CSR”).

On December 9, 2019, LG Chem filed a letter to, among other things, correct the document which was Exhibit 65 to its motion for default and sanctions. EDIS Doc. ID 696726.

On December 13, 2019, SKI filed its supplemental response pursuant to Order No. 28 (hereafter, “RSR”).

On December 23, 2019, LG Chem filed a second notice of supplemental evidence (hereafter, “CSE2”).

On January 21, 2020, SKI filed its own notice of supplemental evidence related to LG Chem’s motion for default and sanctions (hereafter, “RSE2”). EDIS Doc. ID 699636. To this, LG Chem filed a response on January 23, 2020, challenging SKI’s submission as more than a mere notice and containing argument with no relationship to the underlying motion for default and sanctions. EDIS Doc. ID 700055. As a preliminary matter, I agree that SKI’s January 21, 2020 submission is largely irrelevant to the present motion for sanctions and default.

[REDACTED]

Lastly, on January 24, 2020, SKI filed a letter to correct the document which was Exhibit 151 to its January 21, 2019 notice of supplemental evidence. EDIS Doc. ID 700138.¹

II. FACTUAL BACKGROUND

The events relevant to LG Chem's motion for default and sanctions begin before the filing of the complaint in this investigation and continue through to the present. The facts which can be discerned from the evidence and briefing are as follows.

A. Procedural History

On April 29, 2019, LG Chem filed its complaint with the U.S. International Trade Commission pursuant to section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, alleging, as supplemented, violations of section 337 based upon the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain lithium ion batteries, battery cells, battery modules, battery packs, components thereof, and processes therefor by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. 84 Fed. Reg. 25858 (June 4, 2019). The notice

¹ For ease of reference, each of the foregoing filings are listed below with the identifier used in this initial determination:

Party	Date of Submission	Abbreviation	Attached Exhibits
LG Chem	November 5, 2019	CMD	1-94
	November 15, 2019	CSE1	95-98
	November 26, 2019	CPR	99-112
	December 6, 2019	CSR	113-143
	December 23, 2019	CSE2	144
SKI	November 20, 2019	RRD	1-102
	December 6, 2019	RSE1	~
	December 13, 2019	RSR	103-148
	January 21, 2020	RSE2	149-154
Staff	November 15, 2019	SRD	1-2
	December 6, 2019	SSR	1-17

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