

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LITHIUM METAL OXIDE
CATHODE MATERIALS, LITHIUM-
ION BATTERIES FOR POWER TOOL
PRODUCTS CONTAINING SAME, AND
POWER TOOL PRODUCTS WITH
LITHIUM-ION BATTERIES
CONTAINING SAME**

Investigation No. 337-TA-951

LIMITED EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, or sale within the United States after importation by Respondents Umicore N.V. and Umicore USA Inc. (collectively “Respondents”) of certain lithium metal oxide cathode materials covered by one or more of claims 1-4, 7, 13, and 14 of U.S. Patent No. 6,677,082 (“the ’082 patent”), or claims 1-4, 8, 9; and 17 of U.S. Patent No. 6,680,143 (“the ’143 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting entry of infringing lithium metal oxide cathode materials that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of three percent (3%) of the entered value of covered products.

Accordingly, the Commission hereby **ORDERS** that:

1. Lithium metal oxide cathode materials that infringe one or more of claims 1-4, 7, 13, and 14 of the '082 patent, or claims 1-4, 8, 9, and 17 of the '143 patent that are manufactured by, or on behalf of, or imported by or on behalf of Umicore N.V. and Umicore USA Inc. or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent's owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid lithium metal oxide cathode materials are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of three percent (3%) of the entered value of the products pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (*70 Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative, and until such time as the United States Trade Representative notifies the Commission that this action is approved or disapproved but, in any event, not later than 60 days after the issuance of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection (“CBP”) and pursuant to procedures it establishes, persons seeking to import lithium metal oxide cathode materials that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate this certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to infringing lithium metal oxide cathode materials that are imported by or for the use of the United States, or imported for and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.76).

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.

7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: December 16, 2016

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MATERIALS, LITHIUM-ION BATTERIES FOR POWER
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CONTAINING SAME**

Inv. No. 337-TA- 951

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served by hand upon the Commission Investigative Attorney, Vu Bui, Esq., and the following parties as indicated, on **December 16, 2016**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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**On Behalf of Complainants BASF Corporation and UChicago
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