

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ZERO-MERCURY-ADDED
ALKALINE BATTERIES, PARTS
THEREOF, AND PRODUCTS
CONTAINING SAME**

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) **Inv. No. 337-TA-493**
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**NOTICE OF A COMMISSION DETERMINATION TO EXTEND THE
DEADLINE FOR DETERMINING WHETHER TO REVIEW AN
INITIAL DETERMINATION TERMINATING THE INVESTIGATION AS TO
TWO RESPONDENTS ON THE BASIS OF A SETTLEMENT AGREEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by two weeks, *i.e.*, until December 22, 2003, the deadline for determining whether to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") terminating the above-captioned investigation as to two respondents on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3041. Copies of the ALJ's ID and all other 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. 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>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 *Fed. Reg.* 32771 (2003). The complaint as amended alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1-12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease

and desist orders. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan. *Id.* The ALJ has set September 2, 2004, as the target date for completion of the investigation.

The ALJ issued the subject ID (Order no. 36) on November 6, 2003. The ID terminated the investigation as to two respondents, FDK Corporation and FDK Energy Co., Inc., pursuant to a settlement agreement. Complainants and the two respondents had previously jointly moved for termination pursuant to a settlement agreement and consent order.

On November 7, 2003, complainants moved for reconsideration, asking the ALJ to reconsider his ID and instead terminate the investigation on the basis of both the settlement agreement and consent order. On November 21, 2003, the Commission investigative attorney filed a response supporting the motion for reconsideration. On November 13, 2003, complainants filed a contingent petition for review of the subject ID, asking the Commission for the same relief requested in their motion for reconsideration.

The motion for reconsideration is currently before the ALJ.

The Commission has determined to extend by two weeks, *i.e.*, until December 22, 2003, the deadline for determining whether to review the subject ID in order to permit the ALJ to rule on the motion for reconsideration. Accordingly, absent review by the Commission or reconsideration by the ALJ, the subject ID will become the determination of the Commission at the close of business on December 22, 2003.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

By order of the Commission.

Marilyn R. Abbott
Secretary

Issued: December 1, 2003