

**Amendment to Final Results**

The time period for appealing the CIT's decision sustaining the Department's remand results has expired and no party has appealed this decision. Therefore, pursuant to section 516 A(c) of the Tariff Act, (19 U.S.C. 1516a(c)), we are amending our final results of review for the period August 1, 1997 through July 1, 1998, to reflect the findings in the remand results.

The revised weighted-average margin for AHMSA is as follows:

Manufacturer/Exporter	Margin (percent)
AHMSA .....	0.07 ( <i>de minimis</i> )

The Department will issue appraisal instructions directly to Customs to liquidate without regard to antidumping duties all entries of AHMSA's subject merchandise during the POR, as provided in 19 C.F.R. 351.106(c)(2). The above amended rate will not affect AHMSA's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

We are issuing and publishing this determination in accordance with section 751(a)(1) of the Tariff Act, (19 U.S.C. 1675(a)(1)).

Dated: February 11, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-588-861]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Determination of Sales at Less Than Fair Value.

**SUMMARY:** We preliminarily determine that polyvinyl alcohol from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days

after the date of this preliminary determination.

**EFFECTIVE DATE:** February 20, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Mike Strollo or Gregory E. Kalbaugh, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0629 or (202) 482-3693, respectively.

**SUPPLEMENTARY INFORMATION:****Preliminary Determination**

We preliminarily determine that polyvinyl alcohol (PVA) from Japan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 61591 (Oct. 1, 2002)) (*Initiation Notice*), the following events have occurred:

On September 30, 2002, we received scope comments from Celanese Ltd. and E.I. DuPont de Nemours & Co. (collectively, the petitioners), in which the petitioners requested that we revise the scope to exclude PVA used as, or in the manufacture of, excipients.

On October 11, 2002, the petitioners and two Japanese producers, Kuraray Co., Ltd. (Kuraray) and Marubeni Specialty Chemicals, Inc. (Marubeni), submitted comments on the model-matching criteria to be used by the Department. On October 15, 2002, Marubeni submitted an amendment to its model-matching comments.

On October 21, 2002, we received requests to exclude certain additional products from the scope of this investigation from Kuraray and two importers of PVA (*i.e.*, Oxyvinyls, LP and Ricoh Electronics, Inc.).

Also on October 21, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PVA from Japan are materially injuring the United States industry. *See* ITC Investigation Nos. 731-TA-1014-1018 (Publication No. 3553, *Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 65597 (Oct. 25, 2002)).

On October 22, 2002, we issued antidumping questionnaires to Denki Kagaku Kogyo Kabushiki Kaisha (Denki Kagaku), Japan VAM & POVAL Co., Ltd. (Japan VAM & POVAL), Kuraray, and the Nippon Synthetic Chemical Industry Co., Ltd. (Nippon Gohsei), the producers/exporters accounting for all known exports of subject merchandise from Japan during the period of investigation (POI). For further discussion, see the memorandum to Louis Apple, Director, Office 2, from the Team entitled "Antidumping Duty Investigation of Polyvinyl Alcohol from Japan - Selection of Respondents," dated October 22, 2002.

On November 19, 2002 and November 25, 2002, respectively, Kuraray and Nippon Gohsei submitted responses to Section A of the Department's questionnaire. Both Japan VAM & POVAL and Denki Kagaku failed to respond to the Department's questionnaire. For further discussion, see the "Facts Available (FA)" section of this notice.

On December 5, 2002, Kuraray notified the Department that it would no longer participate in this investigation, and it requested that the Department remove all of its business proprietary information from the record of this proceeding. On December 11, 2002, the Department destroyed Kuraray's business proprietary information and notified Kuraray of this action. For further discussion, see the "Facts Available (FA)" section of this notice.

On December 13, 2002, the petitioners and Nippon Gohsei submitted additional model-matching comments.

On December 23, 2002, the petitioners agreed to the exclusion requests made on October 21, 2002. On January 9, 2003, Kuraray requested that the Department modify the scope language in the petitioners' December 23, 2002, submission to avoid unnecessary restrictions on imports of certain of the products covered by that submission which are not manufactured in the United States. On January 22, 2003, the petitioners agreed to the majority of Kuraray's proposed revisions. Accordingly, certain exclusions have now been incorporated into the scope. For further discussion, see the "Scope Comments" section below.

On January 27, 2003, Japan VAM & POVAL requested that the Department revise the scope to exclude certain additional copolymers. Also on January 27, 2003, Nippon Gohsei requested that the Department modify the scope language in the petitioners' December 23, 2002, submission to avoid unnecessary restrictions on imports of the remaining copolymers covered by

that submission not addressed in Kuraray's January 9, 2003, letter. On February 4, 2003, the petitioners agreed to all of the revisions requested by Nippon Gohsei, and an additional revision requested by Kuraray. On February 5, 2003, the petitioners submitted a letter noting that they were in the process of reviewing Japan VAM & POVAL's exclusion request, and had not yet agreed to the exclusion request. Because there was insufficient time to properly consider Japan VAM & POVAL's exclusion request, we will address it in the final determination.

In December 2002 and January 2003, we received responses to the remaining sections of the Department's original questionnaire, as well as certain supplemental questionnaires, from Nippon Gohsei.

#### Period of Investigation

The POI is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

#### Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

- 1) PVA in fiber form.
- 2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.
- 3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.
- 4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.
- 5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.
- 6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
- 7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.
- 8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion

polymerization of non-vinyl acetic material.

9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

#### Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. *See the Initiation Notice*, 67 FR at 61591.

On September 30, 2002, the petitioners requested that we exclude PVA used as, or in the manufacture, of excipients.

On October 21, 2002, Kuraray and two importers of PVA (*i.e.*, Ricoh Electronics and Oxyvinyls) requested that the Department also revise the scope to exclude various PVA products with specific physical characteristics and/or specific end-uses. These products included: 1) C-polymers - certain copolymers of PVA and cationic monomer; 2) K-polymers - certain copolymers of PVA and carboxylic acid for use in a paper application; 3) M-polymers - certain copolymers of PVA and thiol for use in emulsion

polymerization of non-vinyl acetic material; 4) MP-polymers - certain copolymers of PVA and paraffin; 5) R-polymers - certain copolymers of PVA and silan that are used in paper coating applications; and 6) PVA hydrolyzed at less than 83 percent. Each of the exclusion requests specified ranges of hydrolysis and viscosity and maximum levels of volatiles and ash, by weight.

On December 23, 2002, the petitioners agreed to these requests, shown as items 2, 3, and 5 through 13 in the "Scope of Investigation" section above, and modified as noted below.

On January 9, 2003, Kuraray requested that the Department broaden these exclusions to cover certain additional products not produced in the United States. Specifically, Kuraray requested that the scope exclusions agreed to by the petitioners with respect to certain copolymer products specify a minimum percentage of the non-PVA monomers present in these copolymer products outlined above (*i.e.*, cationic monomer, carboxylic acid, thiol, and paraffin) instead of specifying exact levels of hydrolysis, viscosity, volatiles, and ash content as noted in the petitioners' December 23, 2002, submission.

On January 22, 2003, the petitioners agreed to the majority of the modifications proposed by Kuraray. Specifically, with respect to copolymers of PVA and carboxylic acid, the petitioners agreed to remove the specifications for hydrolysis, viscosity, volatiles, and ash content from the proposed exclusion language. However, the petitioners did not agree to change the end-use requirement in the proposed exclusion from "certified for use in a paper application" to "certified not for use in the production of textiles." With respect to copolymers of PVA and paraffin, the petitioners agreed to remove the specification for hydrolysis, viscosity, volatiles, and ash content from the proposed exclusion language. However, the petitioners did not agree to change the concentration level of the additional monomer from one percent to 0.5 percent (or lower). Finally, the petitioners agreed to lower the viscosity level of homopolymers hydrolyzed greater than 85 percent from 90 to 80 centipoise, provided that, when the product has a viscosity of greater than or equal to 80 centipoise and less than 90 centipoise, it is certified for use in an ink-jet application. Accordingly, certain exclusions have now been incorporated into the scope. *See the "Scope of the Investigation" section above.*

On January 27, 2003, Japan VAM & POVAL, one of the mandatory

respondents who has not responded to the Department's questionnaire, requested that the Department revise the scope to exclude certain PVA products with specific physical characteristics and/or specific end-uses. These products include: D-copolymers (*i.e.*, certain copolymers of PVA and diacetoneacrylamide) for use in a paper application.

Additionally, on January 27, 2003, Nippon Gohsei requested that the remaining scope exclusions agreed to by the petitioners but not addressed in Kuraray's January 9, 2003, submission specify a minimum percentage of the non-PVA monomers (*i.e.*, sulfonic acid, acetoacetylate, polyethylene oxide, or quaternary amine) instead of specifying exact levels of hydrolysis, viscosity, volatiles, and ash content as noted in the petitioners' December 23, 2002, submission.

On February 4, 2003, the petitioners agreed to all of the revisions requested by Nippon Gohsei. In addition, the petitioners also agreed to revise the scope to exclude certain copolymers covalently bonded with silan uniformly present on all polymer chains in a concentration equal to or greater than one mole percent, certified for use in paper coating applications, pursuant to a request made by Kuraray.

As noted above, on February 5, 2003, the petitioners submitted a letter noting that they were in the process of reviewing Japan VAM & POVAL's exclusion request, and had not yet agreed to the exclusion request. Because there was insufficient time to properly consider Japan VAM & POVAL's exclusion request, we will address it in the final determination.

#### Facts Available (FA)

##### 1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the

applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On October 22, 2002, the Department issued its questionnaire to Denki Kagaku, Japan VAM & POVAL, and Kuraray. Neither Denki Kagaku nor Japan VAM & POVAL responded to the Department's questionnaires. Moreover, on December 5, 2002, Kuraray informed the Department that it did not intend to participate in this investigation. Because these companies failed to supply necessary information, we have applied FA to calculate their dumping margins, pursuant to section 776(a)(2)(B) of the Act.

##### 2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Each of the respondents was notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of FA. As a general matter, it is reasonable for the Department to assume that Denki Kagaku, Japan VAM & POVAL, and Kuraray possessed the records necessary for this investigation and that by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. As the respondents failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

##### 3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as “{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review

under section 751 concerning the subject merchandise.” *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See* the September 25, 2002, *Initiation Checklist*, on file in the Central Records Unit, Room B-099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

In selecting from among the facts otherwise available and using an adverse inference, we reviewed the information provided in the petition and in the response submitted by Nippon Gohsei. The petition contained a margin calculation for each of two products sold by Kuraray. *See* below for a review of the methodology used by the petitioners for their calculations of EP and NV. Because these margins were higher than the margin that we calculated for Nippon Gohsei, we selected these margins for purposes of corroboration.

#### Export Price

With respect to the margins in the petition, EP was based on POI price quotes for the sale of PVA produced by Kuraray to customers in the United States. The petitioners calculated net U.S. prices for PVA by deducting a distributor mark-up, where applicable, and certain movement charges.

We corroborated the U.S. prices from the petition by comparing them to prices of comparable products sold by Nippon Gohsei. We found that Nippon

Gohsei made U.S. sales of comparable products at similar prices to the U.S. prices from the petition, thus corroborating the prices provided in the petition. For ocean freight expense, we likewise found that the petition contained the same expense for each of the two products and that sales by Nippon Gohsei with ocean freight in excess of these amounts of expenses were sufficient to corroborate the amounts provided in the petition. We were unable to corroborate the U.S. inland freight charges from the petition since no such charges were reported by Nippon Gohsei. The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the EP calculations in the petition. Specifically, we attempted to locate inland freight charges through publicly available sources, but we were unable to do so.

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." See 19 CFR 351.308(d). Additionally, the SAA specifically states that where "corroboration may not be practicable in a given circumstance, the Department need not prove that the facts available are the best alternative information." See the SAA at 870. For further discussion, see the February 12, 2003, memorandum to the file from the team entitled "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates" (Corroboration Memo).

#### Normal Value

The petitioners based NV on home market price quotes from Kuraray for PVA of a comparable grade to the products exported to the United States. These price quotes were contemporaneous with the U.S. price quotes used as the basis for EP. In addition, the petitioners alleged that sales of PVA products in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we found reasonable grounds to believe or suspect that sales of the foreign like

product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation. Pursuant to section 773(b)(3) of the Act, COP consisted of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COP based on the experience of a U.S. PVA producer during the 2001 fiscal year, adjusted for known differences between costs incurred to manufacture PVA in the United States and Japan.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Japan on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon the amount reported in Kuraray's 2001 financial statements.

We found that Nippon Gohsei made sufficient home market sales at prices similar to the home market prices provided in the petition. One COP amount was provided in the petition for the two products sold by Kuraray. We were able to corroborate this amount, since the highest COP reported by Nippon Gohsei for a comparable product was similar to the COP provided in the petition. For further discussion, see the Corroboration Memo.

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to Denki Kagaku, Japan VAM & POVAL, and Kuraray, we have applied the margin rate of 144.16 percent, which is the highest estimated dumping margin set forth in the notice of initiation. See the *Initiation Notice*, 67 FR at 61593.

#### Fair Value Comparisons

To determine whether sales of PVA from Japan to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to weighted-average NVs.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Nippon Gohsei in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics discussed below.

In October 2002, Kuraray, Marubeni, and the petitioners submitted comments on the model-matching criteria to be used by the Department. Based on these comments, we proposed to match products sold in the United States to products sold in the home market in the ordinary course of trade that were identical with respect to the following hierarchy of characteristics: molecular structure, hydrolysis, viscosity, degree of modification, particle size, tackifier, defoamer, ash, color, volatiles, and visual impurities. We invited interested parties to submit additional comments on these criteria prior to the preliminary determination.

In December 2002, the petitioners requested that the Department revise the proposed model-matching hierarchy to place hydrolysis and viscosity as the most important criteria.

Also in December 2002, Nippon Gohsei requested the Department revise the particle size field of the hierarchy to include PVA in standard, fine, pellet, and liquid forms. In addition, Nippon Gohsei requested that the Department add the field SOLH/U in order to distinguish between PVA sold in dry form versus liquid form. Finally, Nippon Gohsei requested that the Department allow respondents to report hydrolysis, viscosity, and degree of modification in ranges.

After analyzing these comments, we have reconsidered the model-matching hierarchy and revised it as follows: 1) we added as the most important criterion whether the product is a homo- or a co- polymer; 2) we placed hydrolysis and viscosity before molecular structure (*i.e.*, the type of copolymer); 3) we accepted the proposed changes to particle size field suggested by Nippon Gohsei; and 4) we allowed the reporting of hydrolysis, viscosity, and degree of modification in

ranges. All other characteristics remained the same. For further discussion, see the memorandum entitled "Concurrence Memorandum for the Preliminary Determination in the Investigation of Polyvinyl Alcohol from Japan," dated February 12, 2003 (the Concurrence Memorandum), on file in room B-099 of the Department's Central Records Unit (CRU).

### Export Price

In accordance with section 772(a) of the Act, we based our calculations on EP because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser prior to importation. In cases where Nippon Gohsei sold pursuant to multiple-shipment sales agreements, we used the date of the sales agreement, where available, as the date of sale. Where the date of the sales agreement was not known, we used the date of shipment as the date of sale because this date preceded the date of invoice. For further discussion, see the Concurrence Memo.

We based EP on the packed delivered prices to unaffiliated purchasers in either Japan or the United States. Where appropriate, we made adjustments for billing errors. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, loading expenses, international freight, and marine insurance.

### Normal Value

#### A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

#### B. Affiliated-Party Transactions and Arm's-Length Test

Nippon Gohsei reported sales of the foreign like product to affiliated end-users. To test whether these sales to

affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to the affiliated party was, on average, 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. Consistent with section 351.403(c) of the Department's regulations, we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.

#### C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs. See the *Initiation Notice*, 67 FR at 61594.

##### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), including interest expenses. See the "Test of Home Market Sales Prices" section below for treatment of home market selling expenses. We relied on the COP data submitted by Nippon Gohsei, except as noted below:

- We revised the reported costs for raw materials and utilities obtained from an affiliated party using facts available because Nippon Gohsei failed to report either the affiliate's costs and/or the market price for these inputs, as required by section 773(f)(3) of the Act (*i.e.*, the "major input" rule). Because Nippon Gohsei stated that it attempted to obtain the necessary cost data from its affiliate but was unable to compel its affiliate to provide this information, we have used "gap-filler" facts available for the affiliate's costs and/or a market price in accordance with our practice. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880 (Mar. 30, 2000) and accompanying Issues and Decision Memorandum at *Comment 6*. As "gap-filler" facts available, we derived a cost and/or a market price for these inputs using data contained in the

petition. We then used the higher of these costs, the market price, or the reported transfer prices, in accordance with section 773(f)(3) of the Act.

- We included the total amount of research and development expense incurred by Nippon Gohsei during the cost reporting period in the G&A rate calculation. We also included gain and loss on sale of fixed assets, and other operating incomes and expenses in the G&A rate calculation.

For further discussion, see the memorandum from Sheikh M. Hannan to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Adjustments for the Preliminary Determination," dated February 12, 2003.

##### 2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were adjusted for billing errors and were exclusive of any applicable movement charges, and direct and indirect selling expenses. We recalculated indirect selling expenses for certain sales made through affiliated parties to capture the additional layer of indirect selling expenses incurred by the affiliate. For further discussion, see the memorandum to the File from the Team Re: Calculations Performed for The Nippon Synthetic Chemical Industry Co., Ltd. for the Preliminary Determination in the 2001–2002 Antidumping Duty Investigation of Polyvinyl Alcohol from Japan, dated February 12, 2003, which is available in room B-099 of the Department's CRU. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

##### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the

COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Nippon Gohsei's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. Level of Trade

In accordance with section 773(a)(1)(B)(i), to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),<sup>1</sup> including selling functions,<sup>2</sup> class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or

third country prices<sup>3</sup>), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, Court Nos. 00-1058, -1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

We obtained information from Nippon Gohsei regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Nippon Gohsei for each channel of distribution. See page A-11 and exhibit 9 of Nippon Gohsei's November 22 section A response; see also pages 9 through 17 and exhibit 7 of Nippon Gohsei's January 13 response to the Department's supplemental questionnaire.

Nippon Gohsei reported sales through twelve channels of distribution in the home market, including: 1) sales through affiliated distributors to the unaffiliated distributors or end-users; and 2) direct sales to unaffiliated distributors and affiliated and unaffiliated end-users. Nippon Gohsei stated that it performed the following selling functions/services in the home market with respect to these channels of distribution: market research, price negotiations with customers, order processing, interactions with customers, forward inventory maintenance, technical advice, warranty services, freight arrangements, advertising, and

just-in-time delivery. In addition, Nippon Gohsei provided information indicating that its affiliated resellers perform an additional layer of selling functions to customers in the home market.

We first noted that sales by Nippon Gohsei through affiliated distributors pass through two companies before reaching the customer, whereas sales in the other chains of distribution pass directly to the customer. We then examined whether any differences existed with respect to the selling functions performed by Nippon Gohsei in making sales within each of these broad channels of distribution (*i.e.*, through affiliates and direct to the customer). For the sales through Nippon Gohsei's affiliated distributors, we conducted our LOT analysis based on: 1) the selling activities performed by Nippon Gohsei to sell to the affiliated sellers; and 2) the selling activities performed by the affiliated reseller to sell to its unaffiliated customers. The information on the record indicates that the selling functions performed by both Nippon Gohsei and by its affiliated resellers in connection with sales through affiliated resellers are almost identical. Therefore, we find that sales through affiliated parties in the home market constitute one LOT.

Nippon Gohsei also made sales to affiliated and unaffiliated home market end-users and unaffiliated home market distributors. The information on the record also indicates that the selling functions performed in selling directly to end-users and selling to unaffiliated distributors were also substantially the same. Accordingly, we do not find the differences in selling functions so significant as to warrant finding a distinct LOT for sales through these channels. However, when these functions are compared to those for sales through affiliated resellers, we find that Nippon Gohsei and its affiliates provide an additional layer of selling functions that is substantially greater than the selling functions provided for direct sales. Consequently, we preliminarily find that Nippon Gohsei made sales at two LOTs in the home market: 1) sales through affiliated parties, and 2) direct sales to affiliated and unaffiliated customers.

For its sales to the United States, Nippon Gohsei reported two channels of distribution, including sales to unaffiliated trading companies and direct sales to end-users. Nippon Gohsei stated that it performed the following selling functions/services in the U.S. market: market research, price negotiations with customers, order processing, interactions with customers,

<sup>1</sup> The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

<sup>2</sup> Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the PVA selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services, where applicable

<sup>3</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

forward inventory maintenance, technical advice, warranty services, freight arrangements, advertising, and just-in-time delivery. The information on the record indicates that the selling functions performed in selling directly to end-users and selling to unaffiliated distributors were also virtually identical. Like Nippon Gohsei's sales to unaffiliated parties in the home market, the differences between the claimed channels in the U.S. market are not substantial enough to warrant a finding of separate LOTs. Therefore, we preliminarily find that Nippon Gohsei made sales through one LOT in the U.S. market: sales to unaffiliated parties. We further preliminarily find that the U.S. LOT is the same as the home market LOT for sales to unaffiliated parties because the selling functions performed by Nippon Gohsei are substantially the same in both markets. Consequently, we compared Nippon Gohsei's EP sales to its sales at the same LOT in the home market. Where we could not compare EP sales to home market sales of the most similar product at the same LOT, we made an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For further discussion, see the Concurrence Memo.

#### E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we

determined to be at arm's-length. Where appropriate, we made adjustments for billing errors. We also made deductions, where appropriate, for movement expenses, including inland freight (plant to distribution warehouse and plant/warehouse to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and bank charges.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, we made an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412, where appropriate.

#### Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the U.S. dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on

forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. Accordingly, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, except where Nippon Gohsei demonstrated that its exchange rates were established by forward exchange contracts.

#### Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Denki Kagaku Kogyo Kabushiki Kaisha .....	144.16
Japan VAM & POVAL Co., Ltd. ....	144.16
Kuraray Co., Ltd. ....	144.16
The Nippon Synthetic Chemical Industry Co., Ltd. ....	24.82
All Others .....	24.82

Pursuant to section 735(c)(5)(A) of the Act, we have excluded from the calculation of the All Others rate margins which are zero or *de minimis*, or determined entirely on facts available. Because we determined the margin for the three non-participating respondents entirely on facts available, we used Nippon Gohsei's margin as the All Others rate.

#### Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties in this proceeding in accordance with 19 CFR 351.224(b).

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

#### Public Comment

Case briefs for this investigation must be submitted no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days

from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. See 19 CFR 351.309.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution



Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 10 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. See 19 CFR 351.310.

We will make our final determination no later than 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: February 12, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-4132 Filed 2-19-03; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### National Renewable Energy Laboratory; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

*Docket Number:* 02-051.

*Applicant:* National Renewable Energy Laboratory, Golden, CO 80401.

*Instrument:* Ignition Quality Tester.

*Manufacturer:* Advanced Engine Technology Ltd., United Kingdom.

*Intended Use:* See notice at 68 FR 742, January 7, 2003.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

*Reasons:* The foreign instrument provides standardized measurements of ignition delay, maximum chamber temperature, heat rise and autoignition temperature for diesel and alternative fuel and additive compounds. The U.S. Department of Agriculture and

Southwest Research Institute advised February 4, 2003 that (1) this capability is pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 03-4133 Filed 2-19-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

*Docket Number:* 03-004.

*Applicant:* University of Kentucky, Chem/Physics Building, Room 177, Lexington, KY 40506.

*Instrument:* IR Image Furnace, Model SCII-MDH-11020.

*Manufacturer:* NEC Machinery Corporation, Japan.

*Intended Use:* The instrument is intended to be used for synthesis of single crystals of oxides such as ruthenium and copper for fundamental materials research and to understand their magnetic and electronic properties.

*Application accepted by Commissioner of Customs:* January 24, 2003.

*Docket Number:* 03-005.

*Applicant:* Northwestern University, Searle 5-474, MC S205, 320 East Superior Street, Chicago, IL 60637.

*Instrument:* MSM System Series 300 Yeast Manipulator and Micro Zapper.

*Manufacturer:* Singer Instrument Company Limited, United Kingdom.

*Intended Use:* The instrument is intended to be used to study the biological function of yeast SWI/SNF chromatin remodeling complex. Experiments to be conducted include yeast mating, sporulation and zygote isolation.

*Application accepted by Commissioner of Customs:* January 30, 2003.

*Docket Number:* 03-006.

*Applicant:* MetroHealth Medical Center, 2500 MetroHealth Drive, Cleveland, OH 44109-1998.

*Instrument:* Electron Microscope, Model Tecnai G<sub>2</sub> 12 TWIN.

*Manufacturer:* FEI Company, The Netherlands.

*Intended Use:* The instrument is intended to be used for research which will include:

1. Structural alterations in pulmonary vasculature caused by embolized particles present in pharmaceutical tablets.

2. Structural-correlative studies of lung morphology in patients with acute lung injury, including adult respiratory distress syndrome.

3. Evaluation of ultrastructural abnormalities of human and animal neoplasms including pulmonary and extrapulmonary tumors.

4. Defining new ultrastructural abnormalities of respiratory cilia which may play a role in "immotile cilia syndrome" and the development of bronchiectasis.

5. Response of the human lung to mineral dusts.

6. Defining gene function in disease pathogenesis.

7. Determining which neurotransmitter peptides are localized in DiO-labelled synaptic terminals of the aortic depressor nerve.

*Application accepted by Commissioner of Customs:* February 4, 2003.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

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**BILLING CODE 3510-DS-P**