

### Cash-Deposit Requirements

If these preliminary results are not modified in the final results of this review, a cash deposit rate of zero will be effective upon publication of the final results of this new shipper review for all shipments of freshwater crawfish tail meat from the PRC produced and exported by Weishan Zhenyu and entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act. The cash deposit rate for shipments produced and exported by Weishan Zhenyu will be the total amount of antidumping duties divided by the total quantity exported during the POR. This per kilogram cash deposit rate will be equivalent to the company-specific dumping margin rate established in this review. For crawfish tail meat exported, but not produced, by Weishan Zhenyu, we will apply as the cash deposit rate the PRC-wide rate, which is currently 223.01 percent. (See memorandum to file dated August 5, 2002, which places on the record of this review the "Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC, dated August 27, 2001".)

### Assessment Rates

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for the importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. For crawfish tail meat produced and exported by Weishan Zhenyu, we will assess antidumping duties on a per kilogram basis equivalent to the company-specific cash deposit rate established in this review.

### Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this

review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with § 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption

that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: February 12, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-428-836]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Germany

**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 Germany 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 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mike Strollo or Robin Moore, 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) 482-3773, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Preliminary Determination

We preliminarily determine that polyvinyl alcohol (PVA) from Germany 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 October 21, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PVA from Germany 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 selected Clariant GMBH (Clariant) and Kuraray Specialties Europe GMBH (Kuraray Europe), the producers/exporters accounting for the vast majority of exports of subject merchandise from Germany during the period of investigation (POI), as the mandatory respondents in this proceeding. For further discussion, see the memorandum to Louis Apple, Director, Office 2, from the Team entitled "Antidumping Duty Investigation of Polyvinyl Alcohol from Germany - Selection of Respondents," dated October 22, 2002. Due to limited resources, we determined that we could only investigate these two largest producers/exporters. We also issued antidumping questionnaires to Clariant and Kuraray Europe on October 22, 2002.

On November 22, 2002, Kuraray Europe submitted a response to Section A of the Department's questionnaire. On December 5, 2002, Kuraray Europe 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 Europe's business proprietary information and notified Kuraray Europe of this action. For further discussion, see the "Facts Available (FA)" section of this notice.

On December 9, 2002, in a letter faxed to the Department, Clariant acknowledged receipt of the Department's questionnaire. The fax was placed on the record of this proceeding on December 17, 2002. However, Clariant stated that, because it had sold the entirety of its production assets on January 1, 2002, and no longer produced PVA, it did not intend to

respond to the Department's questionnaire. For further discussion, see the "Facts Available (FA)" section of this notice.

### 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 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. Although no comments on the scope of the investigation were received in this proceeding, scope comments were received in the companion Japanese case. Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, we have placed on the record of this proceeding all public scope comments as well as all public versions of the proprietary scope documents filed in the companion Japanese case, and we have modified the scope to conform to that set forth in the preliminary determination of that proceeding. See the "Scope Comments" section of the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, published in the **Federal Register** concurrently with this notice.

### 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 acetoacetyl 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.

### 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 Clariant and Kuraray Europe. On December 9 and December 5, 2002, respectively, these parties informed the Department that they did not intend to participate in this investigation. Because both Clariant and Kuraray Europe 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 at 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). Both respondents were 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 Clariant and Kuraray Europe possessed the records necessary for this investigation and that by not supplying the information the Department requested, Clariant and Kuraray Europe 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* 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 addition, 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. 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.

### Export Price

With respect to the margins in the petition, EP was based on POI price quotes from a U.S. distributor for the sale of fully-hydrolyzed PVA produced by Kuraray Europe. The petitioners calculated net U.S. prices by deducting a distributor mark-up, certain movement expenses, and U.S. imputed credit expenses. We adjusted the petitioners'

EP calculation by not deducting an amount for U.S. credit expenses; instead, we made an adjustment to NV, in accordance with the Department's EP circumstance-of-sale calculation methodology.

We compared the U.S. market price quotes with official U.S. import statistics and U.S. customs data, and found the prices used by the petitioners to be reliable. 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 a home market price quote from a German PVA producer for PVA of a comparable grade to the products exported to the United States. This price quote was 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 price 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 Germany.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Germany 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 amounts reported in Clariant International's 2001 financial statements. The petitioners' calculation of profit was based on operating profit and not on the net income of the German PVA producer. Therefore, for

initiation purposes, we recalculated the CV profit rate to include non-operating items. Because this calculation resulted in a loss, we used a profit rate of zero.

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 margin calculations in the petition. Specifically, we attempted to locate both home market prices through publicly available sources and U.S. producer costs upon which CV was based, but we were unable to do so. See the Corroboration Memo.

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 SAA at 870.

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 petitions to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to Clariant and Kuraray Europe, we have applied the margin rate of 19.05 percent, which is the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice*, 67 FR at 61593.

**All Others**

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA provides that we may use other reasonable methods. See SAA at 873. Because the petition contained two

estimated dumping margins, we have used these two estimated dumping margins to create an "all others" rate based on a simple average. Therefore, we have calculated the margin of 10.75 percent as the "all others" rate. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India*, 64 FR 19123, 19124 (Apr. 19, 1999).

**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 Germany 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)
Clariant GMBH .....	19.05
Kuraray Specialties Europe .....	19.05
All Others .....	10.75

**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 25 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must

be filed within five days after the deadline for submission of 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.*

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