

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. See 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d)(1). Parties who submit arguments in these proceedings are requested to submit with the argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments must provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. Amtex has reported entered values for all of its sales of subject merchandise to the U.S. during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. In accordance with 19 CFR 356.8(a), the Department intends to issue appropriate appraisement instructions directly to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results that the company did not know were destined for the United States. In such instances we will instruct CBP to liquidate unreviewed entries at the All Others rate if there is no rate for the intermediate company or companies involved in the transaction.

#### Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of CMC from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) the cash deposit rate for Amtex will be the rate established in the final results of review, unless that rate is less than or equal to 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), in which case the cash deposit rate will be zero; 2) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate of 12.61 percent from the LTFV investigation. See *Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, and the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. 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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-421-811

#### Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request from petitioner Aqualon Company, a division of Hercules Incorporated (Aqualon), a U.S. manufacturer of purified carboxymethylcellulose (CMC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on CMC from the Netherlands. This administrative review covers imports of subject merchandise produced and exported by Noviant B.V. and CP Kelco B.V. (collectively, CP Kelco). The period of review (POR) is December 27, 2004, through June 30, 2006.

We preliminarily determine that sales of subject merchandise by CP Kelco have been made at less than normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0193 or (202) 482-3019, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 11, 2005, the Department published the antidumping duty order on CMC from the Netherlands. See *Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and*

Sweden, 70 FR 39734 (July 11, 2005) (CMC Order). On July 3, 2006, the Department published the opportunity to request an administrative review of, inter alia, CMC from the Netherlands for the period December 27, 2004, through June 30, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 37890 (July 3, 2006).

In accordance with 19 CFR 351.213(b)(1), Aqualon requested that the Department conduct an administrative review of the antidumping duty order on CMC from the Netherlands on July 27, 2006. On August 30, 2006, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering sales, entries and/or shipments of CMC for the period December 27, 2004, through June 30, 2006, for CP Kelco and Akzo Nobel Surface Chemistry (Akzo). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006).

On September 11, 2006, the Department issued its antidumping duty questionnaire to CP Kelco and Akzo.<sup>1</sup> CP Kelco submitted its section A questionnaire response (AQR) on October 16, 2006, and its sections B and C questionnaire responses on November 21, 2006 (BCQR). On December 4 and 8, 2006, respectively, Aqualon alleged that Akzo and CP Kelco made home market sales of CMC at prices below the cost of production during the POR.

On December 12, 2006, Aqualon submitted comments regarding Akzo's sections A–C questionnaire responses. On January 8, 2007, the Department issued its first sections A–C supplemental questionnaire to Akzo and on January 29, 2007, Akzo submitted its response.

On January 22, 2007, we initiated sales–below-cost investigations of home market sales made by Akzo and CP Kelco. *See* the Department's Memorandum to the File, from Judy Lao, Case Analyst and Nancy Decker, Senior Accountant, titled *Petitioner's Allegation of Sales Below the Cost of Production for Noviant BV/CP Kelco BV*, dated January 22, 2007 (Cost Initiation Memorandum), applicable to both Akzo and CP Kelco. As a result, on January 22, 2007, the Department requested that both Akzo and CP Kelco respond to section D of the Department's questionnaire. CP Kelco submitted its section D response on

February 5, 2007, including its cost reconciliation.

On February 9, 2007, the Department issued its first sections A–C supplemental questionnaire to CP Kelco and on March 12, 2007, CP Kelco submitted its response (SQR). On February 12, 2007, the Department issued a second sections A–C supplemental questionnaire to CP Kelco and on February 26, 2007, CP Kelco submitted its response.

On February 15, 2007, Aqualon submitted a letter to the Department requesting a rescission of the administrative review with respect to Akzo. On March 13, 2007, the Department rescinded the administrative review with respect to Akzo.<sup>2</sup> *See Purified Carboxymethylcellulose from the Netherlands: Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 11325 (March 13, 2007).

On February 27, 2007, the Department issued its third–country selection memorandum in which Taiwan was chosen as the appropriate third country for CP Kelco. *See* the Department's Memorandum to Office 7 Director Richard O. Weible, from Judy Lao and Stephen Bailey, Case Analysts, titled *Selection of Third Country Market for Noviant B.V. and CP Kelco B.V.* (collectively, CP Kelco B.V.), dated February 27, 2007 (Third Country Memorandum). Also on February 27, 2007, Aqualon submitted comments on CP Kelco's section questionnaire response. On March 27, 2007, Aqualon submitted comments on CP Kelco's SQR.

On April 5, 2007, the Department extended the deadline for the preliminary results by 120 days from April 2, 2007, until July 31, 2007. *See Purified Carboxymethylcellulose from Finland, Sweden, the Netherlands, and Mexico: Extension of Time Limits for Preliminary Determinations of Antidumping Duty Administrative Reviews*, 72 FR 16767 (April 5, 2007).

On April 6, 2007, CP Kelco submitted certain documents that were inadvertently omitted from its March 12, 2007, SQR. Additionally on April 6, 2007, the Department issued to CP Kelco a third sections A C supplemental questionnaire, and on April 27, 2007, CP Kelco submitted its response. On April 19, 2007, the Department issued to CP Kelco its first section D supplemental questionnaire, and on May 8, 2007, CP Kelco submitted its

response. On June 8, 2007, the Department issued to CP Kelco a fourth sections A C supplemental questionnaire, and on June 18, 2007, CP Kelco submitted its response.

On July 10, 2007, CP Kelco submitted its sales reconciliation. On July 12, 2007, the Department requested that CP Kelco provide a revised calculation for parent company J.M. Huber's financial expense ratio that deducts packing and freight–out expenses from J.M. Huber's cost of goods sold denominator. CP Kelco submitted this information on July 13, 2007. *See* Memorandum to the File, from Joe Welton, Accountant, titled *Phone Call with Respondent*, dated July 13, 2007; *see also* Memorandum to Neal Halper, Director Office of Accounting, from Gina Lee, Analyst, titled *Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - CP Kelco BV*, dated July 31, 2007 (Cost Memorandum) for a discussion of this issue.

On July 26, 2007, the Department issued a supplemental questionnaire to CP Kelco requesting the actual transaction–specific bank fees charged by CP Kelco's factoring agent, both for U.S. and comparison market sales. We intend to consider this information in our final results.

#### Period of Review

The POR is December 27, 2004, through June 30, 2006.

#### Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

<sup>1</sup> As noted below, the antidumping duty review for Akzo was rescinded on March 13, 2007.

<sup>2</sup> The Department notes that while the rescission notice lists both Akzo Nobel Surface Chemistry B.V. and Akzo Nobel Functional Chemicals B.V., the Department has not made a determination on the successor to Akzo Nobel Surface Chemistry B.V.

### Successor-In-Interest

In February 2005, the Noviant group of companies (including Noviant's Netherlands-based operation of Noviant B.V.) were merged with the CP Kelco group of companies, with both corporate groups previously operating as subsidiaries of the J.M. Huber Corporation (J.M. Huber). Following the merger, the operating title of the two entities became unified under the CP Kelco corporate title. Throughout 2005 and 2006, each of the European Noviant production and export companies' names were changed from "Noviant" to "CP Kelco" (*i.e.*, Noviant B.V. became CP Kelco B.V. in the Netherlands). Because entries have been made under the name of the new company during the POR, the Department must make a successorship determination in order to apply the appropriate and necessary company-specific cash deposit and assessment rates.

In December 2005, the shares of Noviant B.V.'s U.S. sales affiliate, Noviant Inc., were sold in an agreement with the CP Kelco entity's holding company, merging the U.S.-based operations of Noviant and CP Kelco under the CP Kelco corporate title. The completed merger of Noviant's U.S.-based operations with those of CP Kelco became effective January 1, 2006, and the company has since operated as CP Kelco U.S., Inc. (CP Kelco U.S.). For a further discussion of this merger, *see* Memorandum to the File, from Stephen Bailey, Analyst, titled Analysis of Data Submitted by Noviant B.V. and CP Kelco B.V. (collectively, CP Kelco) in the Preliminary Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from the Netherlands, dated July 31, 2007, (Sales Analysis Memorandum), on file in the Department's Central Records Unit (CRU) located in Room B-099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC. CP Kelco U.S. is a subsidiary of CP Kelco, respondent in the current administrative review and subsidiary of J.M. Huber.

In determining whether CP Kelco B.V. (and, therefore, CP Kelco U.S.) is the successor to Noviant B.V. and its U.S. affiliate Noviant Inc. for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992)*

(*Brass from Canada*); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Changed Circumstances Antidumping Duty Administrative Review, 55 FR 28796 (July 13, 1990)*; and *Industrial Phosphoric Acid From Israel: Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944 (February 14, 1994)*. While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada* at 20461. Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

Specifically, the evidence on the record, particularly CP Kelco's response to questions 3-9 of its SQR specifically addressing its claimed successorship, demonstrates that, with respect to the production and sale of the subject merchandise, CP Kelco B.V. is the successor to Noviant B.V. We reviewed CP Kelco's organizational structure before and after the merger and confirmed that there were only minimal changes to management and corporate structure. For instance, with respect to direct U.S. sales, sales are still made through the Unified Dental Team within Huber Engineered Materials (HEM). With respect to sales through Noviant Inc.'s successor, PC Kelco U.S., while customer care and logistics functions were transferred from Atlanta to Chicago, Illinois, and San Diego, California, those former Noviant employees did not relocate; a single new customer care representative was hired in Chicago and the existing CP Kelco U.S. logistics staff in San Diego took over logistics functions relating to CMC.

From a management perspective, consistent with CP Kelco's responses, the merger of Noviant BV with CP Kelco BV is, effectively, a name change, the primary purpose of which was to broaden the companies' marketing scope under the unified "CP Kelco" name. Consequently, our analysis of corporate management changes as a result of the merger indicates that neither the former Noviant BV nor CP Kelco BV (as well as the U.S. affiliates, Noviant Inc. and CP Kelco U.S.) experienced significant shifts in senior executive management. While new management positions were created, we found that Noviant BV's senior

management still existed within CP Kelco BV following the merger. The same holds true for senior management of the U.S.-based entities, Noviant Inc. and CP Kelco U.S., where we found that one senior manager left the company following the merger. These changes, standing alone, are not sufficiently significant to support a determination that CP Kelco's management and organizational structure, as well as its production and sales of the subject merchandise, are not essentially the same as those of Noviant B.V.

Record evidence shows that CP Kelco B.V. uses the same CMC production facilities, and maintains the same customer and supplier relationships as Noviant B.V. *See* pages 8 and 12 of the SQR. For CP Kelco's sales to Taiwan, there were no changes in selling activities before and after the merger, as CP Kelco Singapore Pte. (CP Kelco's Asian sales office) performs the same selling functions as its predecessor Noviant Pte. *See* SQR at pages 12 and 15. Therefore, we preliminarily find that CP Kelco B.V. is the successor to Noviant B.V. for purposes of this proceeding, and for the application of the antidumping law.

### Fair Value Comparisons

To determine whether sales of CMC from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EPs and CEPs of individual U.S. transactions to monthly weighted-average NVs.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered sales of CMC covered by the description in the "Scope of the Review" section of this notice, *supra*, which were sold in the appropriate third-country market, Taiwan, during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to CMC sold in the United States. For our discussion of market viability and selection of comparison market, *see* the "Normal Value" section of this notice, *infra*. We have relied on the following five criteria to match U.S. sales of the subject merchandise to sales in Taiwan of the foreign like product: grade, viscosity, degree of substitution, particle size, and solution characteristic.

Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we

compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's September 11, 2006, antidumping duty questionnaire.

#### Export Price

In accordance with section 772 of the Act, we calculate either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. CP Kelco classified two types of sales to the United States: 1) sales to direct end user customers (EP sales); and 2) sales via its U.S. affiliates, CP Kelco U.S. and HEM, to end-users and distributors (CEP sales). For purposes of these preliminary results, we have accepted CP Kelco's classifications and identified two additional classifications.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the sale invoice date as the date of sale.<sup>3</sup> We based EP on the packed freight on board (FOB) prices to the first unaffiliated purchasers outside the Netherlands. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, and foreign brokerage and handling.

We calculated CEP based on prices charged to the first unaffiliated U.S. customer after importation. We used the sale invoice date as the date of sale. We based CEP on the gross unit price from CP Kelco U.S. and HEM to their unaffiliated U.S. customers, making adjustments where necessary for billing adjustments, pursuant to section 772(c)(1) of the Act. Where applicable, the Department made deductions for movement expenses (foreign inland freight, international freight, U.S. movement, U.S. customs duty and brokerage, marine insurance and post-sale warehousing), while adding freight revenue, in accordance with section 772(c)(2) of the Act and section

351.401(e) of the Department's regulations. In accordance with sections 772(d)(1) and (2) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs incurred in the United States and the Netherlands associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

#### Normal Value

##### *A. Home Market Viability and Comparison Market Selection*

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.*, whether 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 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.

Section 773(a)(1)(C)(ii) of the Act provides that the Department may determine that home market sales are inappropriate as a basis for determining NV if the administering authority determines that the aggregate quantity of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States. When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a particular third country market may be utilized if (I) the prices in such market are representative; (II) the aggregate quantity of the foreign like product sold by the producer or exporter in that third country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (III) the Department does not determine that a particular market situation in the third country market prevents a proper comparison with the U.S. price.

CP Kelco reported, and we determined, that CP Kelco's aggregate volume of home market sales of the foreign like product was not greater than five percent of the aggregate volume of U.S. sales of subject merchandise. See AQR at exhibit A-1. Therefore, because CP Kelco's sales in the home market did not provide a viable basis for calculating NV, we relied on sales to a third country as the basis for NV in accordance with section 773(a)(1)(B)(ii) of the Act. The following is a description of the

Department's procedure in selecting the third country sales used to calculate NV for sales of the foreign like product made by CP Kelco.

In its section A response, CP Kelco provided information regarding its sales to Taiwan, Germany, and Denmark. Upon review of the information provided by CP Kelco, in accordance with section 773(a)(1)(c) of the Act, the Department selected Taiwan as the appropriate comparison market. The Department found that exports of the foreign like product to Taiwan were similar to those exported to the United States, and that exports to Taiwan were substantially larger than exports either to Germany or to Denmark. In addition, the Department did not find any evidence on the record suggesting that Taiwan would be an inappropriate third country market to select as a comparison market. Accordingly, on February 27, 2007, the Department selected Taiwan as the appropriate third country for comparison market purposes. See Third Country Memorandum.<sup>4</sup>

We also used constructed value (CV) as the basis for calculating NV, in accordance with section 773(a)(4) of the Act, for those sales that did not have identical or similar product matches.

##### *B. Cost of Production Analysis*

On January 22, 2007, after a request from Aqualon, the Department initiated a sales-below-cost investigation of CP Kelco because Aqualon provided a reasonable basis to believe or suspect that CP Kelco is selling CMC in Taiwan at prices below its cost of production (COP). Based on the Department's findings, there is a reasonable basis to believe or suspect that CP Kelco is selling CMC in Taiwan at prices below COP. Therefore, pursuant to section 773(b)(1) of the Act, we examined whether CP Kelco's sales in Taiwan were made at prices below the COP. See Cost Initiation Memorandum.

##### *C. Calculation of Cost of Production*

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of CP Kelco's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative (G&A) expenses, financial expenses and packing costs.

We relied on the COP information provided by CP Kelco except for the following adjustment. We added depreciation expense, and deducted packing and freight costs incurred by CP

<sup>3</sup> See the Department's Sales Analysis Memorandum for a further discussion of this issue.

<sup>4</sup> CP Kelco reported sales to Taiwan in its BCQR.

Kelco's parent company J.M. Huber, from the cost of goods sold denominator to generate a revised cost of goods sold used in CP Kelco's financial expense ratio calculation. See Cost Memorandum.

#### D. Test of Comparison Market Prices

We compared CP Kelco's weighted-average COP figures to that company's Taiwan sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether sales to Taiwan had been made at prices below COP. On a product-specific basis, we compared COP to Taiwan prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

In determining whether to disregard Taiwan sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of CP Kelco's Taiwan sales of a given model were made at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of CP Kelco's Taiwan sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, as described in section 773(b)(2)(D) of the Act.

#### E. Results of Cost Test

Our sales below cost test for CP Kelco revealed that for Taiwan sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of Taiwan sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time.

Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

#### F. Price-to-Price Comparisons

We used the sale invoice date as the date of sale.<sup>5</sup> We calculated NV based on prices to unaffiliated customers and matched U.S. sales to NV. We made deductions, where appropriate, for foreign inland freight and international freight pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### G. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative (SG&A) expenses, financial expense, and profit including the adjustment as described in the COP section above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, interest, and profit on the amounts CP Kelco incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan. For selling expenses, we used weighted-average Taiwan selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive

SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer.

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine an LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-*

<sup>5</sup> See the Department's Sales Analysis Memorandum for a further discussion of this issue.

*Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and Accompanying Issues and Decision Memorandum at Comment 6. In the present review, CP Kelco claimed an LOT adjustment. See CP Kelco's BCQR at page B-25. In order to determine whether the comparison market 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>6</sup> including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

CP Kelco reported two LOTs in the third country market, Taiwan, with two channels of distribution to two classes of customers: (1) direct sales from the plant to end users (LOT 1 and Channel 1), and (2) direct sales from the plant to distributors (LOT 4 and Channel 2). Based on our review of evidence on the record, we find that third country market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. CP Kelco performed the same selling functions for sales in both third country market channels of distribution, including sales forecasting, order input/processing, advertising, warranty service, freight and delivery services, *etc.* See CP Kelco's AQR at exhibit A-5; CP Kelco's SQR at exhibit A-34. Additionally, as explained on pages A-18 and A-19 of CP Kelco's AQR, for sales to end users and through distributors, CP Kelco Singapore Pte takes orders directly from the customer, and enters the order in the Oracle 11i ERP (Oracle) system for production (or from stock for sales through distributors). Accordingly, we preliminarily find that CP Kelco had only one LOT for its third country market sales.

CP Kelco reported one EP LOT and one CEP LOT each with its own separate channel of distribution in the United States, and with two classes of customers for CEP sales: (1) direct sales to end users of merchandise (EP sales of LOT 1 and Channel 5), and (2) sales through U.S. affiliates (CEP sales) to end users and distributors of merchandise (LOT 4 with Channel 1 to end users and

Channel 2 to distributors). In reviewing CP Kelco's questionnaire responses, we preliminarily find that CP Kelco has a total of four channels of distribution for its U.S. sales: (1) direct sales to end users of merchandise produced to order, (2) direct sales to end users of merchandise sold from inventory, (3) sales through U.S. affiliates (CP Kelco U.S. and HEM) to end users and distributors of merchandise produced to order, and (4) sales through U.S. affiliates (CP Kelco U.S. and HEM) from warehouse stock maintained by each company to end users and distributors of merchandise. Therefore, we preliminarily find that there are two channels of distribution for EP sales, and two channels of distribution for CEP sales. See CP Kelco's AQR at pages A-19-A-24.

We reviewed the selling functions and services performed by CP Kelco in the U.S. market for EP sales, as described by CP Kelco in its questionnaire responses. We find that the selling functions and services performed by CP Kelco on direct sales for both U.S. channels of distribution relating to the EP LOT (*i.e.*, sales of merchandise produced to order to unaffiliated end users and sales of merchandise from stock to unaffiliated end users) are similar. In particular, for sales produced to order and pulled from stock, CP Kelco's customer care personnel process all orders, which are entered into the Oracle system. Additionally, sales invoices are issued by CP Kelco's plant directly to the customer, and CP Kelco's logistics department arranges for freight and delivery to CP Kelco's unaffiliated U.S. customers. Other services provided within both channels of CP Kelco's EP sales include: sales forecasting, procurement/sourcing services, order/input processing, *etc.* See CP Kelco's AQR at pages A-23-A-24. Accordingly, because these selling functions are substantially similar for these two channels of distribution, we preliminarily determine that there is one EP LOT in the U.S. market.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. See *Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by CP Kelco on CEP sales for both channels of distribution relating to the CEP LOT, as described by CP Kelco in its questionnaire responses, after these deductions. We have determined that the selling functions performed by CP Kelco on all CEP sales are similar because CP Kelco provides almost no

selling functions to either U.S. affiliate in support of either channel of distribution. CP Kelco reported that the only services it provided for the CEP sales were packaging, order input/processing services, and very limited freight and delivery and sales/marketing support services. See CP Kelco's SQR at exhibit A-34. Accordingly, because the selling functions provided by CP Kelco on sales to affiliates in the United States are substantially similar, we preliminarily determine that there is one CEP LOT in the U.S. market.

We then examined the selling functions performed by CP Kelco on its EP sales in comparison with the selling functions performed on CEP sales (after deductions). We found that CP Kelco performs an additional layer of selling functions on its direct sales to unaffiliated U.S. customers which are not performed on its sales to affiliates (*e.g.*, sales forecasting, strategic/economic planning, engineering services, advertising, sales promotion, inventory maintenance, market research, after-sales support services, technical assistance, *etc.*). See CP Kelco's SQR at exhibit A-34. Because these additional selling functions are significant, we find that CP Kelco's direct sales to unaffiliated U.S. customers (EP sales) are at a different LOT than its CEP sales.

Next, we examined the third country market and EP sales. CP Kelco's third country market and EP sales were both made to end users and distributors. In both cases, the selling functions performed by CP Kelco were almost identical for both markets. Other than distributor training, which was only performed for third country sales made through distributors, and re-packing services, which were mainly provided on U.S. sales, in both markets CP Kelco provided the following services: sales forecasting, strategic and economic planning, sales promotion, market research, procurement/sourcing services, order/input processing, technical assistance, after-sales services, *etc.* See CP Kelco's SQR at exhibit A-34. Because the selling functions and channels of distribution are substantially similar, we preliminarily determine that the third country market LOT is the same as the EP LOT. It was, therefore, unnecessary to make an LOT adjustment for comparison of third country market and EP prices.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market or third country market is at a more advanced stage than the LOT of the CEP sales and there is no basis for

<sup>6</sup> The marketing process in the United States and third country market begins with the producer and extends to the sale to the final user or customer. 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 CP Kelco's narrative response to properly determine where in the chain of distribution the sale occurs.

determining whether the difference in LOTs between NV and CEP effects price comparability. CP Kelco reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the third country market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by CP Kelco for sales in the third country market and CEP sales in the U.S. market (*i.e.*, sales support and activities provided by CP Kelco on sales to its U.S. affiliates), we preliminarily find that the third country market LOT is at a more advanced stage of distribution when compared to CEP sales because CP Kelco provides many selling functions in the third country market at a higher level of service (*i.e.*, sales forecasting, strategic/economic planning, sales promotion, inventory maintenance, direct sales personnel, market research, technical assistance, after-sales service, *etc.*) as compared to selling functions performed for its CEP sales (*i.e.*, CP Kelco reported that the only services it provided for the CEP sales were packaging, order input/processing services, and very limited freight and delivery and sales/marketing support services). See CP Kelco's SQR at exhibit A-34. Thus, we find that CP Kelco's third country market sales are at a more advanced LOT than its CEP sales. There was only one LOT in the third country market, no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment; therefore, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the third country market indirect selling expenses from NV for third country market sales that were compared to U.S. CEP sales. As such, we limited the third country market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

#### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period

December 27, 2004, through June 30, 2006, to be as follows:

Manufacturer / Exporter	Margin (percent)
Noviant B.V. and CP Kelco B.V. ....	24.50

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than five days after the time limit for filing case briefs. See 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. See 19 CFR 351.309(c)(2). An interested party may request a hearing within 30 days after the publication of the preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of this review the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by CP Kelco and for which CP Kelco did not know another company

would export its merchandise to the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 14.57 percent, which is the "all others" rate established in the LTFV investigation. See *CMC Order*. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. 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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

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