

## INTERNATIONAL TRADE COMMISSION

### Investigation No. 731-TA-1088 (Preliminary) (Remand)

#### Polyvinyl Alcohol from Taiwan

#### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of polyvinyl alcohol provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).<sup>2</sup>

#### Commencement of Final Phase of Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

#### Background

On September 7, 2004, a petition was filed with the Commission and Commerce by domestic producer Celanese Chemicals, Ltd., Dallas, TX, alleging that an industry in the United

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<sup>1</sup>The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup>Vice Chairman Pearson and Commissioners Okun and Lane dissented, having determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly LTFV imports of polyvinyl alcohol from Taiwan.

States is materially injured and threatened with further material injury by reason of LTFV imports of polyvinyl alcohol from Taiwan. Accordingly, effective September 7, 2004, the Commission instituted antidumping duty investigation No. 731-TA-1088 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 15, 2004 (69 FR 55653). The conference was held in Washington, DC, on September 28, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On October 24, 2004, the Commission determined by a vote of 3 to 2, that there was no reasonable indication that a U.S. industry was materially injured or threatened with material injury by reason of imports of PVA from Taiwan.<sup>3</sup> Notice of that determination was published on October 29, 2004. 69 Fed. Reg. 63177. The Commission transmitted its determination to the Secretary of Commerce on October 22, 2004. The Commission's views were contained in USITC Publication 3732 (October 2004), entitled *Polyvinyl Alcohol from Taiwan: Investigation No. 731-TA-1088 (Preliminary)*. Domestic producer/petitioner Celanese appealed the Commission's negative preliminary determination to the U.S. Court of International Trade ("CIT").

On January 29, 2007, the CIT remanded the determination to the Commission for further proceedings. *Celanese Chemicals, Ltd. v. United States*, Slip Op. 07-16, 29 ITRD 1985 (Ct. Int'l Trade 2007). On remand, the Commission determined, by a vote of 3 to 3, that there was a reasonable indication that a U.S. industry was materially injured by reason of imports of subject imports of PVA from Taiwan. Chairman Aranoff and Commissioners Williamson and Pinkert, who had commenced their service as Commissioners in the intervening time, voted in the affirmative. On remand, Vice Chairman Pearson and Commissioners Okun and Lane reaffirmed their negative preliminary determinations. *Polyvinyl Alcohol from Taiwan: Investigation No. 731-TA-1088 (Preliminary) (Remand)*, USITC Publication 3920 (April 2007). The tie vote yielded an affirmative determination by operation of 19 U.S.C. § 1677(11).

On November 19, 2008, the CIT affirmed the Commission's affirmative preliminary determination on remand. *Celanese Chemicals Ltd. v. United States*, Slip Op. 08-125, 30 ITRD 2352 ("*Celanese II*"). On January 16, 2009, DuPont appealed to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit").

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<sup>3</sup>Commissioners Miller and Koplan dissented, having determined that there was a reasonable indication that an industry in the United States was materially injured by reason of allegedly LTFV imports of polyvinyl alcohol from Taiwan. Commissioner Hillman did not participate in the investigation.

On December 23, 2009, the Federal Circuit affirmed, without opinion, the CIT's decision in *Celanese II*, and issued its mandate on February 18, 2010. No party has applied under 28 U.S.C. 2101(c) to the U.S. Supreme Court for a *writ of certiorari*. The judicial proceedings having now ended, the Commission now publishes notice of its preliminary determination on remand.

By order of the Commission.

/s/  
Marilyn R. Abbott,  
Secretary to the Commission.

Issued: March 25, 2010