

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe from Mexico on November 2, 1992. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea ("Korea"), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the period November 1, 2004, through October 31, 2005, on November 1, 2005. *See* 70 FR 65883. Respondents NDN, Hylsa, Prolamsa, Mueller, and interested party Southland requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 30, 2005. In response to these requests, the Department published the initiation of the antidumping duty administrative review on circular welded non-alloy steel pipe from Mexico on December 22, 2005. *See* 70 FR 76024. The Department received requests for withdrawal from the administrative review from Mueller, NDN, and Southland on January 31, 2006. The Department received a request for withdrawal from the administrative review from Hylsa on February 27, 2006.

Prolamsa

On December 14, 2005, the Department received a letter from respondent Prolamsa. The letter indicated that U.S. Customs and Border Protection ("CBP") liquidated all of Prolamsa's entries of merchandise during the period of review that Prolamsa considered to be covered by the scope of the order. *See* Letter from Prolamsa to the Department, dated December 14, 2005. In response, the Department requested that Prolamsa provide data on all sales of merchandise made during the period of review that Prolamsa considered covered by the order; *see* Memorandum to the File from John Drury, Senior Case Analyst, dated December 19, 2005. Prolamsa provided the requested information; *see* Letter from Prolamsa to the Department, dated December 20, 2005. Petitioners filed comments regarding the information submitted by Prolamsa on January 23, 2006; *see* Letter from Petitioners to the Department, dated January 23, 2006. In response, Prolamsa requested that the Department determine whether the

merchandise exported by Prolamsa during the period of review was merchandise subject to the scope of the order; *see* Letter from Prolamsa to the Department, dated February 6, 2006.

Based on a review of the evidence on the record, the Department determined that Prolamsa had not sold merchandise subject to the order during the period of review. *See* Letter from the Department to Prolamsa, dated February 14, 2006.

Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Additionally, the Secretary may rescind an administrative review, if the Secretary concludes that there were no entries or sales of subject merchandise during the POR. *See* 19 CFR 351.213(d)(3). NDN, Mueller, Southland and Hylsa have withdrawn their requests in a timely manner, and the Department determined that Prolamsa did not have sales of subject merchandise during the period of review. Therefore, we are rescinding this review. The Department will issue appropriate assessment instructions to CBP within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 16, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-818]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia

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

EFFECTIVE DATE: March 27, 2006

SUMMARY: We preliminarily determine that imports of certain lined paper products ("CLPP") are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT:

Brandon Farlander, or Natalie Kempkey, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0182 or (202) 482-1698, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2005, the Department of Commerce ("the Department") initiated the antidumping investigation of CLPP from Indonesia. *See Initiation of Antidumping Duty Investigation: Certain Lined Paper Products from Indonesia*, 70 FR 58374 (October 6, 2005) ("Initiation Notice"). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*. The comments we received are discussed in the "Scope Comments" section below.

On October 31, 2005, the International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Indonesia of CLPP alleged to be sold in the United States at less than fair value. *See Certain Lined Paper School Supplies From China, India, and Indonesia [Investigation Nos. 701-TA-442-443 and 731-TA-1095-1097 (Preliminary)]*, (ITC Preliminary Report) 70 FR 62329 (October 31, 2005).

On October 31, 2005, the Department issued Mini-section A quantity and value ("Q&V") questionnaires to six

potential respondents. On November 4, 2005, we issued an extension to the deadline for the Q&V from November 9, 2005, to November 15, 2005. On November 14 and 15, 2005, we issued a memorandum to the file including the responses of two of the six companies from which we requested Q&V information. *See* Memorandum from Natalie Kempkey to the File entitled "November 12, 2005, Letter from P.T. Solo Murni Certain Lined Paper School Supplies from Indonesia;" *see also* Memorandum from Natalie Kempkey to the File entitled "November 15, 2005, Letter from P.T. Locomotif Certain Lined Paper School Supplies from Indonesia." We received responses from the rest of the companies on November 15, 2005, the extended deadline. On November 17, 2005, we concluded that the only potential respondent was P.T. Pabrik Kertas Tjiwi Kimia T.B.K. ("TK"). *See* the Memorandum from Natalie Kempkey to Susan Kuhbach entitled "Antidumping Investigation of Certain Lined Paper Products from Indonesia: Selection of Respondents." On November 28, 2005, the Association of American School Paper Suppliers and its individual members (MeadWestvaco Corporation; Norcom, Inc.; and Top Flight, Inc.) ("Petitioner") alleged that critical circumstances existed with regard to imports from Indonesia, China, and India.

On November 18, 2005, we issued Sections A, B, C, and D of the antidumping questionnaire to TK. We received a Section A response from TK on December 9, 2005. On December 20, 2005, TK asked the Department to extend the deadlines for responding to Sections B and C and Section D to January 2 and 9, 2006, respectively. On December 20, 2006, we granted TK's request. We received the Section B-D responses on the extended deadlines. On January 26, 2006, the Department sent out its second supplemental questionnaire for Section D. This response was due by February 10, 2006. We did not receive a timely response from TK for this supplemental questionnaire. On February 3, 2006, the Department issued a third supplemental questionnaire on sections A-C, due by February 17, 2006. We did not receive a timely response from TK for this third supplemental questionnaire.

On January 30, 2006, the Department issued a letter to Tri-Coastal Design Group, Inc. ("Tri-Coastal") questioning whether Tri-Coastal is an importer of subject merchandise consistent with 19 CFR. 351.102(b) and whether Tri-Coastal qualifies as an interested party to this proceeding consistent with 19 U.S.C. 1677(a). Tri-Coastal responded

via a letter dated February 1, 2006, which the Department received on February 6, 2006, that it does not qualify as an interested party. Tri-Coastal subsequently withdrew its appearance in this investigation, resulting in Tri-Coastal's removal from the APO and Public Service lists of this proceeding. On March 20, 2006, the Department issued a Memorandum to the File concerning the Department's conversation with counsel for TK on February 17, 2006, confirming that TK would not respond to further Department supplemental questionnaires and that TK did not expect the Department to verify TK's information on the record. *See* Memorandum from Damian Felton to the File, dated March 20, 2006, and entitled "Conversation with Counsel for PT. Pabrik Kertas Tjiwi Kimia Tbk. Regarding Respondent's Withdrawal from Active Participation."

Period of Investigation

The period of investigation is July 1, 2004, through June 30, 2005.

Scope of Investigation

The scope of this investigation includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front

cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this investigation whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this investigation are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationery (including but not limited to products commonly known as "fine business paper," "parchment paper," and "letterhead"), whether or not containing a lined header or decorative lines;

- Stenographic pads (“steno pads”), Gregg ruled (“Gregg ruling” consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches;

Also excluded from the scope of this investigation are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar® Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1” wide elastic fabric band. This band is located 2–3/8” from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face

to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks

FiveStar® Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this investigation is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090 of the Harmonized Tariff Schedule of the United States (HTSUS). During the investigation additional HTS codes may be identified. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997)), in our *Initiation*

Notice 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*.

On October 28, 2005, Continental Accessory Corporation (“Continental”) submitted timely scope comments in which it argues that the Department should issue a ruling that the scope of this investigation does not cover “fashion stationery,” a niche lined paper product. Continental argues that fashion stationery is substantially different from subject commodity-grade lined paper products because of differences in physical appearance, production methods, costs, consumer expectations, and other factors. Continental also argues that none of the domestic petitioners has the capability of manufacturing fashion stationery in the United States.

On November 16, 2005, Petitioner submitted rebuttal comments. Petitioner argues that what Continental refers to as “stationery,” and “fashion goods,” is actually nothing more than notebooks. Contrary to Continental’s allegation, Petitioner claims these notebooks are “substantially produced” within the United States. Petitioner states that the language of the scope is clear in describing the products for which relief is sought, “certain lined paper products regardless of the material used for a front or back cover, regardless of the inclusion of material on the front and cover, and regardless of the binding materials.” Petitioner also argues that Continental’s claim that fashion notebooks “are not intended to be included with covered merchandise” is baseless. Petitioner states that Continental has provided no evidence to demonstrate that the purchaser views fashion notebooks as a higher value product. Lastly, Petitioner notes that the ITC has already rejected Continental’s claims that its fashion books are not within the scope of the domestic like product or should be treated as a separate like product. *See ITC Preliminary Report*.

As further discussed in the March 20, 2006, memorandum entitled “Scope Exclusion Request: Continental Accessory Corporation” (on file in the Department’s Central Records Unit), we denied Continental’s request that its fashion notebooks be excluded from the scope of the investigation.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (“AFA”) is appropriate for the preliminary determination with respect

to TK. See Memorandum to the File from Natalie Kempkey entitled "Preliminary Determination in the Antidumping Duty Investigation of Certain Lined Paper Products from Indonesia: Corroboration of Total Adverse Facts Available Rate," dated March 20, 2006.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act further states that 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.

In this case, TK did not provide information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, TK did not respond to two of the Department's supplemental questionnaires. We note that information requested in those supplemental questionnaires is necessary for the Department to complete its analysis and calculations. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A), and (C) of the Act, we have based TK's dumping margin on facts otherwise available.

B. Application of Adverse Inferences for Facts Available

In applying adverse inferences to facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico*, 69 FR 59892 (October 6, 2004).

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994) ("SAA"). Further, "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997).

Although the Department provided the respondent with notice of the consequences of failure to respond adequately to the supplemental questionnaires in this case, TK did not respond to the supplemental questionnaires. This constitutes a failure on the part of TK to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776 of the Act. Therefore, the Department has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information,

section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and SAA at 829-831. In this case, because we are unable to calculate a margin based on TK's own data and because an adverse inference is warranted, we have assigned to TK the highest margin alleged in the petition and which we included in the notice of initiation of this investigation. See *Initiation Notice*, 70 FR 58374.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition), it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. The Department's regulations state 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. See 19 CFR 351.308(d) and SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. See the September 29, 2005, Office of AD/CVD Operations Initiation Checklist (*Initiation Checklist*) on file in Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

For this preliminary determination, we examined evidence supporting the calculations in the petition to determine the probative value of the margins 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 and normal-value calculations on which the margins in the petition were based. We find that the estimated margins we set forth in the *Initiation Notice* have probative value. See Memorandum to the File from Natalie Kempkey entitled "Preliminary Determination in the Antidumping Duty Investigation of Certain Lined Paper Products from Indonesia: Corroboration of Total Adverse Facts Available Rate," dated March 20, 2006. Therefore, in selecting

AFA with respect to TK, we have applied the margin rate of 118.63 percent, the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice.*

All Others Rate

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 the Department may weight-average margins other than the zero, *de minimis*, or facts-available margins to establish the "all others" rate.

For purposes of determining the "all others" rate and pursuant to section 735(c)(5)(B) of the Act, we have calculated a simple average of the two margin rates from the petition. As such, we shall use the weighted-average percent of 97.85 percent as the "all others" rate.

Critical Circumstances

A. TK

On November 28, 2005, Petitioner requested that the Department make an expedited finding that critical circumstances exist with respect to CLPP from Indonesia. Petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise. Petitioner based its allegation on evidence of retailers engaging in negotiations that would cause a surge of imports of subject merchandise into the United States from December 2005 through February 2006 (in advance of the preliminary determination date) in order to avoid duties.

In accordance with 19 CFR 351.206(c)(2), since this allegation was filed earlier than the deadline for the Department's preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination. *See Policy Bulletin 98/4 regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).

Section 733(e)(1)(A) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect

that: (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales.

The statute and the SAA are silent as to how we are to make a finding that there was knowledge that there was likely to be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion. In determining whether the relevant statutory criteria have been satisfied, we considered: (i) Import statistics from the ITC Dataweb, and (ii) the ITC preliminary injury determination. *See ITC Preliminary Report.*

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). Because we are not aware of any antidumping order in any country on CLPP from Indonesia, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. For this reason, the Department does not find a history of injurious dumping of CLPP from Indonesia pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales, or 15 percent or more for constructed export price transactions, sufficient to impute knowledge of dumping. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). For the reasons explained above, we have assigned a margin of 118.63 percent to TK. Based on this margin, we

have imputed importer knowledge of dumping for TK. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan, (TTR from Japan)* 68 FR 71072, 71076 (December 22, 2003).

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports consistent with section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the ITC. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, (Stainless Steel from Japan)* 64 FR 30573, 30578 (June 8, 1999). The ITC preliminarily found material injury to the domestic industry due to imports from Indonesia of CLPP, which are alleged to be sold in the United States at less than fair value and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See ITC Preliminary Report.* Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Since TK has met the first prong of the critical circumstances test according to section 733(e)(1)(A) of the Act, we must examine whether its imports were massive over a relatively short period. Section 733(e)(1)(B) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The Department's regulations also provide, however, that if the

Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

On February 6, 2006, TK filed company-specific monthly import data for shipments of subject merchandise to the United States for January 2003 through January 2006. However, we are disregarding this information because, as noted above, TK has withdrawn from the investigation and we will not be able to verify this data. Therefore, the Department must base its determination on facts available. Moreover, because of TK's failure to cooperate, we have made an adverse inference that there were massive imports from TK over a relatively short period. *See TTR from Japan*, 68 FR at 71077.

In this case, the Department is unable to use information supplied by U.S. Customs and Border Protection (CBP) to corroborate whether massive imports occurred because the HTS numbers listed in the scope of the investigation are basket categories that include non-subject merchandise and, thus, do not permit the Department to make an accurate analysis. *See Stainless Steel from Japan*, 64 FR at 30585. In addition, the SAA states that, "The fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference under subsection (b)." *See SAA* at 870.

Based upon the above, we preliminarily find critical circumstances with respect to TK.

B. All Others

It is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated and, therefore, concluded that critical circumstances also existed for companies covered by the "all others" rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. *See Stainless Steel from Japan*, 64 FR at 30585. Instead, the Department considers the traditional critical circumstances criteria with respect to

the companies covered by the "all others" rate.

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling CLPP at less than fair value, we look to the "all others" rate. *See TTR from Japan*, 64 FR at 71077. The dumping margin for the "all others" category, 97.85 percent, exceeds the 15 percent threshold necessary to impute knowledge of dumping consistent with 19 CFR 351.206. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise consistent with 19 CFR 351.206. *See ITC Preliminary Report*.

Finally, with respect to massive imports, we are unable to base our determination on our findings for TK because our determination for TK was based on AFA. Consistent with *TTR from Japan*, 68 FR at 71077, we have not inferred, as AFA, that massive imports exist for "all others" because, unlike TK, the "all others" companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to shipment levels by the "all others" companies is not appropriate.

The approach taken in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24239 (May 6, 1999) and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5220, 5227 (February 4, 2000), was to examine CBP data on overall imports from the countries in question to see if the Department could ascertain whether an increase in shipments occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. However, we are unable to rely on information supplied by CBP because in this investigation the HTS numbers listed in the scope of the investigation are basket categories that include non-subject merchandise. Lacking information on whether there was a massive import surge for the "all others" category, we are unable to determine whether there have been massive imports of CLPP from the producers included in the "all others" category. *See TTR from Japan*, 68 FR at 71077. Consequently, the third criterion necessary for determining affirmative critical circumstances has not been met. Therefore, we have preliminarily determined that critical

circumstances do not exist for imports of CLPP from Indonesia for companies in the "all others" category.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing CBP to suspend liquidation of all entries of CLPP from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For P.T. Pabrik Kertas Tjiwi Kimia T.B.K., we are directing CBP to suspend liquidation of all imports of subject merchandise that are entered or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. *See* section 733(e)(2) of the Act. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer or Exporter	Margin (percent)
P.T. Pabrik Kertas Tjiwi Kimia T.B.K.	118.63
All Others	97.85

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the ITC's 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 30 days after the publication of this notice. 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.

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

or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will 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, N.W., 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 30 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. We will make our final determination within 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: March 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031606A]

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Issuance of an Incidental Take Permit

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that NOAA's National Marine Fisheries Service (NMFS) intends to gather the necessary information to prepare an Environmental Impact Statement (EIS). The EIS will examine the proposed implementation of a Habitat Conservation Plan (HCP) and issuance of one incidental take permit (ITP) in accordance with the Federal Endangered Species Act (ESA), as amended. The U.S. Forest Service (USFS) and the U.S. Fish and Wildlife Service (USFWS) will be participating as Federal cooperating

agencies. The USFS manages land in close proximity to the project area and, therefore, has an interest in the analysis of the proposed action. The applicant may seek an ITP from the USFWS for coverage for species under its jurisdiction; therefore, the USFWS is participating in the scoping process for EIS development.

DATES: We must receive written comments on alternatives and issues to be addressed in the EIS May 26, 2006. We will hold public scoping meetings on:

Tuesday, June 6, 2006, at East Portland Community Center, 740 SE 106th Avenue, Portland, OR from 6 p.m. to 7 p.m., and on Wednesday, June 7, 2006, at Portland City Hall, Lovejoy Room, 1221 SW 4th Avenue, Portland, OR from 5 p.m. to 7 p.m.. We will accept oral and written comments at these meetings.

ADDRESSES: Comments and requests for information should be sent to Ben Meyer, Branch Chief, Willamette Basin Habitat Branch, NMFS, 1201 NE Lloyd Blvd, Suite 1100 Portland, OR 97232, or by facsimile (503) 231-6893; or Joe Zisa, Supervisor, Land and Water Conservation Division, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 S.E. 98th Ave., Portland, OR 9726, or by facsimile (503) 231-6195. Comments may be submitted by e-mail to the following address: BullRunHCP.nwr@noaa.gov. In the subject line of the e-mail, include the document identifier: Bull Run HCP EIS. Comments and materials received will be available to public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Joe Zisa, USFWS, (360) 231-6961 or Ben Meyer, NMFS, (503) 230-5425.

SUPPLEMENTARY INFORMATION: The permit applicant is the City of Portland, Bureau of Water Works (PWB). PWB intends to request an ITP for four fish species: Chinook salmon (*Oncorhynchus tshawytscha*), chum salmon (*Oncorhynchus keta*), coho salmon (*Oncorhynchus kisutch*) and steelhead/rainbow trout (*Oncorhynchus mykiss*), which are listed as threatened under the ESA. The PWB may also seek coverage for four species of concern under the jurisdiction of the USFWS - cutthroat trout (*Oncorhynchus clarki*), Pacific lamprey (*Lampetra tridentata*), western brook lamprey (*Lampetra richardsoni*), and river lamprey (*Lampetra ayresii*), should these species be listed in the future. The PWB, NMFS, and USFWS are also considering coverage for aquatic/riparian species that, if present, could be potentially

affected by proposed flow alteration and riparian habitat management measures. The species under consideration include: Cope's giant salamander (*Dicamptodon copei*), Cascade torrent salamander (*Rhyacitriton cascadae*), northern red-legged frog (*Rana aurora aurora*; species of concern), Cascades frog (*Rana cascadae*; species of concern), coastal tailed frog (*Ascaphus truei*; species of concern), western toad (*Bufo boreas*), western painted turtle (*Chrysemys picta belli*), and northwestern pond turtle (*Clemmys marmorata marmorata*; species of concern). The PWB and NMFS will undertake a process to evaluate the possibility for impacts to these species, the implications of covering them in the HCP, and the analysis necessary in the EIS. If the species are covered, appropriate conservation measures will be included in the HCP.

The PWB, NMFS, and USFWS are also considering coverage for forest-dwelling species that, if present, could be potentially affected by proposed riparian habitat management measures and noise generated during water supply system operation, maintenance, and repair. Species under consideration include: clouded salamander (*Aneides ferreus*), fisher (*Martes pennanti*), Oregon slender salamander (*Batrachoseps wrighti*; species of concern), Larch Mountain salamander (*Plethodon larselli*; species of concern), bald eagle (*Haliaeetus leucocephalus*; threatened), and northern spotted owl (*Strix occidentalis caurina*; threatened). The PWB and USFWS will undertake a process to evaluate the possibility for impacts to these species, the implications of covering them in the HCP, and the analysis necessary in the EIS. If the species are covered, appropriate conservation measures will be included in the HCP.

The permits would authorize incidental take for specified PWB activities within the Sandy River Basin for a period of 50 years: storage and withdrawal of water from the Bull Run River watershed; operation, maintenance, and repair of existing water supply facilities; generation of electricity (as a byproduct of water supply operation); related land management activities; and biological monitoring.

The HCP would provide measures to minimize and mitigate impacts of the proposed incidental taking of listed species and the habitats upon which they depend.

NMFS is furnishing this notice to advise other agencies and the public of our intentions; and to obtain suggestions and information on the scope of issues