

(10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Irette Patterson,**  
Program Analyst.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-882]

#### Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Notice of Court Decision Not in Harmony With Amended Final Determination of the Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 10, 2018, the United States Court of International Trade (CIT or Court) sustained the final remand results pertaining to the countervailing duty (CVD) investigation on certain cold-rolled steel flat products from the Republic of Korea covering the period January 1, 2014, through December 31, 2014. The Department of Commerce (Commerce) is notifying the public that the final judgement in this case is not in harmony with the *Amended Final Determination* of the CVD investigation and that Commerce is amending the *Amended Final Determination* with respect to the CVD rate assigned to POSCO.

**DATES:** Applicable September 20, 2018.

**FOR FURTHER INFORMATION CONTACT:** Yasmin Bordas at (202) 482-3813, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 29, 2016, Commerce published its *Final Determination*.<sup>1</sup> Upon consideration of ministerial error allegations, Commerce issued an *Amended Final Determination* and

calculated a subsidy rate of 59.72 percent for POSCO.<sup>2</sup>

On March, 8, 2018, the CIT remanded various aspects of the *Amended Final Determination* to Commerce.<sup>3</sup> In its *Remand Order*, the Court held that “substantial evidence supports Commerce’s decision to apply facts available.”<sup>4</sup> The Court held that the record demonstrated that POSCO “withheld information, failed to timely provide information, and impeded the proceeding,” and that POSCO’s “failure to supply the requested information” reflected a failure to act to the best of its ability.<sup>5</sup>

However, the Court also held that Commerce had not conducted an “evaluation of the specific situation,” under the relatively new statutory language of section 776(d)(2) of the Tariff Act of 1930, as amended (the Act) and had not explained “why this case justified its selection of the highest rates.”<sup>6</sup> In addition, the Court concluded that the 1.64 percent rate from *Refrigerators from Korea* was “derived from estimates Commerce made on the basis of an adverse inference,” and, therefore, was not corroborated, under section 776(c) of the Act.<sup>7</sup> The Court, therefore, instructed

<sup>2</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Final Results*) and accompanying Memorandum, entitled “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea” (Issues and Decision Memorandum); see also “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination Calculation Memorandum for POSCO, dated July 20, 2016 (POSCO Final Analysis Memorandum). On September 20, 2016, the Commerce published its amended final results upon consideration of various ministerial error allegations. See *Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)*, 81 FR 64436 (September 20, 2016) (*Amended Final Results*); see also “Response to Ministerial Error Comments Filed by Hyundai Steel Co. Ltd. and POSCO,” dated August 24, 2016 (Ministerial Error Memo); and “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Amended Final Determination Calculation Memorandum for POSCO,” dated August 24, 2016 (POSCO Amended Final Analysis Memorandum).

<sup>3</sup> See *POSCO et al., and AK Steel Corporation, et al., v. United States and Steel Dynamic Inc., et al.*, Consol. Court No. 16-00225, Slip Op. 18-18 (CIT 2018) (*Remand Order*).

<sup>4</sup> See *Remand Order* at 26.

<sup>5</sup> *Id.* at 26-27.

<sup>6</sup> *Id.* at 49.

<sup>7</sup> *Id.* at 57-58. See also *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea Final Determination*) and

Commerce to reconsider its selection of this rate.<sup>8</sup> On the other hand, the Court found that Commerce’s corroboration and selection of the 1.05 percent rate from *Washers from Korea* was supported by substantial evidence.<sup>9</sup>

Pursuant to the *Remand Order*, Commerce issued its Final Redetermination, which addressed the Court’s holdings and revised the CVD rate for POSCO to 42.61 percent.<sup>10</sup> On September 10, 2018, the CIT sustained in whole Commerce’s Final Redetermination.<sup>11</sup>

#### Timken Notice

In its decision in *Timken*,<sup>12</sup> as clarified by *Diamond Sawblades*,<sup>13</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with Commerce’s determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 10, 2018 final judgement, ordering Commerce to proceed with replacing POSCO’s 1.64 percent subsidy rate for programs that were calculated on the basis of adverse facts available with the 1.05 percent rate from *Washers from Korea* constitutes a final decision of that court that is not in harmony with the *Final Amended Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

This notice is issued and published in accordance with sections 516A(e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

accompanying Issues and Decision Memorandum (*Refrigerators from Korea* Issues and Decision Memorandum).

<sup>8</sup> *Id.* at 58.

<sup>9</sup> *Id.* See also *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea Final Results*), and accompanying Issues and Decision Memorandum (*Washers from Korea* Issues and Decision Memorandum).

<sup>10</sup> See Memorandum *POSCO et al., and AK Steel Corporation, et al., v. United States and Steel Dynamic Inc., et al.*; Consol. Court No. 16-00225, Slip Op. 18-18 (CIT March 8, 2018); Final Results of Redetermination Pursuant to Court Remand, dated June 6, 2018, at 26.

<sup>11</sup> See *POSCO et al., and AK Steel Corporation, et al., v. United States and Steel Dynamic Inc., et al.*; Consol. Court No. 16-00225, Slip Op. 18-1115 (CIT September 10, 2018).

<sup>12</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>13</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>1</sup> See *Final Determination*, 81 FR 49943.

Dated: September 19, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–560–832]

#### **Polyethylene Terephthalate Resin From Indonesia: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that imports of polyethylene terephthalate (PET) resin from Indonesia is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

**DATES:** Applicable September 24, 2018.

**FOR FURTHER INFORMATION CONTACT:** Caitlin Monks or Gene Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2670 or (202) 482–3586, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 24, 2018 Commerce published in the **Federal Register** its preliminary affirmative determination of critical circumstances, in part.<sup>1</sup> On May 4, 2018, Commerce published in the **Federal Register** the preliminary affirmative determination of sales at LTFV in the antidumping duty (AD) investigation of PET resin from Indonesia.<sup>2</sup> Commerce invited comments from interested parties on the

<sup>1</sup> See *Antidumping Duty Investigations on Polyethylene Terephthalate Resin from Indonesia, the Republic of Korea, and Taiwan; Preliminary Determination of Critical Circumstances*, 83 FR 17791 (April 24, 2018) (*Preliminary Critical Circumstances Determination*).

<sup>2</sup> See *Polyethylene Terephthalate Resin from Brazil: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19699 (May 4, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

*Preliminary Determination*.<sup>3</sup> The petitioners<sup>4</sup> and Indorama<sup>5</sup> filed case and rebuttal briefs.<sup>6</sup> A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by interested parties for this final determination, may be found in the Issues and Decision Memorandum.<sup>7</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

##### **Scope of the Investigation**

The product covered by this investigation is polyethylene

<sup>3</sup> *Id.* at 19700; see also Memorandum, “Case Brief Deadline Extension for the Antidumping Duty Investigation of Polyethylene Terephthalate Resin from Brazil,” dated July 10, 2018.

<sup>4</sup> DAK Americas, M&G Polymers USA, LLC, and Nan Ya Plastics Corporation, America (collectively, the petitioners).

<sup>5</sup> In the *Preliminary Determination*, in accordance with section 771(33)(F) of the Act, we found the following companies affiliated: PT. Indo-Rama Synthetics Tbk (Indorama Synthetics), Indorama Ventures Alphapet Holdings, Inc. (Alphapet), Indorama Ventures Indonesia (Ventures Indonesia), PT. Indorama Polypet Indonesia (Polypet), and Indorama Polymers Public Company Ltd. (Polymers). Further, we collapsed, pursuant to 19 CFR 351.401(f), the following three Indonesian producers into a single entity: Indorama Synthetics, Ventures Indonesia, and Polypet, collectively referred to as Indorama Producers throughout this final determination. See PDM at 6–11. We have made no changes to these findings in our final determination. We received responses from the Indorama Producers, and their U.S. affiliate, Alphapet, which we refer to collectively as Indorama throughout this final determination.

<sup>6</sup> See Petitioners' Case Brief, “Petitioners' Case Brief,” dated August 15, 2018 (Petitioners' Case Brief); see also Indorama's Case Brief, “Polyethylene Terephthalate Resin (‘PET Resin’) from Indonesia: Administrative Case Brief,” dated August 16, 2018 (Indorama's Case Brief); see also Petitioners' Rebuttal Brief, “Petitioners' Rebuttal Brief,” dated August 22, 2018 (Petitioners' Rebuttal Brief); see also Indorama's Revised Rebuttal Brief, “Polyethylene Terephthalate Resin (‘PET Resin’) from Indonesia: Rebuttal Brief,” dated August 24, 2018 (Indorama's Rebuttal Brief).

<sup>7</sup> See Memorandum, “Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Polyethylene Terephthalate Resin from Indonesia,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

terephthalate resin from Indonesia. Commerce did not receive any scope comments subsequent to the *Preliminary Determination* and, therefore, the scope has not been revised since the *Preliminary Determination*. For a complete description of the scope of this investigation, see Appendix I.

##### **Period of Investigation**

The POI is July 1, 2016, through June 30, 2017.

##### **Verification**

As provided in section 782(i) of the Act, we conducted the cost and sales verifications in Indonesia and the United States between May 4, 2018, and June 22, 2018. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondents.

##### **Final Affirmative Determination of Critical Circumstances, in Part**

For this final determination, as explained in detail in the accompanying Issues and Decision Memorandum, we determine that critical circumstances exist for the Indorama Producers, but do not exist for “all other” producers or exporters not individually examined.<sup>8</sup>

##### **Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix II.

##### **Use of Facts Otherwise Available and Adverse Inferences**

For purposes of this final determination, Commerce relied on facts otherwise available with an adverse inference when calculating the margin for the Indorama Producers (a collapsed entity comprised of three producers),<sup>9</sup> pursuant to sections 776(a)(1) and (2)(A)(C)(D) and 776(b) of the Act. For further information regarding the use of facts available and adverse inferences, see the Issues and Decision Memorandum.

##### **Changes Since the Preliminary Determination**

Based on our analysis of the comments received and our findings at verification, we are now relying on facts available in determining a dumping margin for the Indorama Producers.

<sup>8</sup> See Issues and Decision Memorandum at IV.

<sup>9</sup> See *supra* n.4.