

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See* section 732(c)(4)(A). Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.¹

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like,

most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Thus, based on our analysis of the information presented to the Department by petitioner, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigation* section above, and have analyzed industry support in terms of this domestic like product.

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Antidumping Investigation Initiation Checklist: Allura Red from India*, Industry Support section, March 24, 2003 (*AD Initiation Checklist*), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

We determine, based on information provided in the petition, that petitioner has demonstrated industry support representing over 50 percent of total production of the domestic like product, consisting of petitioner and another U.S. producer of Allura Red, Noveon, Inc. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See AD Initiation Checklist*.

United States Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation.

United States Price

Petitioner established U.S. price based on constructed export price (CEP) and export price (EP). For its CEP allegations, petitioner used actual and estimated prices of Allura Red from an Indian producer, through its U.S. affiliate, to unaffiliated U.S. purchasers. In its March 17, 2003, and March 19, 2003, supplemental submissions, petitioner calculated CEP for three actual prices reflecting Free on Board (FOB) warehouse sales of the subject merchandise. *See AD/Injury Supplemental #1* at 1–4 and Attachment B; *AD/Injury Supplemental #2* at 4 and Attachment A. Petitioner also calculated CEP for several prices which were estimated based on the circumstances of lost sales known to petitioner. For each one of these prices, petitioner deducted movement expenses, FDA certification fees, duties, imputed credit, selling expenses, and inventory carrying cost. Since the actual sale prices are sufficient for calculating U.S. price for purposes of initiation, it is not necessary at this time to address whether it is appropriate to include margins based on estimated prices resulting from lost sales.

For EP prices, petitioner calculated U.S. price based on Indian export statistics. Petitioners reported that the HTSUS for Allura Red is in a basket category. Based on our research, we requested clarification regarding the Indian export statistics and whether they are specific to Allura Red, but were unable to determine that the export statistics are specific to the merchandise for which petitioner is alleging dumping. *See AD/Injury Supplemental #1* at 5; *AD/Injury Supplemental #2* at 1–2. Further, petitioner has stated that all imports of the subject merchandise may have been CEP transactions, as it is not aware of any specific EP sales transactions. *See AD/Injury Supplemental #2* at 2. Since questions remain with regard to the EP provided by petitioner and since the actual sale prices provided in the petition are sufficient for calculating U.S. price for purposes of initiation, it is not necessary at this time to address whether it is appropriate to include margins based on EP.

Normal Value

With respect to normal value (NV), petitioner provided a home market price from a domestic price list from Roha Dychem Pvt., Ltd., an Indian producer of Allura Red. To calculate the NV, petitioner deducted a quantity discount that is noted on the price list. In addition, petitioner adjusted the home

¹ *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).