

Technologies Corporation (petitioner). See *Allura Red from India: Petition for the Imposition of Antidumping and Countervailing Duties (Petition)*. The Department received information supplementing the petition, on March 17, March 18, and March 19, 2003. See *Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 17, 2003) (AD/Injury Supplemental #1); *Response to Department's Supplemental Questions Regarding the Subsidy Portion of the Petition Regarding Allura Red from India* (March 18, 2003) (CVD Supplemental); *Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 19, 2003) (AD/Injury Supplemental #2).

In accordance with section 702(b)(1) of the Act, petitioner alleges that manufacturers, producers, or exporters of Allura Red in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. See *Determination of Industry Support for the Petition*, below.

Period of Investigation

In accordance with 19 CFR 351.204 (b)(2), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers Allura Red coloring, also known as Food, Drug and Cosmetic (FD&C) Red No. 40, defined as synthetic red coloring containing not less than 85 percent of the disodium salt of 6-hydroxy-5-[(2-methoxy-5-methyl-4-sulfophenyl)azo]-2-naphthalenesulfonic acid, whether or not certified for human consumption at the time of entry into the United States. The product definition covers all forms and variations of Allura Red, such as powders, press cakes, extrudates, liquid, or granules, but excludes lake pigments formed from Allura Red. This investigation does not cover colors of animal, vegetable, or mineral origin, also known as "natural colors."

Allura Red is currently classifiable in the Harmonized Tariff Schedule United States (HTSUS) under subheading

3204.12.5000, a basket category. The tariff classification is provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Act, on March 5, 2003, we invited the Government of India (GOI) to hold consultations with us regarding the countervailing duty petition. The GOI declined our offer for consultations. See *Memorandum to the File from Dana S. Mermelstein: Allura Red from India: Petition for the Imposition of Countervailing Duties; Contacts with the Indian Embassy Regarding Consultations*, dated March 24, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(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 702(c)(4)(A). Moreover, section 702(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, and the information obtained and received independently by the Department, 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

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).