

U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4023, (202) 482-0410 or (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 14, 2003, the Department of Commerce ("the Department") received a petition on imports of hydraulic magnetic circuit breakers ("HMCBs") from South Africa filed in proper form by Airpax Corporation, LLC (referred to hereafter as "the petitioner"). On April 22, 2003, the Department requested additional information and clarification of certain areas of the petition. The petitioner filed a supplement to the petition on April 25, 2003.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the petitioner alleges that imports of HMCBs from South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act. Furthermore, with respect to the antidumping duty investigation the petitioner is requesting the Department to initiate, it has demonstrated sufficient industry support (see "Determination of Industry Support for the Petition" below).

Scope of Investigation

This investigation covers all hydraulic magnetic circuit breakers (sometimes referred to as magnetic hydraulic) circuit breakers ("HMCBs"), incorporating a tripping means of a magnetic coil surrounding a tube and plunger, restrained by air, liquid or spring, whether or not sealed, whether or not of molded case, of any voltage less than 72.5 kilovolts, of any amperage rating, with single or multiple poles, of any mounting or connection means and of any terminal type, whether or not having a magnetic latch, and excluding thermal and thermal magnetic circuit breakers. The subject merchandise is classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8535.21.00 and 8536.20.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner

to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 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.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition must be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that 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.

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 administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole 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 International Trade Commission ("the ITC"), which is responsible for determining whether "the domestic industry" has been materially injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding

the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to time and information limitations. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to 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 its April 14th petition, petitioner claims it has industry support. The petitioner states that it compromises virtually all U.S. production of HMCBs. However, the petition identifies three additional U.S. entities engaged in the sale of HMCBs in the domestic market. According to the petition, none of the three maintain commercial production in the United States. The petitioner asserts that virtually all of those firms' manufacturing is done in other countries and that any domestic manufacturing is limited to samples in non-commercial quantities. Based on all available information, we agree that the petitioner compromises virtually all domestic commercial production of HMCBs.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioner has established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition 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) are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product

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 from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).