

petition. 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: (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 of a domestic like product. Thus, to determine whether a 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 ("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 the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a 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 their initial petitions and subsequent submissions, the petitioners state that they comprise well over 50 percent of U.S. CTV production. The petitions identify three additional U.S. companies engaged in the production of CTVs, none of which have taken a position on (either for or against) the petitions. Through data provided by the petitioners and our own independent

research, we have determined that the CTV production of these three companies is not high enough to place the petitioners' industry support in jeopardy. Based on all available information, we agree that the petitioners comprise over 50 percent of all domestic CTV production.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioners have 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 petitions from domestic producers of the like product. 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, the domestic producers or workers who support the petitions 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 petitions. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

With regard to the definition of domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. On May 19, 2003, Funai Electric Malaysia Sdn., Bhd., and Funai Corporation, Inc., a Malaysian producer of the subject merchandise and importer/reseller, respectively (collectively known as "Funai"), challenged industry support for the petitions, in accordance with section 732(c)(4)(E) of the Act. In addition, on May 20, 2003, Sichuan Changhong Electric Co., Ltd. also challenged industry support for the petitions. On May 21, 2003, the petitioners filed their reply to both of these challenges.

Based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, CTVs, which is defined in the "Scope of Investigations" section above, and we have analyzed industry support in terms of this domestic like product. For more information on our analysis and the data upon which we relied, see Import Administration Antidumping

Investigation Initiation Checklist ("Initiation Checklist"), Industry Support section and Appendix 1, dated May 22, 2003, on file in the Central Records Unit of the main Department of Commerce building.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices, constructed value ("CV"), and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding an investigation involving a non-market economy ("NME") country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-87 (May 2, 1994).

Malaysia

Export Price

The anticipated POI for Malaysia is April 1, 2002, through March 31, 2003.

The petitioners based export price ("EP") on a U.S. port price quote within the period of investigation ("POI") for the direct sale of 27-inch CTVs produced in Malaysia by Funai to an unaffiliated customer in the United States. The petitioners calculated a net U.S. price by deducting foreign inland freight. See the Initiation Checklist.

Because the petitioners provided price quotes for actual products and we determine that these price quotes are sufficient for initiation purposes, we did not use the average unit values calculated from U.S. import statistics that the petitioners provided because they are based on a broad basket HTSUS category. To the extent necessary, we will consider the appropriateness of the petitioners' alternative methodology during the course of this proceeding.

¹ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988) ("the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV").