

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 U.S. 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.²

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 case, the petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the "Scope of Investigations" section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support and, therefore, polling is unnecessary. *See* Office of AD Enforcement, Initiation Checklist: 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents

(SFWA) from Germany, India, and the People's Republic of China (June 3, 2003) (the Initiation Checklist) at attachment II (on file in the Central Records Unit, Room B-099 of the Department of Commerce).

On May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition. However, neither party provided sufficient evidence that would call into question the sufficiency of the petitioner's industry support. *See* Initiation Checklist at attachment II for further details. Therefore, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA; thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25 percent of the total production of the domestic like product. Furthermore, the requirements of section 732(c)(4)(A)(ii) of the act are also met. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the "Injury Allegation" section in the Initiation Checklist.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of India were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act (URAA), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." SAA, H.R. Doc. No. 103-316 at 833 (1994). Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that before initiating such

an investigation the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. We have analyzed the country-specific allegation as described below for India. Based on our analysis, we found reasonable grounds to believe or suspect that sales of DAS and SFWA in India were made at prices below cost. *See* the "Normal Value" section for India, below.

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 home market prices, and constructed value (CV) 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.

Germany

Export Price

The petitioner based export price (EP) on average unit values of DAS imports from Germany during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000. *See* Initiation Checklist for further information.

Normal Value

With respect to normal value (NV), the petitioner calculated COM based on the production costs of a German DAS manufacturer, Ciba Spezialitatenschemie Grenzach GmbH, that is affiliated with the petitioner, because home market prices and information related to third country sales were unavailable during the fiscal year 2002. To calculate selling, general and administrative expenses (SG&A) and profit, the petitioner relied on amounts reported in the consolidated financial statements for the 2002 fiscal year of Bayer AG, a German producer of DAS. We relied on the cost data contained in the petition except in the following instances.

1. We recalculated the selling, general and administrative (SG&A) expenses amount per pound of DAS exclusive of

² 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).