

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. 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.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.

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 investigation. Based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, colored pigment dispersions, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of this domestic like product.

In their initial petition and subsequent submissions, the petitioners state that they comprise over 50 percent of U.S. colored pigment dispersions production. The petition identifies nine additional U.S. companies engaged in the production of colored pigment dispersions, none of which have taken a position on (either for or against) the petition. Through data provided by the petitioners and our own independent research, we have determined that the colored pigment dispersions production of these nine 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 colored pigment dispersions 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 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) of the Act 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 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) of the Act also are 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. For more information on our analysis and the data upon which we relied, see Import Administration AD/CVD Enforcement Initiation Checklist ("Initiation Checklist"), Industry Support section and Attachment II, dated June 25, 2003, on file in the Central Records Unit of the main Department of Commerce building.

Constructed 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 this investigation. The sources of data for the deductions and adjustments relating to U.S. price, 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 determination, we may re-examine the information and revise the margin calculations, if appropriate.

Constructed Export Price

The petitioners alleged that the subject colored pigment dispersions produced in India by Hindustan Inks and Resins Ltd. ("Hindustan") (*i.e.*, the largest Indian producer named in the petition) were sold in the United States through its affiliate Micro Inks. Therefore, the petitioners based U.S. price on constructed export price ("CEP"). According to the data provided by the petitioners, in the United States Micro Inks sells the subject colored pigment dispersions imported from Hindustan in the flush form as imported and as further manufactured into printing ink. The petitioners based CEP prices for colored pigment dispersions sold as imported on invoice prices adjusted for movement expenses, indirect selling expenses, and CEP profit. The CEP prices for further manufactured colored pigment dispersions were based on Micro Inks' listed prices for printing ink adjusted for movement expenses, indirect selling expenses, CEP profit and further manufacturing costs. For margin calculation purposes, we excluded one of the three prices for the sale of flush colored pigment dispersions because we were unable to definitively determine

² 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").