

Scope of the Investigations

These investigations cover all manganese dioxide (MnO₂) that has been manufactured in an electrolysis process, whether in powder, chip or plate form. Excluded from the scope are natural manganese dioxide ("NMD") and chemical manganese dioxide ("CMD"), including high-grade chemical manganese dioxide ("CMD-U").

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2820.10.0000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a 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 interested 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, D.C. 20230. This 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 determinations.

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: (i) at least 25 percent of the total production of the domestic like product; and (ii) 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 law. 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).

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 domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the Petition we have determined there is a single domestic like product, EMD, which is defined further in the "Scope of the Investigations" section above, and we have analyzed industry support in terms of that domestic like product. For more information on our analysis and the data upon which we relied, see *Antidumping Duty Investigation Initiation Checklist* ("Initiation Checklist"), dated August 20, 2003, Appendix II - Industry Support on file

in the Central Record Unit ("CRU") in room B-099 of the main Department of Commerce building.

In determining whether the domestic petitioner has standing, we considered the industry support data contained in the petition with reference to the domestic like product as defined above in the "Scope of the Investigations" section. To estimate 2002 production for all domestic EMD producers named in the Petition, Petitioner estimated production data using Roskill Information Service Ltd. and conservatively assumed that the remaining company produced to capacity. For purposes of determining industry support, Petitioner combined its year 2002 production data with Erachem Comilog, Inc. ("Erachem"), also a domestic producer, and supporter of the Petition. To estimate 2002 production for all other domestic EMD producers named in the Petition, Petitioner estimated production data using Roskill Information Services Ltd. and conservatively assumed the remaining company produced to capacity. This estimated production data was added to the actual production data detailed above to arrive at total estimated U.S. production of EMD for the year 2002 in short tons. See Petition at Exhibit 9 describing how this production data was estimated.

Using the data described above, the share of total estimated U.S. production of EMD in year 2002 represented by Petitioner and Erachem, a supporter of the Petition, equals over 50 percent of total domestic production. Therefore, the Department finds the domestic producers who support the Petition account for at least 25 percent of the total production of the domestic like product. In addition, as no domestic producers have expressed opposition to the Petition, the Department also finds the domestic producers 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.

Therefore, we find that Petitioner has met the requirements of section 732(c)(4)(A) of the Act.

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 source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production ("COP") and constructed value ("CV") have been accorded