

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.

Moreover, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. The Petition covers certain processed hazelnuts as defined in the Scope of the Investigation section, above, and it constitutes a single class or kind of merchandise. The Department has no basis on the record to find the Petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the Petition. *See Antidumping Duty Investigation Initiation Checklist ("Initiation Checklist")*.

Based on the Petition data, the share of total estimated U.S. production of the domestic like product from October 2002 to September 2003 represented by Petitioners and the supporting domestic producers equal over 25 percent of total domestic production but less than 50 percent of production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Memorandum to the File from Richard O. Weible, Office Director, Group III, Office 8: Antidumping Duty Petition on Certain Processed Hazelnuts from*

Turkey: Extension of Deadline for Determining Industry Support, dated November 10, 2003. Petitioners did not meet the 50 percent threshold with their Third Petition Amendment for industry support because there are other hazelnut processors in the United States who are not subject to the U.S. Department of Agriculture's federal marketing order for hazelnuts and source some or all of their supply of hazelnuts from imports. Therefore, in accordance with Section 732(c)(4)(D), we polled the industry. On November 12, 2003, the Department sent a letter to possible hazelnut processors requesting U.S. production data for the period October 2002 to September 2003. This letter is on file in the Central Records Unit in room B-099 of the main Department of Commerce building and on the Import Administration website. For a detailed summary of the Department's efforts to identify relevant companies, *See Memorandum to the File regarding Procedures Used to Determine Industry Support*, dated December 1, 2003. Additionally, the Department published a notice in the **Federal Register** extending the twenty-day initiation and requesting production information from hazelnut processors in the United States (*See Notice of Request for Information and Extension of time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey*, (68 FR 64589) November 14, 2003.) The Department has relied upon the responses to this letter and follow-up phone calls to clarify certain responses to determine industry support. For the analysis of the data, *See Initiation Checklist*. Our analysis of the data indicates that the domestic producers of processed hazelnuts 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. *See Initiation Checklist*.

Therefore, we find that the industry support requirements of section 732(c)(4)(A) of the Act have been met.

Period of Investigation

The anticipated period of investigation ("POI") will be October 1, 2002 through September 30, 2003.

Export Price and Constructed 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 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 treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our 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 this information and revise the margin calculations, if appropriate.

Export Price

In calculating the U.S. price, the Petitioner relied upon actual sales during the POI of Turkish processed hazelnuts to the United States. Petitioners provided sales invoices as support for their U.S. starting price. To calculate a net price, Petitioners deducted the Turkish export tax on processed hazelnuts and movement expenses, which include ocean freight, marine insurance, and brokerage. Petitioners calculated the export tax and the movement expenses from publically available data.

Constructed Value

Petitioners attempted to locate home market and third country prices of processed hazelnuts and outlined their efforts in the Third Petition Amendment. Petitioners were unable to locate home market prices that occurred within the POI or prices of subject merchandise (*i.e.*, shelled hazelnuts). Petitioners located prices of Turkish processed hazelnuts to Germany and provided information demonstrating reasonable grounds to believe or suspect that sales of processed hazelnuts in the German third country market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department initiate a country-wide sales-below-cost investigation. *See Memorandum to the File from Steve Williams, Import Analyst, Office of Policy: Telephone call with Pete Koenig regarding antidumping duty petition of Certain Processed Hazelnuts from Turkey*, dated December 01, 2003. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the Petitioners based normal value for sales in Turkey on CV. The Petitioners calculated CV using the cost of manufacturing, depreciation, selling, general and administrative expenses, and interest expense figures. Consistent with section 773(e)(2) of the Act, the Petitioners included in CV an amount for profit. For profit, the Petitioners relied upon amounts reported in a publicly available document.