

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.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

In their initial petition and subsequent submissions, the petitioners state that they comprise more than 50 percent of U.S. hand truck production. Based on all available information, we agree that the petitioners comprise more than 50 percent of the domestic hand truck production and accordingly, determine that the petition has been filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist dated December 3, 2003 (public version on file in the Central Records Unit of the Department of Commerce, Room B-099) ("*Initiation Checklist*").

Period of Investigation

The anticipated period of investigation ("POI") is April 1, 2003, through September 30, 2003.

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 relating to export price ("EP"), normal value ("NV"), and factors of production ("FOP") 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 this investigation, 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).

Export Price

The petitioners based the export price on price quotes from a Chinese producer of hand trucks to unaffiliated purchasers in the United States within the POI as reported in Exhibit 19 of the November 13, 2003 petition. The petitioners claim that the two price quotes obtained were for two models of hand trucks that are among the most prevalent of the models imported from China. Accordingly, we found that the gross unit prices provided by the petitioners represent information that reasonably reflected prices to the United States. Therefore, we relied on the gross unit prices provided in the petition. The prices were quoted FOB Qingdao, the PRC, and the petitioners were conservative because they did not deduct Chinese inland freight from the quoted prices.

Normal Value

The petitioners assert that the PRC is an NME country, and note that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). The PRC will be treated as an NME unless and until its NME status is revoked. *See* section 771(18)(C)(i) of the Act. Because the PRC's status as an NME remains in effect, the petitioners estimated the dumping margin using an NME methodology.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: 1) at a level of economic development comparable to the PRC in terms of per capita gross national product, and 2) a significant producer of comparable merchandise. The petitioners provided recent U.S. import statistics of hand trucks from India and a report by a researcher in India hired by the petitioners to study the hand truck industry. The report shows that there is significant production of hand trucks in India. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for the purpose of initiating this investigation.

The petitioners estimated the quantities of inputs required to produce hand trucks in the PRC based on the petitioners' own experience and their extensive analysis of the two representative hand trucks they acquired from the PRC. Based on the

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).