

domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(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 either poll the industry or rely on other information in order to determine if there is support for the petition.

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 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 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 petition covers a single class or kind of merchandise, CVP-23, as defined in the "Scope of Investigation" section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Further, based on our analysis of the information presented to the Department by the

petitioners, 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 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 702(c)(4)(D) of the Act. In addition, the Department received no opposition to the petitions from domestic producers of the like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petitions 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 petitions. Thus, the requirements of section 702(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *Countervailing Duty Investigation Initiation Checklist: Carbazole Violet Pigment 23 (CVP-23) in the Forms of Crude Pigment, Presscake and Dry Color Pigment from India* (December 11, 2003) (Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India are materially injuring, or are threatening material injury to, an industry in the United States.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that: (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably

available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

1. The Duty Entitlement Passbook Scheme (DEPS)/ Post-Export Credits
2. Export Promotion Capital Goods Scheme (EPCGS)
3. Export Processing Zones (EPZ)/ Export-Oriented Units (EOU) Programs
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Pre-Shipment Export Financing
6. Exemption of Export Credit from Interest Taxes
7. Market Development Assistance (MDA)
8. Special Imprest Licenses
9. Central Value Added Tax (CENVAT) Scheme

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of subsidized imports from India of the subject merchandise.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See *Initiation Checklist*.

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on CVP-23, and petitioners' responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether

² See *USEC, Inc., v. United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988). See also *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).