

purposes, our written description of the scope of this investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all 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, DC 20230. The 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 determination.

Period of Investigation

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

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. The Department shall determine that the petition has been filed by, or on behalf of, the industry 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 for the petition using any statistically valid sampling method to poll the industry.

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.¹

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 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 petitioner, we have determined that there is a single domestic like product, ready-to-cook Kosher chicken and parts thereof, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of this domestic like product.

The petition identifies a number of U.S. companies, in addition to Empire Kosher Poultry, Inc., that are engaged in the production of ready-to-cook Kosher chicken. The petition includes a letter from one of these companies, David Elliot Poultry Farm, in which the company states that it supports the petition. The Department received no opposition to the petition from domestic producers of the like product.

Our review of the data provided in the petition indicates that the petitioner has established industry support representing over 50 percent of total

production of the domestic 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. Finally, because the petition has established industry support representing over 50 percent of total production of the domestic like product, industry polling is unnecessary. 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. See also Office of AD/CVD Enforcement Initiation Checklist (Initiation Checklist), Attachment I, Industry Support section, dated December 22, 2003, on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

Export Price and Normal Value

The following is a description of the allegation of sales at LTFV upon which the Department based its decision to initiate this investigation. The sources of data used to derive the deductions and adjustments relating to U.S. price and normal value (NV) 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.

Export Price

The petitioner alleged that the ready-to-cook Kosher chicken and parts thereof produced in Canada by Chai Poultry Inc. (Chai Poultry) and Marvid Poultry Inc. (Marvid) was sold to U.S. distributors prior to importation of the merchandise into the United States. Therefore, the petitioner based U.S. price on export price (EP). The petitioner based EP for ready-to-cook Kosher chicken and parts thereof on price quotes provided to U.S. distributors by Chai Poultry for whole ready-to-cook Kosher chicken, Kosher chicken legs, and boneless skinless Kosher chicken breasts, reduced by estimated freight charges.

¹ 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").