

manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 16.99 percent, which was the "all others" rate as established in the LTFV investigation. The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR section 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305<sup>2</sup> of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 4, 1998.

**Joseph Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 98-24746 Filed 9-15-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-815]

#### Initiation of Antidumping Duty Investigation: Elastic Rubber Tape From India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** September 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Craig Matney or Cynthia Thirumalai at (202) 482-1778 and (202) 482-4087, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### Initiation of Investigation

##### *The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

##### *The Petition*

On August 18, 1998, the Department of Commerce (the Department) received a petition filed in proper form by Fulflex, Inc., Elastomer Technologies Group, Inc., and RM Engineered Products, Inc., collectively referred to hereinafter as "the petitioners." Elastomer and RM are both wholly owned subsidiaries of M-Tec Corporation. The petitioners filed supplemental information to the petition on September 1, 1998.

In accordance with section 732(b) of the Act, the petitioners allege that imports of elastic rubber tape (ERT) from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated that they are the only producers of ERT in the United States (see Determination of Industry Support for the Petition section below).

##### *Scope of the Investigation*

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and 1/8 inches to 1 5/8 inches (3 mm to 42 mm) in width. Such product is generally used in swimwear and underwear.

The merchandise subject to this investigation is classified in the

*Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to insure the petition accurately reflects the product for which they are seeking relief. Moreover, as discussed in the preamble to the new regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by September 29, 1998. Comments should be addressed to Import Administration's Central Records Unit at 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 our preliminary determination.

##### *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 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.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of 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 separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information.

<sup>2</sup> See *Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order* (63 FR 24391, May 4, 1998).

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.<sup>1</sup> Section 771(10) of the Act defines the domestic like product as "a product that 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 this case, the Department has determined that the petition and supplemental information contained adequate evidence of sufficient industry support; therefore, polling was not necessary. See Initiation Checklist, dated September 8, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B-099). Additionally, no person who would qualify as an interested party pursuant to section 771(A), (C), (D), (E) or (F) has expressed opposition on the record to the petition. To the best of the Department's knowledge, the producers who support the petition account for 100 percent of the production of the domestic like product. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

#### *Export Price and Normal Value*

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners identified Garware as the only Indian exporter to the United

States of ERT. Because information obtained by the petitioners indicates that most of Garware's U.S. sales are through its affiliated importer in the United States, the petitioners have based U.S. price on constructed export price (CEP). For Garware's CEP prices, the petitioners used prices and offers for sale to unaffiliated purchasers in the United States in April and June of 1998. Because the terms of Garware's U.S. sales were delivered, the petitioners calculated a net U.S. price by subtracting estimated costs for shipment from Garware's factory in India to the port of export using publicly available information. In addition, the petitioners subtracted ocean freight expenses calculated from a Garware shipping document obtained by the petitioners. U.S. import duties were estimated by the petitioners using the HTSUS schedule and then subtracted from the prices. The petitioners also subtracted amounts for U.S. merchandise processing fees and U.S. harbor maintenance fees in accordance with section 772(c)(2)(A) of the Act. Based upon their own experience, the petitioners then subtracted estimated U.S. inland freight costs from the port of importation to customers' delivery locations. Finally, the petitioners calculated a selling expense rate based on an average of the selling costs in the domestic industry and subtracted this amount.

With respect to normal value (NV), the petitioners stated that they believe the volume of Indian home market sales was sufficient to form a basis for NV, pursuant to section 773(a)(1)(C)(ii) of the Act. The petitioners obtained gross unit prices and offers for sale during the period contemporaneous with the U.S. sales and offers for sale for products which are either identical or similar to those sold to the United States. Since the home market prices and offers for sale were ex-factory, the petitioners made no adjustment to these prices. These home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

While the petitioners believe that Garware's home market is viable, they have also made a dumping analysis based on constructed value (CV) in order to show dumping is occurring under either scenario. The petitioners' calculations are for the Garware ERT compound which was sold/offered for sale in the United States. To calculate CV, the petitioners relied on a chemical analysis of Garware's product to determine its composition. To value the components of Garware's product, the petitioners used Indian data, where

possible. Where Indian data was not obtainable, the petitioners used their own costs, stating that the prices they pay are equivalent to world-market prices. We adjusted the petitioners' calculation to reflect that products of various dimensions but of identical chemical composition have the same material usage per unit of weight. To value overhead and SG&A, the petitioners used percentages from the *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222, 27229 (May 19, 1997) (Persulfates). In *Persulfates* the Department derived the overhead and SG&A percentages from the financial statement of an Indian producer of hydrogen peroxide. Because the information in the petition does not indicate that the production of hydrogen peroxide closely resembles that of ERT, we have not used the overhead and SG&A rates from *Persulfates*. Instead, we have relied on publicly available information from the Reserve Bank of India on the chemical industry, in general. To derive a profit rate, the petitioners compared Garware's home market prices to the cost of production of the product sold.

#### *Fair Value Comparisons*

Based on the data provided by the petitioners, there is reason to believe that imports of ERT from India are being, or are likely to be, sold at less than fair value. Based on a comparison of CEP to home market prices, the petitioners calculated dumping margins range from 49.43 to 66.51 percent. The estimated dumping margins based on a comparison between the CV of Garware's product and CEP range from 28.93 to 43.66 percent.

#### *Allegations and Evidence of Material Injury and Causation*

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits and income, net sales volumes and values, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate

<sup>1</sup> See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

and adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist, dated September 8, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B-099).

#### *Allegation of Critical Circumstances*

The petitioners have alleged that critical circumstances exist. To support their allegation, the petitioners have provided evidence in the petition of a trend of increasing imports recently and the potential for even greater increases in the near future. The petitioners also provided evidence suggesting the person by whom, or for whose account, ERT is imported knew or should have known that the merchandise was being sold at less than fair value and that there was likely to be material injury as a result. In taking into consideration the foregoing, we find that the petitioners have alleged the elements of critical circumstances and supported it with reasonably available information. We, therefore, will investigate this matter further.

#### *Initiation of Antidumping Investigation*

Based upon our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of ERT from India are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by January 26, 1999.

#### *Distribution of Copies of the Petition*

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to the exporter named in the petition.

#### *International Trade Commission Notification*

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

#### *Preliminary Determination by the ITC*

The ITC will determine by October 2, 1998, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury by reason of imports of ERT from India. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will

proceed according to statutory and regulatory time limits.

This notice is published pursuant to sections 732(d) and 777(i) of the Act.

Dated: September 8, 1998.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 98-24750 Filed 9-15-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-423-602]

#### **Industrial Phosphoric Acid From Belgium; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Extension of time limit for final results of antidumping duty administrative review of industrial phosphoric acid from Belgium.

**SUMMARY:** The Department of Commerce ("the Department") is extending the time limit for the final results of the antidumping duty administrative review of the antidumping order on industrial phosphoric acid from Belgium. This review covers 1 producer/exporter of industrial phosphoric acid. The period of review is August 1, 1996 through July 31, 1997.

**EFFECTIVE DATE:** September 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Todd Peterson or Thomas Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-4195 or 482-3814, respectively.

**SUPPLEMENTARY INFORMATION:**

#### **Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351.101, et seq. (62 FR 27296—May 19, 1997).

#### **Extension of Preliminary Results**

The Department initiated this administrative review on September 25,

1997 (62 FR 50292). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. Because of the complexity of an issue in this case, it is not practicable to complete this review within the statutory time limit of 365 days. The Department, therefore, is extending the time limit for the final results of the aforementioned review to October 8, 1998. See memorandum from Maria Harris Tildon to Robert S. LaRussa, which is on file in Room B-099 at the Department's headquarters.

This extension of time limit is in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: September 8, 1998.

**Maria Harris Tildon,**

*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.*

[FR Doc. 98-24747 Filed 9-15-98; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-814]

#### **Pure Magnesium From Canada; Notice of Extension of Time Limit for Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit.

**SUMMARY:** The Department of Commerce is extending the time limit for the final results of the fifth review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This extension is made pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** September 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0189.

**SUPPLEMENTAL INFORMATION:** Because it is not practicable to complete this review within the original time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (*i.e.*,