

is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Distribution of Copies of the Petitions

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

#### International Trade Commission Notification

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

#### Preliminary Determinations by the ITC

The ITC will determine, no later than July 2, 2001, whether there is a reasonable indication that imports of PET film from India and Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 6, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-825]

#### Notice of Initiation of Countervailing Duty Investigation: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India

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

**ACTION:** Initiation of Countervailing Duty Investigation.

**EFFECTIVE DATE:** June 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Alexander Amdur or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW., Washington, DC 20230; (202) 482-5346 or (202) 482-5193, respectively.

#### 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 of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2000).

##### *The Petition*

On May 17, 2001, the Department received a petition filed in proper form by the following parties: DuPont Teijin Films, Mitsubishi Polyester Film, and Toray Plastics (America) Inc. (collectively, the petitioners). The Department received from the petitioners information supplementing the petition throughout the 20-day initiation period.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of polyethylene terephthalate film, sheet and strip (PET film) in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (*see* the Determination of Industry Support for the Petition section below).

##### *Scope of Investigation*

For purposes of this investigation, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (May 19, 1997). The Department encourages all parties to submit such comments within 20 days from the publication of this notice. 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 scope comment period 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.

##### *Consultations*

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of India (GOI) for consultations with respect to the petition. The GOI did not accept our invitation to hold consultations before the initiation.

#### Determination of Industry 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 the 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 separate and distinct authorities. 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.<sup>1</sup>

<sup>1</sup> See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Panel Displays and Display*

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 all PET film, including equivalent PET film. In a prior antidumping investigation, the ITC adopted this definition of the domestic like product. *See Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea*, (ITC Pub. No. 2383) (May, 1991) (Final Determination). Because no party has commented on the petition’s definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate, the Department has adopted the domestic like product definition set forth in the petition.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4) 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. Finally, 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 administering agency 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.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied upon not only the petition and amendments thereto, but also “other information” it obtained through research and which is attached to the Initiation Checklist (*See Import Administration Countervailing Duty Investigation Initiation Checklist*

(Initiation Checklist), Attachment I, Re: Industry Support, June 6, 2001, on file in the Central Records Unit (CRU) of the main Department of Commerce building). Based on information from these sources the Department determined that producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

### 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 materially injure, or threaten material injury to, a U.S. industry.

### 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 and, as noted below, dumped imports of the subject merchandise. The petitioners contend that the industry’s injured condition is evident in declining trends in U.S. selling prices, sales, revenue and market share.

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 determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Attachment II to the Initiation Checklist—Analysis of Allegations and Evidence of Material Injury and Causation.

### Period of Investigation (POI)

The petitioners contend that the POI is April 1, 2000 through March 31, 2001, which is the last completed fiscal year for each of the alleged producers/exporters of the subject merchandise. If these companies do not have the same fiscal year then the POI would be calendar year 2000.

### 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 *Initiation Checklist*):

#### A. GOI Programs:

1. The Duty Entitlement Passbook Scheme (DEPBS)—Pre-and Post-Export Credits
2. Advanced License Scheme
3. Special Import Licenses (SILs)
4. Export Promotion Capital Goods Scheme (EPCGS)
5. Pre-and Post-shipment Export Financing
6. Exemption of Export Credit from Interest Taxes
7. Income Tax Exemption Scheme (ITES) (Sections 10A, 10B and 80 HHC)
8. Loan Guarantees from the GOI
9. Benefits for Export Processing Zones/Export Oriented Units

#### B. State of Maharashtra Programs:

1. Octroi Refund Scheme
2. Sales Tax Incentive Scheme
3. Capital Incentive Scheme
4. Electricity Duty Exemption Scheme

#### C. State of Uttar Pradesh Programs:

1. Sales Tax Incentive Scheme
2. Capital Incentive Scheme

We are not 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:

#### 1. State of Uttar Pradesh (SUP) Transport Subsidy Scheme

The petitioners claim that the SUP provides a state transport subsidy at the rate of 25 percent of the cost of transport. However, the petition does not provide any information on whether this program is specific under section 771(5A) of the Act.

#### 2. State of Gujarat (SOG) Infrastructure Assistance Schemes

The petitioners, citing to a document entitled “Gujarat Industrial Policy—2000,” allege that the SOG provides three types of infrastructure assistance: (1) Assistance for creating infrastructure facilities and research to specific industries, including “plastic processing industries;” (2) assistance for

infrastructure for medium and large industrial projects in rural areas; and (3) additional incentives "at the rate of 25 percent under all of the schemes" for industrial units "coming up" in identified "backward talukas." The petitioners also state that the document on Gujarat Industrial Policy provides "direct evidence" of the planned existence of these programs during the POI. However, the information provided by the petitioners regarding the Infrastructure Assistance Scheme only provides information on the intentions of the SOG to provide assistance under this scheme in 2000. For example, the document entitled "Gujarat Industrial Policy—2000" uses such phrases as a "a scheme will be introduced," "assistance will be provided," and "intends to introduce." The petition thus provides no information that the Infrastructure Assistance Scheme in fact existed during the POI. Since the petitioners have not provided information on whether this scheme in fact existed during the POI, they have therefore not provided sufficient information supporting their allegations that this program provides a financial contribution under section 771(5)(D) of the Act, that this program provides a benefit under section 771(5)(E) of the Act, or that this program is specific under section 771(5A) of the Act.

### 3. State of Madhya Pradesh (SMP) Sales Tax Incentive Scheme

The petitioners based their allegations concerning this program on a SMP state profile. The SMP state profile includes one sentence on this program under "Industrial Incentive Schemes," stating "sales tax exemption/deferment for 4 to 9 years." This information does not support the petitioners' allegation that this program is specific under section 771(5A) of the Act.

### 4. SMP Capital Incentive Scheme

The petitioners based their allegations concerning this program on a SMP state profile. The SMP state profile includes one sentence on this program under "Industrial Incentive Schemes," stating "capital investment subsidy at the rate of 5 percent to 15 percent." This information does not support the petitioners' allegation that this program is specific under section 771(5A) of the Act.

### Critical Circumstances

The petitioners request that the Department initiate a critical circumstances investigation of Indian PET film because the petitioners believe that these imports are likely to "undermine seriously the remedial

effect of any \* \* \* countervailing duty order."

Section 703(e)(1) of the Act states that the Department will find that critical circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that (A) the alleged countervailable subsidies are inconsistent with the Subsidies Agreement and (B) there have been massive imports of the subject merchandise over a relatively short period of time. Section 351.206(h) of our regulations defines "massive imports" as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that "relatively short period" will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

At this time, the petitioners have not supported their allegation under section 703(e)(1) of the Act and section 351.206 of the Department's regulations. Although the petitioners provided data indicating significant increases in imports over a three-year period, we do not consider this to be sufficient evidence of massive imports over a relatively short period of time within the meaning of section 703(e)(1)(B) of the Act and section 351.206 of the Department's regulations. If, at a later date, the petitioners adequately allege the elements of critical circumstances, based on reasonably available information, the Department will investigate this matter further.

### Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on PET film from India, and found that it complies with 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 manufacturers, producers, or exporters of PET film from India receive countervailable subsidies.

### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the GOI. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

### International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

### Preliminary Determination by the ITC

The ITC will determine, no later than July 2, 2001, whether there is a reasonable indication that imports of PET film from India are causing material injury, or threatening to cause material injury, to a U.S. industry. 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 issued and published pursuant to section 777(i) of the Act.

Dated: June 6, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**ACTION:** Notice of Application.

**SUMMARY:** The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or by E-mail at oetca@ita.doc.gov.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001 *et seq.*) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the