

## Initiation of Antidumping Investigations

Based upon our examination of the petitions covering DAS and SFWA, we have found that they meet the requirements of section 732 of the Act. See the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of DAS and SFWA from Germany, India and the PRC 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 determinations no later than 140 days after the date of these initiations.

## 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 Germany, India, and the PRC. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

## ITC 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 June 30, 2003, whether there is a reasonable indication that imports of DAS and SFWA from Germany, India, and the PRC 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 3, 2003.

**Joseph Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-835]

### Notice of Initiation of Countervailing Duty Investigation: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from India

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

**EFFECTIVE DATE:** June 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dana Mermelstein at (202) 482-1391, or Sean Carey (202) 482-3964; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

#### Initiation of Investigation

##### The Petition

On May 14, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Ciba Specialty Chemicals Corp. (Ciba) (petitioner). See *4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemistry from the PRC, India, and Germany (Petition)*. The Department received information supplementing the petition, on May 27 and May 29, 2003. See *Response to the Department's Supplemental Questions Regarding the Countervailing Duty Investigations of Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemistry from the PRC, India, and Germany (May 27, 2003) (CVD Supplemental)* and *Response to Department's Supplemental Questions Regarding the Scope, Standing and Injury Portions of the Petition Regarding Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemistry from India (May 29, 2003) (Scope, Standing and Injury Supplemental)*.

In accordance with section 702(b)(1) of the Act, petitioner alleges that manufacturers, producers, or exporters of DAS and SFWA in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to

initiate. See *Determination of Industry Support for the Petition*, below.

#### Period of Investigation

In accordance with 19 CFR 351.204 (b)(2), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

#### Scope of Investigation

This investigation covers, 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper and detergent. This investigation covers all DAS and SFWA regardless of end use.

DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading 3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we sought additional information from the petitioner concerning the scope of the investigation. As a result of this supplemental information, we modified the scope language proposed by the petitioner with regard to the name of the subject merchandise and the description of the products covered.<sup>1</sup>

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). 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, N.W., Washington, D.C. 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.

<sup>1</sup> See Memorandum to the File Re: Change to Scope Description (June 3, 2003).

## Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Tariff Act of 1930, we held consultations with the Government of India ( $\geq$ GOI<sup>2</sup>) regarding this petition on May 29, 2003. See *Memorandum to the File from Sean Carey: Consultations with the Government of India Regarding the Countervailing Duty Petition on 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and DAS Applicators commonly identified as Stilbenic Fluorescent Whitening Agents (SFWA) from India*, dated May 30, 2003.

## Determination of Industry Support for 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)(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. See section 702(c)(4)(A). 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 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.<sup>2</sup>

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 petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the *Scope of Investigations* section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, 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, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. See *Countervailing Duty Investigation Initiation Checklist: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid and Stilbenic Fluorescent Whitening Agents (DAS and SFWA) from India*, (June 3, 2003) (*CVD Initiation Checklist*), on file in the Central Records Unit, room B-099 of the main Department of Commerce building.

For each country, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA. Thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25

percent of the total production of the domestic like product. Furthermore, the requirements of section 702(c)(4)(A)(ii) of the act are also met. Although, on May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition, they did not provide evidence that would call into question the sufficiency of Ciba's industry support. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *CVD Initiation Checklist* at Attachment II for further details.

## 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 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 (DEPB)/ Post-Export Credits
2. Pre-Shipment and Post-Shipment Export Financing
3. Export Promotion Capital Goods Scheme (EPCGS)
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Exemption of Export Credit from Interest Taxes
6. Export Processing Zones/ Export-Oriented Units Programs
7. Market Development Assistance (MDA)
8. Special Imprest Licenses

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in

<sup>2</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 from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

India. The full discussion of our bases for not initiating on these programs is set forth in the *CVD Initiation Checklist*:

1. Import Mechanisms (Sale of Import Licenses)
2. Duty Drawback on Excise Taxes

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

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of subsidized imports from India of the subject merchandise. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. See *CVD Initiation Checklist*.

### **Initiation of Countervailing Duty Investigation**

Based on our examination of the petition on DAS and SFWA, and petitioner's 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 manufacturers, producers, or exporters of DAS and SFWA from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

### **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 government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

### **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 June 28, 2003, whether there is a reasonable indication that imports of subject merchandise from India are materially injuring, or threatening 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 3, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

### **DEPARTMENT OF THE INTERIOR**

#### **U.S. Fish and Wildlife Service**

[I.D. 050103A]

### **Notice of Intent To Conduct Public Scoping and Prepare an Environmental Impact Statement Related to the King County, WA, Habitat Conservation Plan**

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and in accordance with the Washington State Environmental Policy Act, this notice advises the public that the USFWS and NMFS (collectively, the Services) intend to gather information necessary to prepare an Environmental Impact Statement (EIS). The EIS is for the potential approval of a Habitat Conservation Plan (HCP) and issuance of two incidental take permits (from NMFS and from the USFWS) to take seven endangered and threatened species and 22 unlisted species in accordance with the Endangered Species Act, as amended (ESA). The permit applicant is King County, WA, Department of Natural Resources and Parks, Wastewater Treatment Division (King County). The application is related to construction, operation, and maintenance activities associated with a

regional wastewater conveyance and treatment system in western King, Snohomish, and Pierce Counties, WA (permit activities).

The Services provide this notice to: (1) advise other agencies and the public of our intentions; and (2) obtain suggestions and information on the scope of issues to include in the EIS.

**DATES:** Written comments are encouraged, and should be received on or before August 11, 2003. The Services will jointly hold public scoping meetings on the following dates:

Date	Time	Location
June 17, 2003 ..	3 - 6 p.m.	King Street Center, 201 S. Jackson Street, 8th Floor Conference Center, Seattle, WA
June 24, 2003 ..	6 - 8 p.m.	Kohlwes Education Center, 300 SW 7th Street, Renton, WA
June 26, 2003 ..	6 - 8 p.m.	Northshore Utility District, 6830 NE 185th Street, Kenmore, WA

**ADDRESSES:** Address comments and requests for information related to preparation of the EIS, or requests to be added to the mailing list for this project, to Jon Avery, USFWS, 510 Desmond Drive S.E., Suite 102, Lacey, WA 98503-1273; facsimile 360-753-9518; or to Phyllis Meyers, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-6349.

**FOR FURTHER INFORMATION CONTACT:** Jon Avery, USFWS, 360-753-5824; or Phyllis Meyers, NMFS, 206-526-4506.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) permit applications anticipated from the King County Wastewater Treatment Division. Therefore, the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532 (19)). Harm is defined by the USFWS to include significant habitat modification or