

### 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 governments of India, Indonesia, Taiwan, and Thailand. 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).

### 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 May 10, 2004, whether there is a reasonable indication that imports of bottle-grade PET resin from India, Indonesia, Taiwan, and Thailand 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: April 13, 2004.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Notice of Initiation of Countervailing Duty Investigations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India (C-533-842) and Thailand (C-549-824)

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

**EFFECTIVE DATE:** April 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Douglas Kirby (India) or Christian Hughes (Thailand) at (202) 482-3782 or (202) 482-0190 respectively, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Initiation of Investigations

#### The Petition

On March 24, 2004, the U.S. Department of Commerce (the Department) received a countervailing duty petition filed in proper form by the United States PET Resin Producers Coalition ("Petitioner"). The Department received supplemental information to the petition from the petitioner on April 5, 2004. In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), petitioner alleges that producers or exporters of bottle-grade PET resin in India and Thailand receive countervailable subsidies within the meaning of section 701 of the Act, and that imports from India and Thailand are materially injuring, or are threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigations that it is requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

#### Period of Investigation

The anticipated period of investigation (POI) for both investigations is January 1, 2003 through December 31, 2003. See section 351.204(b)(2) of the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27385 (May 19, 1997)).

#### Scope of Investigations

The merchandise covered by each of these investigations is bottle-grade polyethylene terephthalate (PET) resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigations. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigations.

The merchandise subject to these investigations is properly classified under subheading 3907.60.0010 of the

Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations. 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 discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. 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 calendar 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 determinations.

#### Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Act, we held separate consultations regarding this petition with the Government of India ("GOI") and the Government of Thailand on April 7, 2004. *See Memorandum to the File from Douglas Kirby: Consultations with the Government of India Regarding the Countervailing Duty Petition on PET Resin*, dated April 9, 2004; *see also Memorandum to the File from Christian Hughes: Consultations with the Government of Thailand Regarding the Countervailing Duty Petition on PET Resin*, dated April 8, 2004. Following consultations, the GOI provided information to support its statements at consultations regarding several of the GOI programs alleged by the petitioner. This information was placed in the record and provided to petitioner. *See Memorandum to the File from Dana Mermelstein*, "Petition for the Imposition of Countervailing Duties on Bottle-Grade Polyethylene Terephthalate (PET) Resin from India: Information Submitted by the

Government of India," April 12, 2004, on file in the Import Administration Central Records Unit, Room B-099 of the Department of Commerce Building. The Department's consideration of this information is fully discussed in the *Countervailing Duty Investigation Initiation Checklist: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India* (April 13, 2004) (India CVD Initiation Checklist).

#### 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 investigations, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies 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. 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.<sup>1</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 petition covers a single class or kind of merchandise, bottle-grade PET resin, 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. Further, based on our analysis of the information presented to the Department by the petitioner, we have determined that there is a single domestic like product, also bottle-grade PET resin, which is consistent with the definition in the "Scope of Investigations" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioner has established industry support representing over 50 percent of total production of the domestic like product. *See India CVD Initiation Checklist; see also Countervailing Duty Investigation Initiation Checklist: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand (Thailand CVD Initiation Checklist)* (April 13, 2004). Thus, no polling of the domestic industry by the Department pursuant to section 702(c)(4)(D) of the Act is required. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the petitioner and the domestic producers who support the petition 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 petitioner and the domestic producers 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.

<sup>1</sup> 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).

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 India CVD Initiation Checklist* at Attachment II; *see also Thailand CVD Initiation Checklist*, at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

#### Injury Test

Both India and Thailand are "Subsidies Agreement Countries" within the meaning of section 701(b) of the Act. Therefore, section 701(a)(2) applies to each investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India and Thailand 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 petitioner supporting the allegations.

#### India

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 India CVD Initiation Checklist):

1. The Duty Entitlement Passbook Scheme (DEPS)/ 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 Program
7. Market Development Assistance (MDA)
8. Status Certificate Program
9. Loan Guarantees from the GOI
10. State of Maharashtra Program: Industrial Policy 2001
11. State of Gujarat Program: Sales-Tax Incentive Scheme
12. State of West Bengal Program: New Economic Policy on Industrial Development

## Thailand

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 Thailand (a full description of each program is provided in the *Thailand CVD Initiation Checklist*):

1. Section 28 of the Investment Promotion Act: Exemption from Payment of Import Duties on Machinery
2. Section 30 of the Investment Promotion Act: Reduction of Import Duties on Raw or Essential Materials
3. Section 31 of the Investment Promotion Act: Income Tax Exemptions
4. Section 35 of the Investment Promotion Act: Special Rights and Benefits Granted to Promoted Activities Located in Investment Promotion Zones

### Critical Circumstances Allegation

In the petition, the petitioner claims that, following the initiation of these countervailing duty investigations, there is a reasonable basis to believe or suspect that critical circumstances will exist with regard to imports of bottle-grade PET resin from India and Thailand.

Section 703(e)(1) of the Act states that, if a petitioner alleges critical circumstances, the Department will find that such critical circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that, under paragraph (A), the alleged countervailable subsidies are inconsistent with the Subsidies Agreement, and that, under paragraph (B), there have been massive imports of the subject merchandise over a relatively short period of time. Section 351.206(h) of the Department's 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 the "relatively short period" will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later. To date, the petitioner has not demonstrated that the requirement of "massive imports . . . over a relatively short period" has been met.

The petitioner requests that, pursuant to section 702(e) of the Act, the Department request U.S. Customs and Border Protection (CBP) to compile information on an expedited basis regarding entries of subject merchandise. We note that section 702(e) of the Act states that if, at any

time after initiation, there is a reasonable basis to believe or suspect that the alleged countervailable subsidies are inconsistent with the Subsidies Agreement, the Department may request the Commissioner of Customs to compile such information on an expedited basis. The petitioner alleges that certain programs listed in the petition with respect to both India and Thailand constitute export subsidies, which would be inconsistent with the Subsidies Agreement.

As noted above, the petitioner has not met the criteria for a finding of critical circumstances. Therefore, at this time, we have no reasonable basis to believe or suspect that critical circumstances exist. However, the petitioner can resubmit its request for a finding of critical circumstances and, if the criteria for such a finding are met, we will issue a critical circumstances finding at the earliest possible date. *See Policy Bulletin 98/4*, 63 FR 55364 (October 15, 1998) (determination of critical circumstances may be made any time after initiation). In addition, we are considering the petitioner's request to obtain information from CBP for monitoring purposes, and will inform interested parties of our determination as soon as practicable.

### Allegations and Evidence of Material Injury and Causation

The petitioner alleges 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 and Thailand of the subject merchandise.

The petitioner contends that the industry's injured condition is evident in lost sales and customers, in the declining trends in prices, profits, and domestic market share, and in its reduced ability to reinvest and pursue research and development activities. The allegations of injury and causation are supported by relevant evidence including U.S. import data, affidavits supporting claims of lost sales and declining revenues, and pricing information. The petitioner also alleges the imminent threat of further material injury based on the likely increases in foreign production volume of bottle-grade PET resin, the likelihood of substantially increased imports, and the prices of these imports having the likely effect of depressing or suppressing domestic prices.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and threat of material injury, and has determined that these allegations are

properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See India CVD Initiation Checklist; see also Thailand CVD Initiation Checklist.*

### Initiation of Countervailing Duty Investigations

Based on our examination of the petition on bottle-grade PET resin, 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 two countervailing duty investigations to determine whether manufacturers, producers, or exporters of bottle-grade PET resin from India and from Thailand receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determinations no later than 65 days after the date of this initiation.

### Distribution of Copies of the Petition

In accordance with section 702(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 Thailand. We will attempt to provide a copy of the public version of the petition to each known exporter as provided for under 19 CFR 351.203(c)(2).

### ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

### Preliminary Determination by the ITC

The ITC will determine no later than May 10, 2004, whether there is a reasonable indication that imports of bottle-grade PET resin from India and Thailand are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in these investigations being terminated; 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: April 13, 2004.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

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