

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties the calculations performed in this preliminary determination within five days of the date of public announcement.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs on the later of 50 days after the date of publication of this notice or ten days after the issuance of the verification reports. *See* 19 CFR 351.309(c)(1)(I). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of the Department's preliminary determination. *See* 19 CFR 351.210(b)(1).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the

Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of magnesium metal from the Russian Federation are materially injuring, or threatening material injury to, the U.S. industry.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4-2479 Filed 10-1-04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-841]

Initiation of Anti Dumping Duty Investigation: Polyvinyl Alcohol From Taiwan

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

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT:

Susan Lehman or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0180 or (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 7, 2004, the Department of Commerce (the Department) received a petition on imports of polyvinyl alcohol (PVA) from Taiwan filed in proper form by Celanese Chemicals Ltd. (the petitioner). On September 9, 2004, and September 15, 2004, the Department issued supplemental questionnaires requesting additional information and clarification of certain areas of the petition. The Department also requested additional information in September 17, 2004, and September 24, 2004, conference telephone calls with the petitioner. *See* Memorandum from Catherine Cartsos through Mark Ross to the File dated September 20, 2004, and Memorandum from Susan Lehman through Mark Ross to the File dated September 27, 2004. The petitioner filed supplements to the petition on September 13, 2004,

September 21, 2004, and September 27, 2004.

On September 23, 2004, E.I. DuPont de Nemours & Co. (DuPont), a domestic producer of PVA, upon the request of the Department, filed a statement detailing DuPont's total production of PVA for the calendar year 2003. On September 24, 2004, DuPont submitted two challenges to the petition. On September 27, 2004, Solutia Inc. (Solutia), a domestic producer of PVA, submitted a document informing the Department that it "neither supports nor opposes the antidumping duty petition" on PVA from Taiwan.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of PVA from Taiwan 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 and threaten to injure an industry in the United States.

The Department finds that the 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 the petitioner has demonstrated sufficient industry support with respect to the investigation that the petitioner is requesting the Department to initiate (*see* "Determination of Industry Support for the Petition" below).

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid. PVA in fiber form is not included in the scope of this investigation. The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). 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 petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties, Countervailing Duties, Final Rule*, 62 FR 27296, 27323)(May 19, 1997), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested 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 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 the 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 as a whole 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 the Department and the ITC must apply the same statutory definition regarding the domestic like product they do so for different purposes and pursuant to separate and distinct authority. *See* section 771(10) of the Act. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to 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 subtitle." 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.

With regard to the definition of domestic like product, 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, PVA, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of the domestic like product.

On September 24, 2004, the Department received opposition to the petition from DuPont, a producer of the domestic like product. Also, on September 27, 2004, the Department received a submission from Solutia, a producer of the domestic like product, expressing that it takes neither an affirmative nor a negative position with regard to this proceeding. However, the Department confirmed the necessary industry support based on the actual 2003 production figures which each domestic producer provided (*i.e.*, the petitioner represents over 50 percent of total production of the domestic like product). *See* Attachment II of the Initiation Checklist, dated September 27, 2004 (Initiation Checklist), on file in the Central Records Unit, Room B-099 of the Department of Commerce. The domestic producer who supports the petition accounts for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Further, the domestic producer who supports the petition accounts 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) are also met.

On September 24, 2004, the same producer of the domestic like product that filed an opposition to the petition (DuPont) filed a submission in which it urged the Department to reject the petition "because the petitioner has engaged in improper conduct" with respect to the establishment of industry support. Because the petitioner represents over 50 percent of total U.S. production, notwithstanding the allegations contained in DuPont's September 24, 2004, submission, it is not appropriate to reject the petition.

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.

Period of Investigation

The anticipated period of investigation is July 1, 2003, through June 30, 2004.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for 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, we may reexamine the information and revise the margin calculation, if appropriate.

The petition identified one producer of PVA in Taiwan. *See* Volume I of the September 7, 2004, petition at page 25. The petitioner based export price (EP) on Taiwan export statistics, U.S. price quotes from two U.S. distributors engaged in the sale of Taiwan-origin PVA, and U.S. import statistics. We have not used the Taiwanese EP statistics because it is our practice to use U.S. import statistics used in the petition when there is a close correlation between the relevant HTS number and the subject merchandise. We found no compelling evidence to suggest that we should use the Taiwanese information over U.S. information. We have not used the U.S. price quotes because the prices were not as reasonably reliable as average per-unit values derived from U.S. import statistics. The price quotes were estimated prices based on rejected sales offers made by the petitioner. Therefore, we used the average unit prices based on U.S. import statistics that the petitioner provided in Exhibit 2 of its September 21, 2004, submission.

The petitioner calculated EP by deducting an amount for foreign inland freight from factory to port. We reviewed the information provided regarding EP and have determined that it represents information reasonably available to the petitioner and have reviewed it for adequacy and accuracy. *See* Initiation Checklist.

To calculate NV, the petitioner obtained contemporaneous home-market prices for PVA sold in Taiwan from a Web site sponsored by the Taiwan Institute of Chemical Industry. The petitioner made an adjustment to home-market price by deducting amounts for inland freight and imputed credit expense. The petitioner compared home-market prices to its own cost of production (COP), adjusted for known cost differences between Taiwan and

¹ *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988).

the United States, to support a sales-below-cost allegation.

The Statement of Administrative Action (SAA), accompanying the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. See SAA, H.R. Doc. No. 103-316 at 833 (1994). The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that the "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' *** exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.*

Pursuant to section 773(b)(3) of the Act, COP consists of the COM and SG&A (including financial expenses). The petitioner calculated COP based on its own experience as a U.S. producer during 2003, adjusted for known differences between costs incurred to manufacture PVA in the United States and in Taiwan. With the exception of labor, the publicly available data the petitioner used was contemporaneous with the prospective POI. See Initiation Checklist.

Based upon a comparison of the home-market prices of the foreign like product to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

As such, pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioner calculated NV based on constructed value (CV). Consistent with section 773(e)(2)(B)(iii) of the Act, the petitioner included in CV an amount for profit. For profit, the petitioner relied upon amounts reported in Chang Chun Petrochemical Ltd.'s (CCP's), the potential respondent's, 2003 financial statements.

We adjusted the petitioner's calculated margin because the petitioner subtracted inland freight expenses from the CV and we do not normally deduct such expenses from CV. Therefore, we added the inland freight expense of 0.30

New Taiwan dollars per kilogram to the CV calculated by the petitioner and then converted the recalculated CV to a U.S. dollars per pound figure using the same methodology as the petitioner used. This results in a CV of US\$ 0.8418 per pound and a U.S. price that is US\$ 0.2398 per pound lower than CV. We reviewed the NV and CV information provided and have determined that it represents information reasonably available to the petitioner and have reviewed it for adequacy and accuracy.

Based on a comparison of EP derived from U.S. average unit values (AUVs) to adjusted CV, the dumping margin is 39.83 percent for PVA from Taiwan.

As indicated above, the petitioner also provided information demonstrating reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Fair-Value Comparison

Based on the data provided by the petitioner, there is reason to believe that imports of PVA from Taiwan are being, or are likely to be, sold in the United States at less than fair value.

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 and is threatened with material injury by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that the industry's injured condition is evidenced by the volume of lost sales, declining profitability, reductions in employment, and stagnant capacity utilization. Furthermore, the petitioner contends that injury and threat of injury is evidenced by negative effects on its revenue, market share, and growth.

These allegations are supported by relevant evidence including 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 and adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist.

Initiation of Antidumping Investigation

Based upon the examination of the petition on PVA from Taiwan, and other information reasonably available to the Department, we find 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 PVA from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

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 Taiwan. We will attempt to provide a copy of the public version of the petition to the producer 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 International Trade Commission

The ITC will preliminarily determine, no later than October 22, 2004, whether there is a reasonable indication that imports of PVA from Taiwan 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: September 27, 2004.

James J. Jochum,
Assistant Secretary for Import Administration.

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Hong Kong

September 28, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: October 4, 2004.