



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-098, C-533-886]

Polyester Textured Yarn from India and the People's Republic of China: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 7, 2018.

FOR FURTHER INFORMATION CONTACT: Janae Martin at (202) 482-0238 (India) and Robert Palmer at (202) 482-9068 (People's Republic of China (China)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 18, 2018, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of polyester textured yarn (yarn) from India and China, filed in proper form on behalf of Unifi Manufacturing, Inc. and Nan Ya Plastics Corp., America (the petitioners), domestic producers of yarn.¹ The CVD Petitions were accompanied by antidumping duty (AD) petitions concerning imports of yarn from India and China.²

¹ See Petitioners' Letter, "Polyester Textured Yarn from India and the People's Republic of China," dated October 18, 2018 (the Petitions).

² See Volumes II and IV of the Petitions.

During the period October 22 through November 1, 2018, we requested information from the petitioners pertaining to the scope of the investigations and certain allegations contained within the Petitions.³ The petitioners filed additional information between October 26, and November 2, 2018.⁴

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Governments of China and India (GOC, and GOI, respectively) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of yarn in China and India and that imports of such products are materially injuring, or threatening material injury to, the domestic yarn industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act.

³ See Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Supplemental Questions" (General Issues Supplemental), "Petition for the Imposition of Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China: Supplemental Questions," "Petition for the Imposition of Countervailing Duties on Imports of Polyester Textured Yarn: Supplemental Questions," all dated October 22, 2018, "Petition for the Imposition of Countervailing Duties on Imports of Polyester Textured Yarn {from India}: Supplemental Questions," dated October 29, 2018, and "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Supplemental Questionnaire Regarding Proposed Scope," dated November 1, 2018.

⁴ See Petitioners' Letters, "Polyester Textured Yarn from India and the People's Republic of China -Petitioners' Supplement to Volume I Relating to General Issues," "Polyester Textured Yarn from India-Petitioners' Response to Department's October 22, 2018 Supplemental Questionnaire," and "Petitioners' Supplement to Volume III of the Petitions Relating to Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China," all dated October 26, 2018; Petitioners' Letter to Commerce, "Polyester Textured Yarn from India – Petitioners' Response to the Department's October 29, 2018 Supplemental Questionnaire," dated October 30, 2018; Petitioners' Letter to Commerce, "Polyester Textured Yarn from India and the People's Republic of China – Petitioners' Supplement to Volume I Relating to General Issues," dated October 31, 2018 (Second General Issues Supplement); and Petitioners' Letter to Commerce, "Polyester Textured Yarn from India and the People's Republic of China – Petitioners' Response to Commerce's Question Regarding the Scope Language," dated November 2, 2018.

Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigations.⁵

Period of Investigations

Because the Petitions were filed on October 18, 2018, the period of investigation is January 1, 2017, through December 31, 2017 for each investigation.

Scope of the Investigations

The product covered by these investigations is yarn from China and India. For a full description of the scope of these investigations, see the Appendix to this notice.

Comments on the Scope of the Investigations

During our review of the Petitions, we contacted the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁶ As a result, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by these investigations, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).⁷ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments

⁵ See the "Determination of Industry Support for the Petition" section, *infra*.

⁶ See General Issues Supplement. See also Memorandum, re: "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India-Phone Call with Counsel to the Petitioners," dated October 29, 2018.

⁷ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

include factual information,⁸ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on November 27, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 7, 2018, which is 10 calendar days from the initial comments deadline.⁹

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).¹⁰ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue,

⁸ See 19 CFR 351.102(b)(21) (defining "factual information").

⁹ See 19 CFR 351.303(b).

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011). See also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC and GOI of the receipt of the Petitions and provided them the opportunity for consultations with respect to the China CVD Petition and India CVD Petition, respectively.¹¹ Consultations were held with the GOI on November 2, 2018.¹² The GOC did not request consultations.

Determination of Industry Support for the Petitions

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 a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) 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, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as

¹¹ See Commerce's Letters, "Countervailing Duty Petition on Polyester Textured Yarn from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition" and "Countervailing Duty Petition on Polyester Textured Yarn from India: Invitation for Consultations to Discuss the Countervailing Duty Petition," both dated October 18, 2018.

¹² See Memorandum, "Consultations with Officials from the Government of India Regarding the Countervailing Duty Petition Concerning Polyester Textured Yarn," dated November 2, 2018.

required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

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 a petition has the requisite industry support, the statute directs Commerce 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 Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹³ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’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 law.¹⁴

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).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.¹⁵ Based on our analysis of the information submitted on the record, we have determined that polyester textured yarn, as

¹³ See section 771(10) of the Act.

¹⁴ 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, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁵ See Volume I of the Petitions, at 11-12; see also General Issues Supplement, at 4-5 and Exhibit GEN-Supp-2.

defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁶

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the Appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2017, as well as the 2017 production of companies that support the Petitions.¹⁷ The petitioners compared the production of the supporters of the Petitions to the estimated total production of the domestic like product for the entire domestic industry.¹⁸ We relied on data provided by the petitioners for purposes of measuring industry support.¹⁹

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.²⁰ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²¹ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because

¹⁶ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Polyester Textured Yarn from the People’s Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Polyester Textured Yarn from the People’s Republic of China and India (Attachment II); *see also* Countervailing Duty Investigation Initiation Checklist: Polyester Textured Yarn from India (India CVD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

¹⁷ *See* Volume I of the Petitions, at 4-5 and Exhibit GEN-2.

¹⁸ *Id.*; *see also* General Issues Supplement, at Exhibit GEN-Supp-3.

¹⁹ *Id.* For further discussion, *see* China CVD Initiation Checklist, at Attachment II; and India CVD Initiation Checklist, at Attachment II.

²⁰ *Id.*

²¹ *Id.*; *see also* section 702(c)(4)(D) of the Act.

the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.²² Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions 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 Petitions.²³ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioners filed the Petitions 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 sufficient industry support with respect to the CVD investigations that they are requesting that Commerce initiate.²⁴

Injury Test

Because China and India are “Subsidies Agreement Countries” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations.

Accordingly, the ITC must determine whether imports of the subject merchandise from China and/or India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that

²² See China CVD Initiation Checklist, at Attachment II; and India CVD Initiation Checklist, at Attachment II.

²³ *Id.*

²⁴ *Id.*

subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁵ In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least developed countries must exceed the negligibility threshold of four percent. The petitioners also demonstrate that subject imports from India, which has been designated as a least developed country under section 771(36)(B) of the Act, exceed the negligibility threshold of four percent.²⁶

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; decline in the domestic industry's production, capacity utilization, and U.S. commercial shipments; decline in the domestic industry's financial performance; lost sales and revenues; and closures of U.S. production facilities.²⁷ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁸

Initiation of CVD Investigation

Based on the examination of the Petitions, we find that the Petitions meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of yarn from China and India benefit from countervailable subsidies conferred by the GOC and GOI, respectively. In accordance with section 703(b)(1) of the Act

²⁵ See Volume I of the Petitions, at 13-14 and Exhibit GEN-8.

²⁶ *Id.*

²⁷ *Id.* at 10, 13-26 and Exhibits GEN-6 and GEN-8 through GEN-13; see also General Issues Supplement, at 6-7 and Exhibits GEN-Supp-4 and GEN-Supp-5.

²⁸ See China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Polyester Textured Yarn from the People's Republic of China and India (Attachment III); and India CVD Initiation Checklist, at Attachment III.

and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

China

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 19 of the 20 alleged programs, and to partially initiate on the remaining program. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 40 of the 43 alleged programs, and to partially initiate on one of the 43 programs. For a full discussion of the basis for our decision to initiate on each program, *see* India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioners named 51 companies in China²⁹ and 33 companies in India³⁰ as producers/exporters of yarn. Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of yarn from China and India during the POI under the appropriate Harmonized Tariff

²⁹ *See* Volume I of the Petition at Exhibit GEN-5 and Second General Issues Supplement, at Exhibit GEN-SUPP-5.

³⁰ *Id.*

Schedule of the United States numbers listed in the “Scope of the Investigation,” in the Appendix.

On November 6, 2018, Commerce released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of these CVD investigations.³¹ Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce’s Web site at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the GOC and GOI *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

³¹ See Memorandum, “Polyester Textured Yarn from the People’s Republic of China (China) Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection” and Memorandum, “Polyester Textured Yarn from India Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,” both dated November 6, 2018.

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of yarn from China and India are materially injuring, or threatening material injury to, a U.S. industry.³² A negative ITC determination will result in the investigation being terminated.³³ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁴ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information

³² See section 703(a)(2) of the Act.

³³ See section 703(a)(1) of the Act.

³⁴ See 19 CFR 351.301(b).

³⁵ See 19 CFR 351.301(b)(2).

being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁶ Parties must use the certification formats

³⁶ See section 782(b) of the Act.

provided in 19 CFR 351.303(g).³⁷ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Instructions for filing such applications may be found on Commerce's Web site at <http://enforcement.trade.gov/apo>.

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: November 7, 2018.

P. Lee Smith,
*Deputy Assistant Secretary
for Policy and Negotiations.*

³⁷ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (“*Final Rule*”); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

Appendix

Scope of the Investigations

The merchandise covered by these investigations, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams).

The merchandise subject to these investigations is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2018-24952 Filed: 11/16/2018 8:45 am; Publication Date: 11/19/2018]