

DEPARTMENT OF COMMERCE

International Trade Administration

(C-570-963)

Certain Sodium and Potassium Phosphate Salts from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Yasmin Nair or Joseph Shuler, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3813 and (202) 482-1293, respectively.

SUPPLEMENTARY INFORMATION

The Petition

On September 24, 2009, the Department of Commerce ("Department") received a petition filed in proper form by ICL Performance Products LP and Prayon, Inc. (collectively, "Petitioners"), domestic producers of certain sodium and potassium phosphate salts.¹ In response to the Department's requests, Petitioners provided timely information supplementing the Petition on October 1, 2009.

¹ See Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as Amended: Certain Sodium and Potassium Phosphate Salts from the People's Republic of China, dated September 24, 2009 ("Petition").

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (“the Act”), Petitioners allege that manufacturers, producers, or exporters of sodium and potassium phosphate salts in the People’s Republic of China (“PRC”) receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the countervailing duty (“CVD”) investigation (see “Determination of Industry Support for the Petition” section below).

Period of Investigation

The period of investigation is January 1, 2008, through December 31, 2008.

Scope of Investigation

The phosphate salts covered by this investigation include Sodium Tripolyphosphate (“STPP”), whether anhydrous or in solution, anhydrous Monopotassium Phosphate (“MKP”), anhydrous Dipotassium Phosphate (“DKP”) and Tetrapotassium Pyrophosphate (“TKPP”), whether anhydrous or in solution (collectively “phosphate salts”).

STPP, also known as Sodium triphosphate, Tripoly or Pentasodium triphosphate, is a sodium polyphosphate with the formula $\text{Na}_5\text{O}_{10}\text{P}_3$. The American Chemical Society, Chemical Abstract Service (“CAS”) registry number for STPP is 7758-29-4. STPP is typically 25% phosphorus, 31% sodium and and 57% diphosphorus pentoxide (P_2O_5). STPP is classified under heading 2835.31.0000, HTSUS.

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $\text{K}_4\text{P}_2\text{O}_7$. The CAS registry number for

TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P₂O₅ content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula KH₂PO₄. The CAS registry number for MKP is 7778-77-0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P₂O₅. MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K₂HPO₄. The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P₂O₅ content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The product covered by this investigation includes anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of STPP and TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the investigation, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners 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 Department's 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 by November 3, 2009, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets 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 to consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on September 25, 2009, the Department invited representatives of the Government of the PRC for consultations with respect to the CVD petition. The Government of the PRC did not request such consultations. On October 13, 2009, the GOC requested that the Department extend the deadline for consultations. The Department responded that it could not extend this deadline for pre-initiation consultations, but would consult with the GOC in the course of this proceeding if initiated, as required by Article 13.2 of the Subsidies and Countervailing Measures Agreement.

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 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, the Department 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.

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 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 law. *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), *cert. denied* 492 U.S. 919 (1989).

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.” Although the reference point from which the domestic like product analysis begins is usually “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),

Petitioners submit that there is one class or kind of merchandise, but four domestic like products.

The four like products, when considered together, correspond to the product scope description. Based on our analysis of the information submitted on the record, we have determined that STPP, MKP, DKP, and TKPP constitute four domestic like products and we have analyzed industry support in terms of those domestic like products. For a discussion of the domestic like product analysis in this case, *see* “Countervailing Duty Investigation Initiation Checklist: Certain Sodium and Potassium Phosphate Salts from the People’s Republic of China (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Sodium and Potassium Phosphate Salts from the People’s Republic of China, on file in the Central Records Unit (“CRU”), Room 1117 of the main Department of Commerce building.

With regard to section 702(c)(4)(A) of the Act, in determining whether Petitioners have standing (*i.e.*, the domestic workers and producers supporting 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), we considered the industry support data contained in the Petition with reference to the domestic like products. To establish industry support, Petitioners provided their own production volume of the domestic like products for calendar year 2008, and compared that to total production volume of the domestic like products for the industry. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

The Department’s review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support for each of the four like products. First, the Petition establishes

support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like products and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 702(c)(4)(D) of the Act and Initiation Checklist at Attachment II. 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 the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the relevant domestic like product. *See* Initiation Checklist at Attachment II. 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 Petition account for more than 50 percent of the production of the relevant domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that Petitioners filed the 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 initiate. *See* Initiation Checklist at Attachment II.

Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of certain sodium and potassium phosphate salts from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing certain sodium and potassium phosphate salts. In addition, Petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industries' injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production, reduced capacity and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Analysis of Injury Allegations and Evidence of Material Injury and Causation).

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a CVD 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) of the Act; and (2) is accompanied by information reasonably available to the Petitioner(s) supporting the allegations.

The Department has examined the CVD petition on sodium and potassium phosphate salts from the PRC and finds 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 CVD investigation to determine whether manufacturers, producers, or exporters of sodium and potassium phosphate salts in the

PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Income Tax Programs

1. “Two Free, Three Half” Tax Exemption for Foreign Invested Enterprises (“FIEs”)
2. Income Tax Subsidies for FIEs Based on Geographic Location
3. Income Tax Exemption Programs For Export-Oriented FIEs
4. Local Income Tax Exemption or Reduction Program for “Productive” FIEs
5. Preferential Tax Subsidies for Research and Development by FIEs
6. Reduced Income Tax Rate for High- and New-Technology Enterprises
7. Income Tax Credit on Purchases of Domestically Produced Equipment
8. Reduction in or Exemption from the Fixed Assets Investment Orientation Regulatory Tax

B. Grant Programs

1. Subsidies to Loss-Making State-Owned Enterprises (“SOEs”) by the Government of China (“GOC”) at the National Level
2. Subsidies to Loss-Making SOEs by the GOC at the Provincial Level
3. Grants Pursuant to the State Key Technology Renovation Project Fund
4. Grants Pursuant to the “Famous Brands” Program

C. Tariff and Indirect Tax Exemption Programs

1. Value Added Tax (“VAT”) Refunds for FIEs Purchasing Domestically Produced Equipment

D. VAT and Tariff Exemptions on Imported Equipment

E. Preferential Lending Policies

1. Discounted Loans for Export Oriented Industries (“Honorable Enterprises”)

F. Government Restraints on Exports of Yellow Phosphorus

For further information explaining why the Department is investigating these programs, see Initiation Checklist.

We are not including in our investigation the following program alleged to benefit producers and exporters of the subject merchandise in the PRC:

Provision of Electricity for Less Than Adequate Remuneration

Petitioners allege that the GOC, through the National Development and Reform Commission, regulates the power rates for certain industries, including the yellow phosphorus industry and that differential rates are provided to the yellow phosphorus industry. Petitioners have not provided information that supports the allegation that differential pricing of electricity is provided to producers of the subject merchandise. Consequently, we do not plan on investigating this program.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the period of investigation. We intend to release the CBP data under the Administrative Protective Order (“APO”) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to

make our decision regarding respondent selection within 20 days of publication of this Federal Register notice.

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 Department's website at <http://ia.ita.doc.gov/apo>.

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 Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, consistent with section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act and 19 CFR 351.203(c)(1).

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized sodium and potassium phosphate salts from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c)(1).

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date

Appendix I

Scope of the Investigation