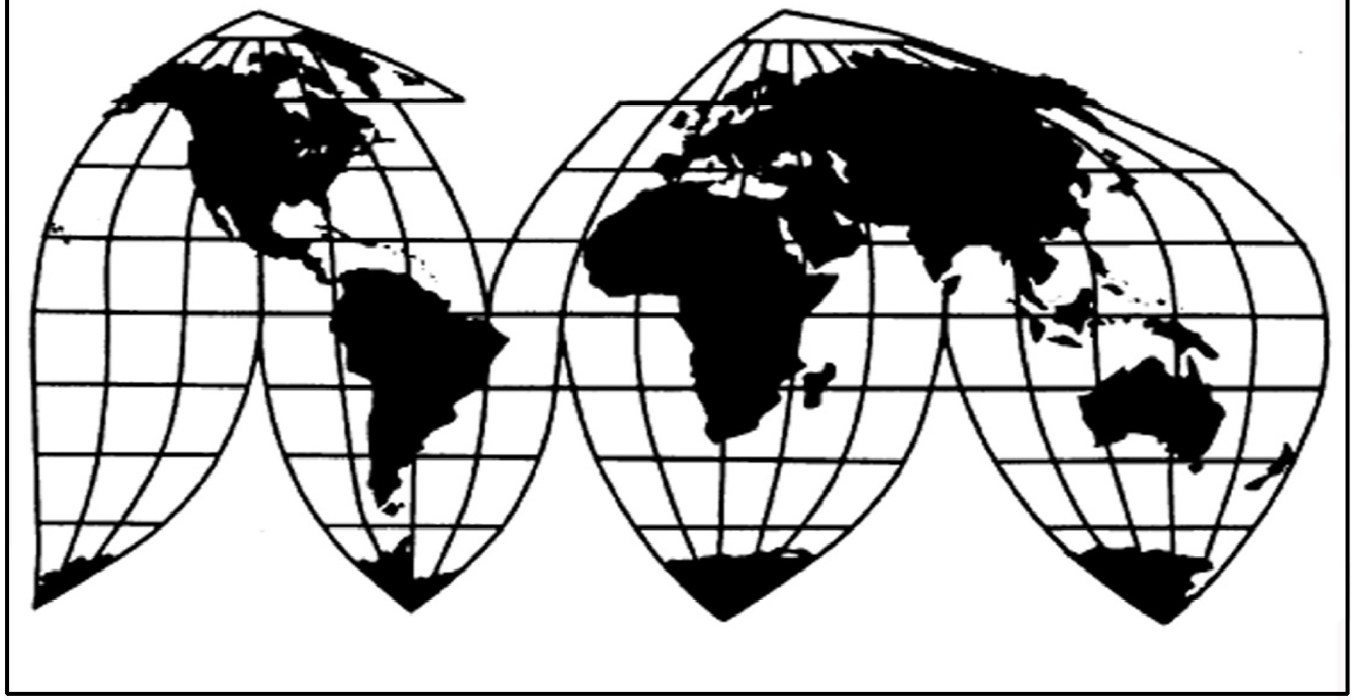
Sodium Hexametaphosphate From China

Investigation No. 731-TA-1110 (Final)

Publication 3984 **March 2008**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Address all communications to
Secretary to the Commission
United States International Trade Commission
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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

Investigation No. 731-TA-1110 (Final)

SODIUM HEXAMETAPHOSPHATE FROM CHINA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of sodium hexametaphosphate, provided for in subheadings 2835.39.50 and 3824.90.39 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[2]

BACKGROUND

The Commission instituted this investigation effective February 8, 2007, following receipt of a petition filed with the Commission and Commerce by ICL Performance Products, LP, St. Louis, MO, and Innophos, Inc., Cranbury, NJ. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of sodium hexametaphosphate from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of October 31, 2007 (72 FR 61677). The hearing was held in Washington, DC, on January 24, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Dean A. Pinkert did not participate in this investigation.

VIEWS OF THE COMMISSION

Based on the record in the final phase of this investigation, we find that an industry in the United States is materially injured by reason of imports of sodium hexametaphosphate ("SHMP") from China that are sold in the United States at less than fair value ("LTFV").[1]

I. BACKGROUND

The petition in this investigation was filed on February 8, 2007. Representatives of the petitioners, ICL Performance Products, LP ("ICL") and Innophos, Inc. ("Innophos") ("Petitioners"), domestic producers of SHMP,[2] testified at the Commission's January 24, 2008 hearing; Petitioners filed a prehearing brief and a posthearing brief. Chinese producer Hubei Xingfa Chemical Group Company, Ltd. ("Xingfa" or "Chinese respondent") participated in the Commission's hearing and filed a prehearing brief and a posthearing brief.[3] The Commission also received questionnaire responses from ***, accounting for almost all SHMP imports from China in 2006.[4] Finally, purchaser Procter & Gamble Company participated in the Commission's hearing and filed a response to Commission questions.

II. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[5] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[6] In turn, the Act defines "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 . . . ."[7]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in

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[1] Commissioner Pinkert did not participate in this determination.

[2] These producers account for *** U.S. production of SHMP. Confidential Staff Report ("CR") and Public Staff Report ("PR") at Table III-1. A third producer, Nalco Co. ("Nalco") operated a commercial SHMP plant until October 2003, ***. CR/PR at III-1 and nn. 2 and 3, and Table III-1.

[3] According to Xingfa, it accounted for about *** of total SHMP production in China in 2006, and its exports accounted for *** of 2006 exports of SHMP from China to the United States. See Xingfa's Posthearing Brief at Attachment 9; CR at VII-5. Only one other Chinese producer, Sichuan Mianzhu Norwest, responded to the Commission's questionnaire. Sichuan Mianzhu Norwest estimated that it accounted for *** of total production of SHMP in China in 2006 and *** of 2006 exports of SHMP from China to the United States. CR at VII-5, n.9; PR at VII-3, n.9.

[4] CR/PR at Tables IV-1 and IV-2. The Commission also received questionnaire responses from *** of SHMP.

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(4)(A).

[7] 19 U.S.C. § 1677(10).

characteristics and uses" on a case-by-case basis.[8] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[9] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[10] Although the Commission must accept the determination of the U.S. Department of Commerce ("Commerce") as to the scope of the imported merchandise allegedly sold at LTFV,[11] the Commission determines what domestic product is like the imported articles Commerce has identified.[12]

B. Product Description

In its final determination, Commerce defined the imported merchandise subject to this investigation as:

> sodium hexametaphosphate ("SHMP") . . . a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating $NaPO_3$ units. SHMP has a P_2O_5 content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3824.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service ("CAS") has assigned the name "Polyphosphoric Acid, Sodium Salt" to SHMP. The CAS registry number is 68915-31-1. However, SHMP is commonly identified by CAS No. 10124-56-8 in the market. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

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[8] See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[9] See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

[10] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

[11] See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 (Fed. Cir. April 25, 2002) at 9 ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), aff'd, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

[12] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, Inc. v. United States, 501 F.3d 1291, 1298, n.1 (Fed. Cir. 2007) ("Commerce's [scope] finding does not control the Commission's [like product] determination."); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

> The product covered by this investigation includes SHMP in all grades, whether food grade or technical grade. The product covered by this investigation includes SHMP without regard to chain length, *i.e.*, whether regular or long chain. The product covered by this investigation includes SHMP without regard to physical form, whether glass, sheet, crushed, granule, powder, fines, or other form, and whether or not in solution.
>
> However, the product covered by this investigation does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.[13]

The subject merchandise includes SHMP in all grades, chain lengths, and physical forms.

SHMP is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths.[14] Its high degree of solubility sets it apart from other sodium phosphates. SHMP typically is differentiated by four characteristics: grade, chain length designation, P_2O_5 content, and particle size.[15] The grade can be either food grade or technical grade. While SHMP in both grades generally is sold with a Certificate of Analysis that specifies the tested chemistry and impurities contained in a particular package, food-grade SHMP also must meet the standards of the Good Manufacturing Practices of the U.S. Food and Drug Administration to reduce the risk of contaminants in the product.[16] SHMP generally is designated as either "regular chain" or "long chain," which refer to the average length of the polyphosphate chains in the sample.[17] The P_2O_5 content is closely related to the chain length designation, with longer chain lengths having higher P_2O_5 content.[18] Finally, SHMP is produced in different particle sizes: glass, granular, and powder.[19] SHMP is used in water treatment, industrial and institutional cleaners, industrial applications (e.g., clay processing), food and beverage production, and personal care products and dentifrices (e.g., toothpaste), among other applications.[20] Within each of these uses, SHMP has unique applications due to its properties.

C. Domestic Like Product

In the preliminary phase of this investigation, the Commission agreed with the Petitioners' proposal[21] that the evidence supported defining a single domestic like product consisting of SHMP, in all grades, chain lengths and particle sizes, coextensive with the scope of investigation.[22] Specifically, SHMP in all grades, chain lengths, and physical forms share certain general physical characteristics and

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[13] Final Determination of Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China, 73 Fed. Reg. 6479 (February 4, 2008).

[14] See generally, CR at I-8 - I-21; PR at I-6 - I-13; Petitioners' Postconference Brief at 5; Petitioners' Prehearing Brief at 5-8.

[15] CR at I-9; PR at I-7.

[16] CR at I-9 - I-11; PR at I-7; Petitioners' Postconference Brief at 23, and Petitioners' Prehearing Brief at 9-11.

[17] CR at I-10; PR at I-7.

[18] CR at I-10; PR at I-7. The P_2O_5 content of SHMP can vary from 60 percent to approximately 71 percent. Id.

[19] CR at I-10; PR at I-8.

[20] CR at I-9, I-11 - I-13 and Tables I-2 - I-5; PR at I-7, I-8 - I-10 and Tables I-2 - I-5.

[21] Petition at 35-37; Petitioners' Postconference Brief at 4-9. Petitioners also contended that the domestic like product should not be defined more broadly than the scope of investigation to include such products as blends which contain less than 50 percent by volume of SHMP in the finished product. Petitioners' Postconference Brief at 9-10; Conference Transcript in the preliminary phase of the investigation ("Conference Tr.") at 75.

[22] Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Preliminary), USITC Pub. 3912 at 7 (April 2007).

uses, are interchangeable in most end uses, are sold to end users and distributors, are produced by similar production processes, and are generally perceived to be similar products.

In the final phase of this investigation, no party advocates defining the domestic like product differently.[23] No new information has been developed since the preliminary determination to suggest that a different definition would be warranted. Accordingly, for the reasons stated in the preliminary determination, we define a single domestic like product consisting of SHMP, coextensive with the scope of investigation.

D. Domestic Industry

The domestic industry is defined as the domestic "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[24] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our finding that the domestic like product is SHMP, we define a single domestic industry consisting of all domestic producers of SHMP.[25]

III. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS[26]

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[27] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[28] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[29] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[30] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[31]

For the reasons stated below, we determine that the domestic industry producing SHMP is materially injured by reason of subject imports from China.

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[23] Accord Xingfa's Prehearing Brief at 1-2; Petitioners' Prehearing Brief at 5-13.

[24] 19 U.S.C. § 1677(4)(A).

[25] ***. There is no other evidence that domestic producers are related to subject producers or importers, or that domestic producers import subject merchandise. CR at III-1 and III-5; PR at III-1 and III-3.

[26] Negligibility is not an issue in this investigation under 19 U.S.C. § 1677(24). The petition was filed on February 8, 2007. Subject imports from China accounted for 82.1 percent of total imports of SHMP for the most recent 12-month period (February 2006-January 2007) for which data were available that preceded the filing of the petition. CR at IV-12; PR at IV-7.

[27] 19 U.S.C. §§ 1671d(a) and 1673d(a).

[28] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[29] 19 U.S.C. § 1677(7)(A).

[30] 19 U.S.C. § 1677(7)(C)(iii).

[31] 19 U.S.C. § 1677(7)(C)(iii).

A. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of subject imports.

1. Demand Conditions

SHMP is an input into the production of many industrial and consumer products, and thus its demand is derived from the demand for those end-use products.[32] Its primary uses are for water treatment (40.7 percent of consumption), other industrial applications (22.5 percent), industrial and institutional cleaners (16.8 percent), meat/seafood/poultry production (15.3 percent), other consumer products (3.5 percent), and dentifrices (1.2 percent).[33] SHMP is produced in food grade or technical grade,[34] each of which also is designated as either regular chain or long chain (referring to the average length of the polyphosphate chains in the sample).[35] Technical-grade SHMP is used in water treatment, personal care products (e.g., Calgon®), pet food, and other industrial uses (e.g., kaolin or clay mining). Food-grade SHMP is used in food and beverage production and dental applications (e.g., toothpaste, mouth rinses, and whiteners).[36] In general, long-chain SHMP is used in beverage and dental applications, whereas regular-chain SHMP is used more in industrial applications, although there is not a clear line defining each type's uses.[37]

Apparent U.S. consumption of SHMP has fluctuated during the period examined but increased from *** in 2004 to *** in 2006, for an overall increase of ***.[38] Apparent U.S. consumption of SHMP was higher in interim period (January-September) 2007 (***) compared to interim period (January-September) 2006 (***).[39] The record indicates that U.S. consumption of SHMP is projected to increase

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[32] CR at II-6; PR at II-4.

[33] CR/PR at Table I-2. SHMP accounts for a very small share of the final cost of the products in which it is incorporated, generally ranging from less than 1 percent to 6 percent. CR at II-8; PR at II-5.

[34] Food-grade SHMP is required to meet stricter standards for quality and purity than technical-grade SHMP by requiring production to adhere to Good Manufacturing Practices. CR at I-9, I-10, and II-2; PR at I-7 and II-1.

[35] CR at I-9 and I-10; PR at I-7. Regular-chain SHMP consists of approximately 10 links per molecule, whereas long-chain SHMP consists of about 20 links per molecule. CR at II-2 and II-3; PR at II-2; see also CR at I-15-20; PR at I-12-13. In the final investigation, ICL indicated that it ***. Innophos indicated that it ***. CR at I-20; PR at I-13.

[36] CR at I-11, I-13, II-6, and Table I-3; PR at I-8-10, II-4, and Table I-3.

[37] CR at I-11 and I-13, II-6, and Table I-3; PR at I-8-10, II-4, and Table I-3. *** SHMP was technical-grade product for both domestically produced SHMP and subject imports. In 2006, *** of domestically produced SHMP was technical grade (chain length 9-16), *** produced in food grade (chain length 9-16), *** produced in food grade (chain length 17-26), *** in technical grade (chain length 17-26), and *** in all other grades. CR/PR at Table I-4. In 2006, *** of subject imported SHMP was technical grade (chain length 17-26), *** produced in technical grade (chain length 9-16), *** produced in food grade (chain length 9-16), *** produced in food grade (chain length 17-26), and *** in all other grades. CR/PR at Table I-5.

[38] CR/PR at Tables IV-5 and C-1. Responses from importers were mixed regarding whether demand had increased or remained unchanged during the period of investigation and generally were specific to an end-use market for SHMP. Increases were noted for use in kaolin mining, cheese/dairy processing, candy and food production, soaps/detergent production, and water treatment. Purchasers' responses also were mixed regarding whether demand for SHMP had increased. CR at II-6-7; PR at II-4-5.

[39] CR/PR at Table IV-5.

annually by an average of 1.7 percent from 2004 to 2009, with the most growth projected in the water treatment (2.7 percent) and meat/seafood/poultry (3.9 percent) applications.[40]

2. Supply Conditions

During the period of investigation, two domestic producers, ICL and Innophos, accounted for *** U.S. production of SHMP.[41] Both technical-grade and food-grade SHMP can be produced on the same equipment.[42] Innophos uses the same furnace for production of both grades of SHMP, whereas ICL has two furnaces, either of which can be used to produce food-grade or technical-grade SHMP.[43] While the domestic industry's capacity to produce SHMP has remained relatively constant during the period of investigation,[44] Innophos reported that it plans to expand its SHMP production capacity by 15 percent, with the additional capacity expected to be on line by the second quarter of 2008.[45]

Petitioners proposed that the Commission consider the state of the market in 2003, when there were four SHMP plants operating in the United States, compared to the end of 2006, when ICL had closed its Trenton, Michigan plant, and ***.[46] ICL's predecessor firm, Astaris, operated two SHMP production facilities, the one still producing SHMP in Lawrence, Kansas and the Trenton plant, which was closed in November 2003.[47] The parties disagreed on whether this closure was related to competition with subject imports.[48] The Commission's normal practice is to consider data for the three most recent calendar years, plus interim periods where applicable.[49] Nonetheless, we will expand the period of

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[40] CR at II-6, n.20; PR at II-4, n.20; Petitioners' Postconference Brief at 27, Table 6.

[41] CR/PR at Table III-1. As noted above, a third domestic SHMP producer, Nalco, operated a plant until October 2003 ***. CR at III-1-2 and nn.1-3; PR at III-1 and nn.1-3. Nalco informed the Commission that ***. According to Petitioners, Nalco maintains two furnaces that can produce SHMP; SHMP production from one furnace is currently used for internal consumption while the other furnace could, at little expense, start producing within two to three months. Hearing Transcript ("Tr.") at 83-85. Xingfa contends that the "principal business" of Nalco is to provide water and waste treatment services to industrial and institutional users with its production of SHMP intended for internal consumption for these end uses. Xingfa's Posthearing Brief at Attachment 4.

[42] CR at I-15; PR at I-11.

[43] CR at I-15; PR at I-11; Tr. at 26.

[44] CR/PR at Table III-2. During the period of investigation, Innophos shut down its furnace for an extended period in the summer of 2006 due to reduced orders and continued to supply customers from inventory that was built up prior to the shutdown. CR at III-5; PR at III-3.

[45] Tr. at 86; CR at III-8; PR at III-4.

[46] See, e.g., Petitioners' Prehearing Brief at 2-3 and 22-25. Compare Tr. at 160-161 (According to Xingfa, "there's a lot of reasons why 2003 doesn't make sense. But, if you want to use it, I don't think it makes that much difference to the outcome even.").

[47] CR at III-3-4; PR at III-2; and Tr. at 78-80. Astaris was purchased by ICL in November 2005. CR at III-4, n. 15; PR at III-2, n. 15.

[48] According to Petitioners, the closure of the Trenton plant was related to Astaris' loss in sales volume and pricing pressure due to the Chinese imports and that "Chinese imports – not Innophos or non-subject imports – filled the void." Tr. 78-81 and Petitioners' Prehearing Brief at 3 (emphasis in original). Xingfa argued that the "closure of the Trenton plant in 2003 had nothing to do with SHMP" and pointed to the reason given in ***. Xingfa's Posthearing Brief at Attachment 3.

[49] See Silicon Metal from Russia, Inv. No. 731-TA-991 (Final), USITC Pub. 3584 (March 2003) at 11, n. 68, citing, inter alia, Kenda Rubber Industrial Co. v. United States, 630 F. Supp. 354, 359 (Ct. Int'l Trade 1986), aff'd on this point, Bratsk Smelter v. United States, Slip Op. 04-75 (Ct. Int'l Trade June 22, 2004) at 14-15 ("The statute . . . does not direct the ITC to use a specific period of time for its analysis . . . [but] 'in making a present material

(continued...)

investigation if it is appropriate to do so in light of an industry's cyclical nature or if there is a well-defined need to obtain a broader perspective of the market.[50] In this case, we do not find it necessary to expand the period of investigation and have not considered 2003 data in our analysis.

*** domestic SHMP and the majority of imported SHMP is shipped from inventory rather than produced to order.[51] Domestic producers' inventories have increased over the period of investigation and rose as a share of U.S. shipments, from *** in 2004 to *** in 2006; their inventories as a share of U.S. shipments were *** in interim period 2006 and *** in interim period 2007.[52]

The domestic industry historically has supplied only a portion of the U.S. market for SHMP, with the remainder supplied by imports. Domestic producers' share of the U.S. market declined steadily from *** in 2004 to *** in 2006; their U.S. market share was higher in interim period 2007 (***) compared to interim period 2006 (***).[53] Subject imports' share of the U.S. market increased from *** in 2004 to *** in 2006; subject imports' U.S. market share was lower in interim period 2007 (***) compared to interim period 2006 (***).[54] Finally, the U.S. market share held by non-subject imports fluctuated during the period examined but increased *** overall from *** in 2004 to *** in 2006; non-subject imports' U.S. market share was lower in interim period 2007 (***) compared to interim period 2006 (***).[55]

3. Substitutability and Other Conditions

SHMP is a chemical product sold with a Certificate of Analysis that specifies the chemical properties, average chain length, particle size and maximum level of impurities contained in a particular package.[56] While the grade, chain length, P_2O_5 content, or physical form may limit the interchangeability of a specific product for a particular end use, this limitation applies whether it is a U.S. product, subject import, or non-subject import. Thus, the record supports the conclusion that SHMP is generally

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[49] (...continued)
injury determination, the Commission must address record evidence of significant circumstances and events that occur between the petition date and vote date' . . . [recognizing] that 'older information on the record provides a historical backdrop against which to analyze fresher data.'" quoting Usinor v. United States, 26 CIT---- (2002)).

[50] See, e.g., Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (March 2006) at 18, n. 133; Purified Carboxymethylcellulose from Finland, Mexico, Netherlands, and Sweden, Inv. Nos. 731-TA-1084-1087 (Final), USITC Pub. 3787 (June 2005) at 14 (stating a three-year period is the normal period of investigation, but "we will expand the period of investigation if it is appropriate to do so in light of an industry's cyclical nature or if there is a well-defined need to obtain a broader perspective of the market. . . . ." (but declining to do so in that investigation). See also Nucor Corp. v. United States, 414 F.3d 1331, 1336 (Fed. Cir. 2005).

[51] CR at II-1-2 and III-13; PR at II-1 and III-5. SHMP has an 18-month shelf life. Domestic producers generally produce SHMP based upon inventory levels of particular grades rather than produce to order. CR at III-13; PR at III-5. Innophos sells *** and ICL sells *** of its SHMP from inventory. About *** of imports reportedly are sold from inventory. CR/PR at II-1. For a SHMP producer, there is an optimal proportional relationship among the particle sizes (glass, granular, and powder) produced. A producer must sell a balanced mixture of product textures in order to operate efficiently and avoid an unbalanced inventory. CR at II-5-6 and III-13; PR at II-4 and III-5.

[52] CR/PR at Table III-4. ***. CR at III-11, n.33; PR at III-4, n.33.

[53] CR/PR at Table IV-5.

[54] CR/PR at Table IV-5.

[55] CR/PR at Tables IV-5 and C-1. The volume of non-subject imports also has increased overall, by 12.1 percent, from 2004 to 2006, but was lower, by 13.1 percent, in interim period 2007 compared to interim period 2006. Id. at Tables IV-2 and IV-4. The leading sources of non-subject imports are: Mexico, Belgium, France, Netherlands, Malaysia, Hong Kong, Thailand, India, Denmark, Korea, and Chile. Id. at Table IV-2 and n. 1.

[56] CR at I-14 and II-9; PR at I-10 and II-6.

interchangeable within form or grade, regardless of where it is produced.[57] U.S. producers and most importers and purchasers reported that the U.S. product, the subject imports, and non-subject imports are frequently or always comparable.[58]

SHMP's high degree of solubility sets it apart from other sodium phosphates and limits the products that can be substituted for it.[59] Possible substitutes are polyacrylates, tetrasodium pyrophosphate, sodium tripolyphosphate, tetrapotassium pyrophosphate (in limited water-treatment applications), sodium acid pyrophosphate, and calcium chloride (for pH adjustment and water binding).[60] Substitution of these other chemical products for SHMP, however, would require adjustments in formulations, changes in processes, loss of functionality, and potentially higher costs.[61]

Short-term contracts or spot sales are the predominant basis on which the subject imports and the domestic like product are sold.[62] SHMP is sold by both producers and some importers on a nationwide basis.[63] The costs for the main raw materials – wet phosphoric acid and soda ash or caustic soda – have increased substantially since 2004.[64] Finally, energy is an important part of the production process of SHMP, which requires a furnace to be heated to very high temperatures.[65]

B. Volume of the Subject Imports

Section 771(7)(C) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[66]

Subject imports accounted for a large and increasing share of U.S. consumption and increased relative to U.S. production from 2004 to 2006.[67] The market share held by subject imports increased from

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[57] CR at II-10-11; PR at II-7-8.

[58] CR/PR at Table II-4. Different customers may require different chain-length SHMP, based on the end use and specific chemical formula. CR at II-2-4; PR at II-2-3. Purchasers were split, however, on the importance of chain length to purchasing decisions. CR/PR at Table II-1.

[59] CR at I-8 and II-10; PR at I-6 and II-6-7.

[60] CR at II-10; PR at II-6-7.

[61] CR at II-10; PR at II-6-7.

[62] CR at V-3; PR at V-2-3. Domestic producer Innophos sells *** of its SHMP on a short-term contract basis whereas ICL sells *** of its SHMP on a short-term contract basis and *** on the spot market. On a simple average basis, 49.2 percent of imports are sold on a long-term contract basis, 15.9 percent on a short-term contract basis, and 34.9 percent on the spot market. Id.

[63] CR/PR at II-1. Petitioners maintain that Chinese SHMP is distributed nationally by sophisticated importers that maintain local inventories to serve customers throughout the United States. They argue that "distributors spread Chinese SHMP throughout the United States and eliminate any advantage that U.S. producers traditionally maintained in terms of delivery time or ability to supply." Petitioners' Prehearing Brief at 15-16.

[64] Prices of these raw materials have increased by more than *** since 2004. CR/PR at V-1. Raw material costs accounted for approximately *** of the cost of goods sold in 2006. Id.

[65] For example, Innophos uses ***. CR/PR at V-1. *** and accounted for ***, respectively, of ICL's and Innophos' total unit cost of goods sold in 2006. Id. at Table VI-3.

[66] 19 U.S.C. § 1677(7)(C)(i).

[67] We note that the official import statistics covering SHMP involve a "basket" category in which non-subject merchandise also is classified. Accordingly, we have made appropriate adjustments to the import data for the annual periods on the basis of evidence provided by petitioners and in responses to importers' questionnaires. Specifically, we adjusted Commerce statistics to exclude all reported imports from Canada, Iceland, Israel, and Taiwan (where

(continued...)

*** in 2004 to *** in 2006.[68] The ratio of the quantity of subject imports to U.S. production rose steadily from *** in 2004 to *** in 2006.[69] The volume of subject imports fluctuated between years, and increased overall from 2004 to 2006.[70] Similarly, subject imports were higher in interim period 2007 compared to interim period 2006.[71] The evidence suggests that a portion of subject imports was first placed in inventory in the United States and later shipped into the U.S. market for the 2004 to 2006 period.[72] For example, as the volume of subject imports increased by 16.3 percent from 2004 to 2005,[73] U.S. importers' inventories of subject merchandise increased *** in 2004 to *** in 2005;[74] these increases in inventories were followed by *** increases in U.S. shipments of subject imports from 2005 to 2006.[75] U.S. shipments of subject imports increased each year, and overall by *** from 2004 to 2006, with the largest increase from 2005 to 2006.[76] The 2004-2005 subject import/inventory pattern seems to have been repeated in interim period 2007, with substantially higher subject import and inventory volumes but lower U.S. shipments of subject imports, compared to interim period 2006.[77]

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[67] (...continued)
there reportedly is no production of SHMP), and made adjustments for imports (i.e., subtracted reported imports of non-SHMP products) from China, Germany, Japan, Mexico, Spain, and the United Kingdom. See CR at IV-4-IV-8; PR at IV-1-IV-5; Petitioners' Postconference Brief at 13-18; Petition at 38-39 and Exh. INJ-3. However, due to less complete coverage for importer questionnaire responses for the interim periods, appropriate adjustments were not possible and import data for the interim periods are unadjusted official import statistics for countries that export SHMP to the United States. Moreover, a mixture of U.S. importers' shipments and U.S. imports was used to calculate apparent U.S. consumption. See CR at IV-7-8, IV-12-13 and Tables IV-3 and IV-4; PR at IV-4-5, IV-7-8 and Tables IV-3 and IV-4.

[68] CR/PR at Table IV-5. The U.S. market share held by subject imports was lower in interim period 2007 (***) compared with interim period 2006 (***). Id. We note that data for U.S. shipments of subject imports, which are understated, were used to calculate apparent U.S. consumption for the interim periods; thus, the interim period market shares do not reflect the substantially higher subject import and inventory volumes in interim period 2007 compared to interim period 2006.

[69] CR/PR at Table IV-2. The ratio of subject imports to U.S. production was *** in interim period 2007. Id.

[70] CR/PR at Tables IV-2 and IV-3. Based on adjusted Commerce statistics, subject imports were 19,695 metric tons in 2004, 22,901 metric tons in 2005, and 21,017 metric tons in 2006, for an increase of 6.7 percent from 2004 to 2006. Based on importers' questionnaire responses, subject imports were 17,386 metric tons in 2004, 21,544 metric tons in 2005, and 20,689 metric tons in 2006, for an increase of 19.0 percent from 2004 to 2006. Id.

[71] CR/PR at Table IV-3. Based on unadjusted Commerce statistics, subject imports were 13,557 metric tons in interim period 2006 and 19,132 metric tons in interim period 2007. Based on importers' questionnaire responses, subject imports were 9,507 metric tons in interim period 2006 and 13,477 metric tons in interim period 2007. Id.

[72] Subject import data include all SHMP imports entering the United States from China, whether placed in inventory in the United States or shipped into the U.S. market. U.S. shipments of subject imports include only actual shipments of imported SHMP to U.S. customers, either directly after importation or after being placed in inventory.

[73] CR/PR at Table IV-2.

[74] CR/PR at Table VII-5. U.S. importers' inventories of subject merchandise were *** in 2004, *** in 2005, and *** in 2006. U.S. subject importers' inventories as a share of imports and U.S. shipments of imports increased from 2004 to 2006, with their highest levels reported in 2005, ***, respectively. Id. at Table VII-5.

[75] CR/PR at Table IV-4.

[76] CR/PR at Table IV-4. U.S. shipments of subject imports were *** in 2004, *** in 2005, and *** in 2006. While U.S. shipments of subject imports are understated for the interim periods, they were *** in interim period 2006, and *** in interim period 2007. Id.

[77] CR/PR at Tables IV-3, IV-4, and VII-5. U.S. importers' inventories of subject merchandise were *** in interim period 2006 compared to *** in interim period 2007. As a share of imports and U.S. shipments of imports, (continued...)

The rate of increase in subject imports was greater than the *** increase in apparent U.S. consumption (***) from 2004 to 2006.[78] Moreover, subject imports made significant gains in market share from 2005 to 2006 at a time of declining consumption.[79] The increase in subject imports' share of the U.S. market from 2004 to 2006 was accompanied by an overall decline in the domestic producers' market share, from *** in 2004 to *** in 2006.[80] The higher market share held by the domestic industry in interim period 2007 compared to interim period 2006 reflects the increases in their U.S. shipments at a time of increasing consumption, as the volume of U.S. shipments of subject imports remained virtually unchanged. While the gains in the domestic industry's market share when the interim periods are compared may have some relationship to the pendency of the investigation,[81] such gains may also be short-lived due to the substantial increases in subject imports' inventories when the same periods are compared.[82] Non-subject imports fluctuated over the period examined and increased overall, both in absolute terms and relative to U.S. consumption, from 2004 to 2006, but were lower in interim period 2007 compared to interim period 2006 and were much smaller than subject imports in absolute terms.[83] In addition, the increase in absolute non-subject import volume over the period of investigation was *** relative to the decline in U.S. producer's U.S. shipments by quantity.[84] Thus, subject imports gained market share largely at the expense of the domestic industry.

For the foregoing reasons, we find that the volume of subject imports is significant, both in absolute terms and relative to consumption and production in the United States.

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[77] (...continued)
such inventories were ***, respectively, in interim period 2006 compared to ***, respectively, in interim period 2007. Id. at Table VII-5.

[78] CR/PR at Tables IV-3, IV-5, and C-1. Apparent U.S. consumption was *** higher in interim period 2007 compared to interim period 2006.

[79] CR/PR at Tables IV-5 and C-1.

[80] CR/PR at Table IV-5. The U.S. market share held by domestic producers was *** in 2004, *** in 2005, and *** in 2006. Id.

[81] The statutory provision governing the Commission's treatment of post-petition information, 19 U.S.C. § 1677(7)(I), states that:

> [T]he Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation … is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

See also Statement of Administrative Action to the Uruguay Round Agreements Act, H. Rep. 103-316, Vol. 1 ("SAA") at 854 (1994).

[82] As discussed above, the interim period market share data are not directly comparable to the annual market share data.

[83] CR/PR at Tables IV-2, IV-4, and IV-5. Non-subject imports were 4,499 metric tons in 2004, 6,410 metric tons in 2005, and 5,042 metric tons in 2006; non-subject imports were 3,614 metric tons in interim period 2006 and 3,180 metric tons in interim period 2007. Id. at Tables IV-2 and IV-4. The U.S. market share held by non-subject imports was *** in 2004, *** in 2005, and *** in 2006; non-subject imports' U.S. market share was *** in interim period 2006 and *** in interim period 2007. Id. at Table IV-5.

[84] U.S. producers' U.S. shipments of SHMP decreased steadily for a decrease of *** from 2004 to 2006, while non-subject imports increased irregularly for an overall increase of ***, and U.S. shipments of subject imports increased by *** over the same period. Moreover, U.S. producers' U.S. shipments of SHMP were higher in interim 2007 compared to interim 2006 while non-subject imports were lower when the same periods are compared. Calculated from CR/PR at Table IV-4.

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[85]

The record reflects some divergence in views by market participants on the importance of price in purchasing decisions. As noted above, *** and most responding importers and purchasers found that subject imports were always or frequently interchangeable with the domestic like product.[86] However, while domestic producers reported that non-price differences between subject imports and the domestic like product were only *** in purchasing decisions, responding importers were evenly divided on whether non-price differences were always/frequently an important factor, or were sometimes a factor.[87]

In this investigation, U.S. producers and importers provided quarterly pricing data for four types of SHMP.[88] The pricing data show a pattern of consistent underselling by subject imports. Subject imports undersold the domestic like product in 57 of the 60 quarterly comparisons, with margins of underselling ranging from 5.2 percent to 51.3 percent.[89] Subject imports undersold the domestic like product in all quarterly comparisons of products 3 and 4, in all but one quarterly comparison of product 1, and in all but two quarterly comparisons of product 2.[90] Accordingly, we find that this evidence demonstrates that there has been consistent and significant price underselling of the domestic like product by subject imports.[91]

We have also considered movements in SHMP prices over the period of investigation. The Commission's pricing data for all four domestic products[92] fluctuate but generally show an overall

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[85] 19 U.S.C. § 1677(7)(C)(ii).

[86] CR/PR at Table II-4.

[87] CR/PR at Table II-6.

[88] The four types of SHMP for which pricing data were requested are: Product 1 – Sodium hexametaphosphate, technical grade, regular chain; Product 2 – Sodium hexametaphosphate, technical grade, long chain; Product 3 – Sodium hexametaphosphate, food grade, regular chain; and Product 4 – Sodium hexametaphosphate, food grade, long chain. CR at V-5; PR at V-4.

[89] CR/PR at Tables V-1-V-5.

[90] CR/PR at Tables V-1-V-5. The margins of overselling for the three quarterly comparisons with overselling reported ranged from 2.0 percent to 8.6 percent. Id. at Tables V-1, V-2, and V-5.

[91] The Commission generally examines prices for the first arms-length transaction in the U.S. market, as we did here. See Kosher Chicken from Canada, Inv. No. 731-TA-1062 (Preliminary), USITC Pub. 1062 at 15, n. 120 (January 2004). We note that even if we found it warranted by the facts – which we do not – to deviate from that practice as Petitioners have requested regarding consideration of the pricing data submitted by U.S. importer Univar, our findings regarding price effects of the subject imports would not change because it would only have increased the prevalence of underselling in the pricing data. See Petitioners' Prehearing Brief at 31-32; Petitioners' Posthearing Brief at 34.

[92] Respondent Xingfa contended that "Innophos and ICL pursued completely different pricing strategies" and proposes that "it is critical for the Commission not to examine only aggregate pricing figures, but also the figures of the two companies." Xingfa's Prehearing Brief at 12-14. We generally compare, however, the weighted average

(continued...)

increase in prices ranging from ***, and for subject imported SHMP products, the price increases range from ***.[93]

While there is evidence of overall price increases over the period examined, we also find evidence that subject imports prevented domestic price increases that otherwise would have occurred to a significant degree. The domestic industry's cost of goods sold ("COGS") as a share of net sales increased from 2004 to 2006, but was lower in interim period 2007 compared to interim period 2006.[94] Although unit sales values also increased from 2004 to 2006, these increases were not sufficient to completely offset the increases in unit COGS, which rose steadily from *** in 2004 to *** in 2006.[95] These data indicate that, as the domestic industry's costs increased and significant volumes of lower-priced subject imports entered the U.S. market, the domestic producers ***. Moreover, apparent U.S. consumption increased over the period of investigation,[96] which would be expected to be a time when the domestic industry ***. While unit COGS were lower in interim period 2007 compared to interim period 2006, unit sales values also were lower, despite higher net sales quantities, and thus still were ***.[97] We therefore find that U.S. producers' prices were suppressed because of persistent underselling by subject imports which subjected domestic producers to a cost-price squeeze. The evidence of some confirmed lost sales and revenues provide additional support for our finding that subject imports have suppressed prices to a significant degree.[98]

Chinese respondent Xingfa claimed that the financial results of the U.S. industry are explained by *** shown by the U.S. producers, and maintains that if the Commission "analyzes shipment data by company against the company's financial performance, the theory of Petitioners that volumes of Chinese SHMP are injuring the domestic industry falls apart," particularly allegations regarding a cost-price squeeze.[99] As directed by statute, the Commission focuses on the domestic industry "as a whole," not on

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[92] (...continued)
import price with the weighted average price of the domestic like product, and do not disaggregate pricing data by company as the Chinese respondent has proposed. DRAMs and DRAM Modules from Korea, Inv. No. 701-TA-431 (Final), USITC Pub. 3616 at 24 (August 2003) ("Subject import prices that are below weighted average domestic prices can impact the market even when they are not the lowest single price in the market at a given point in time.").

[93] CR/PR at Tables V-1-V-4. Specifically, regarding product 1, the Commission's data show that the price for the U.S.-produced product 1 increased by *** from January 2004 to September 2007, while the prices for the corresponding subject imports increased by *** for the same period. CR/PR at Table V-1. The pricing data reported for the U.S.-produced product 2 increased by *** from January 2004 to September 2007 while the prices for the corresponding subject imports increased by *** for the same period. CR/PR at Table V-2. The prices reported for the U.S.-produced product 3 increased by *** from January 2004 to September 2007, while the prices for the corresponding Chinese imports increased by ***. CR/PR at Table V-3. Finally, the prices reported for U.S.-produced product 4 increased by *** from January 2004 to September 2007, while prices for the corresponding Chinese imports increased overall by ***. CR/PR at Table V-4.

[94] CR/PR at Table VI-1.

[95] CR/PR at Table VI-1.

[96] CR/PR at Table IV-5.

[97] CR/PR at Table VI-1.

[98] The Commission confirmed *** of the alleged *** in lost sales over the period of investigation, although we recognize that these numbers may be overstated due to reconciliation concerns. CR at V-14-V-18 and Table V-6; PR at V-7-V-9 and Table V-6. The Commission also confirmed *** in lost revenues. CR at V-18-V-19 and Table V-7; PR at V-8-V-9 and Table V-7.

[99] Xingfa's Posthearing Brief at 6-8, 9-12 and Attachment 1 at 3-12 (the "entire price suppression argument depends on the credibility of the costs of *** and, to a lesser extent, of *** . . . [claiming that] those costs are no more credible than the Trenton plant story."); Xingfa's Prehearing Brief at 15-17 (Xingfa claims that the domestic
(continued...)

individual firms in the industry,[100] and, in doing so, takes the domestic industry, including any differences in cost structures between different producers, as it finds it.[101] Moreover, the evidence in this investigation demonstrates that the differences are neither *** nor unexplained.[102]

For the foregoing reasons, we find that there has been significant underselling by subject imports and that such imports have prevented price increases, which otherwise would have occurred, to a significant degree. Thus, we find that subject imports have had significant adverse effects on domestic prices.

D. Impact of the Subject Imports on the Domestic Industry[103] [104]

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[105] These factors include output, sales, inventories, ability to raise

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[99] (...continued)
industry as a whole is not caught in a cost-price squeeze caused by Chinese imports because "[i]f the U.S. producers were suffering from costs rising faster than their prices, why did they not raise prices further?").

[100] Committee for Fair Coke Trade v. United States, — F. Supp. 2d.----, Slip Op. 04-68 at 42-43 (Ct. Int'l Trade June 10, 2004). See also Celanese Chemicals Ltd. v. United States, — F. Supp. 2d—, Slip Op. 07-16 (Ct. Int'l Trade January 29, 2007) at 27-28, 32-33 (also noting that this comports with the statutory obligation to consider the existence of material injury to the industry "as a whole," instead of focusing on only a portion of the industry); Calabrian Corp. v. United States, 794 F. Supp. 377, 385-86 (Ct. Int'l Trade 1992) ("This Court has repeatedly affirmed . . . that 'Congress intended the ITC determine whether or not the domestic industry (as a whole) has experienced material injury due to the imports. This language defies the suggestion that the ITC must make a disaggregated analysis of material injury.'" quoting Copperweld Corp. v. United States, 682 F. Supp. 552, 569 (Ct. Int'l Trade 1988)).

[101] Iwatsu Elec. Co., Ltd. v. United States, 758 F. Supp. 1506, 1518 (Ct. Int'l Trade 1991) ("importers take the domestic industry as they find it").

[102] CR at VI-6-VI-9; PR at V1-1-V1-3. ICL's unit cost of goods sold was *** Innophos' unit cost of good sold. CR at VI-8; PR at VI-2-VI-3. We do not consider this *** to be *** nor is it uncommon to find a *** between individual producers in an industry. Additionally, an analysis of the two producers' costs indicated ***, which in turn are largely attributable to ***. CR at VI-9; VI-3. Accord Altx Inc. v. United States, Slip Op. 02-65 at 17 (Ct. Int'l Trade July 12, 2002), aff'd 370 F. 3d 1008, 1120 (Fed. Cir. 2004).

[103] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determination, Commerce calculated final dumping margins for imports of subject SHMP from China as follows: 92.02 percent for both Jiangyin Chengxing International Trading Co., Ltd. and Sichuan Mianzhu Norwest Phosphate Chemical Company Limited; and 188.05 percent for PRC-wide (including Yibin Tianyuan Group Co., Ltd., Mianyang Aostar Phosphorus Chemical Industry Co., Ltd., and Hubei Xingfa Chemicals Group Co., Ltd.). 73 Fed. Reg. at 6482 (February 4, 2008).

[104] Xingfa contends that the "extremely high dumping margin" calculated by Commerce was the result of Commerce's use of "surrogate values" from India in place of actual Chinese costs. "Given this approach Hubei Xingfa chose not to participate in the Commerce investigation following the preliminary determination." Xingfa's Prehearing Brief at 3; Tr. at 118-119 and 131; see also Petitioners' Prehearing Brief at 2 ("These results were obtained on the basis of Hubei Xingfa's questionnaire response – not 'adverse facts available.'").

[105] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports."). SAA at 885.

capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[106]

We have examined the performance indicators in the trade and financial data for the domestic industry producing SHMP. These data indicate declining overall trends from 2004 to 2006, although some indicators have fluctuated during this period, before recovering *** during the first nine months of 2007.

U.S. production, capacity utilization, shipments, and net sales quantity and value all declined overall from 2004 to 2006, but experienced some improvements when the interim periods are compared. U.S. production of SHMP increased from 2004 to 2005, but declined in 2006 for an overall decline of *** from 2004 to 2006.[107] Domestic producers' U.S. shipments of SHMP declined each year for an overall decline of *** from 2004 to 2006.[108] While industry capacity remained flat over the period of investigation, capacity utilization followed production trends, declining overall from 2004 to 2006, and increasing in interim period 2007 compared to interim period 2006. Capacity utilization increased from *** in 2004 to *** in 2005, and decreased to *** in 2006.[109] Net sales volume declined from *** in 2004 to *** in 2006, with *** decrease from 2005 to 2006.[110] When the interim periods of 2006 and 2007 are compared, even though the domestic industry's performance indicators generally improved, increases in net sales value occurred at a slower rate than increases in net sales volume.

The *** in U.S. importers' inventories of subject merchandise from 2004 to 2005 was followed by *** increase *** in U.S. shipments of subject imports from 2005 to 2006.[111] Thus, as apparent U.S. consumption declined *** from 2005 to 2006, imported Chinese product gained U.S. market share at the expense of the market share held by domestic producers.[112] Consequently, domestic producers' inventories increased by *** from 2004 to 2006 and rose as a share of U.S. shipments from *** in

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[106] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[107] U.S. production increased from *** in 2004 to *** in 2005 and then declined to *** in 2006; U.S. production was *** in interim period 2006 and *** in interim period 2007. CR/PR at Tables III-2 and C-1. According to Petitioners, the increase in production in interim period 2007 reflects, in part, ***. CR at III-8, n.31; PR at III-4, n.31.

[108] U.S. shipments declined from *** in 2004 to *** in 2005 and *** in 2006; U.S. shipments were *** in interim period 2006 and *** in interim period 2007. CR/PR at Tables IV-4 and C-1.

[109] CR/PR at Tables III-2 and C-1. Capacity utilization was *** in interim period 2006 and *** in interim period 2007. Id. We note that "there is no short supply provision in the statute" and "the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports." Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Article 1904 NAFTA Remand), USITC Pub. 3658 at 109, n. 310 (December 2003). Compare Xingfa's Posthearing Brief at 12 and Attachment 10 (Xingfa maintains that the changes in the volumes and prices in the U.S. industry are a result, not of the behavior of the Chinese imported product, but rather due to "the lack of capacity in the U.S. to produce sufficient quantity to supply the U.S. market."); Tr. at 140 ("There's a real big problem in terms of shortages at least in the short term."); see also Xingfa's Prehearing Brief at 3 ("if this high dumping margin goes into place, there is a substantial risk that imports from China of SHMP will be cut off or severely curtailed, and a shortage of SHMP will occur in the U.S. market.").

[110] CR/PR at Tables VI-1 and C-1.

[111] CR/PR at Tables IV-4, VII-5, and C-1.

[112] CR/PR at Tables IV-5 and C-1.

2006.[113] When the interim periods 2006 and 2007 are compared, U.S. shipments and net sales volume increased, and U.S. shipments of subject imports remained unchanged, while apparent U.S. consumption increased; as a result, domestic producers regained U.S. market share to some extent.[114] But the substantial increases in the volume of subject imports and inventories when the interim periods are compared was similar to the pattern in the 2004-2005 period after which the domestic producers' U.S. market share decreased, as subject imports' U.S. shipments increased and their inventories declined.[115]

Most employment-related indicators – including average number of production related workers, hours worked, and wages paid for producing SHMP – declined overall from 2004 to 2006 and were lower in interim period 2007 compared to interim period 2006.[116] The domestic industry's average unit labor costs fluctuated between years and rose *** from 2004 to 2006, but were *** in interim period 2007 compared to interim period 2006.[117] Productivity also fluctuated between years, but was *** in interim period 2007 compared to interim period 2006.[118]

The domestic industry's financial indicators – operating income, operating margins, and net sales measured by quantity and value – steadily declined from 2004 to 2006, before improving *** in interim period 2007 compared to interim period 2006. Operating *** in each successive year of the period examined, before *** between interim periods.[119] The industry's ratio of operating *** to net sales followed a similar trend, growing from *** in 2004 to *** in 2005 and *** in 2006, before declining to *** in interim period 2007 compared to *** in interim period 2006.[120]

While net sales measured by quantity decreased steadily by *** from 2004 to 2006, net sales by value initially rose from 2004 to 2005, and then fell from 2005 to 2006, for an overall decline of ***.[121] As discussed previously,[122] COGS as a ratio to sales increased overall from 2004 to 2006. COGS was

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[113] CR/PR at Table III-4. As noted above, Innophos shut down its furnace for an extended period in the summer of 2006 due to reduced orders, and used existing inventory to supply customers. CR at III-5; Conference Tr. at 19-20 and 101-102; Tr. at 99. ***. CR at III-11, n.33; PR at III-4, n.33.

[114] CR/PR at Tables IV-4 and IV-5.

[115] CR/PR at Tables IV-2, IV-3, IV-5 and VII-5.

[116] The average number of production workers declined from *** in 2006, and was *** in interim period 2007 compared to *** in interim period 2006. While hours worked also decreased from *** in 2004 to *** in 2006, and were *** in interim period 2007 compared to *** in interim period 2006, hourly wages increased from *** in 2004 to *** in 2006, and were *** in interim period 2007 compared to *** in interim period 2006. Accordingly, wages paid decreased from *** in 2004 to *** in 2006, and were *** in interim period 2007 compared to *** in interim period 2006. CR/PR at Tables III-5 and C-1.

[117] The domestic industry's average unit labor costs were *** in 2004, *** in 2005, *** in 2006, *** in interim period 2006, and *** in interim period 2007. CR/PR at Tables III-5 and C-1.

[118] Productivity increased from *** in 2004 to *** in 2005, and then declined to *** in 2006; productivity was *** in interim period 2006 and *** in interim period 2007. CR/PR at Table III-5.

[119] CR/PR at Table VI-1. Operating *** in 2004 to *** in 2005, and *** in 2006; operating *** in interim period 2006 and *** in interim period 2007. Id.

[120] CR/PR at Table VI-1. Xingfa argues that the data do not support Petitioners' argument that increasing subject imports are causing injury to the domestic industry because Innophos' ratio of operating income to net sales ***, when subject imports increased the most during the period of investigation. Xingfa's Posthearing Brief at 6-7. As we stated above and as directed by statute, the Commission focuses on the domestic industry "as a whole," not on individual firms in the industry. We note, however, that Innophos ***. CR/PR at Table VI-1.

[121] CR/PR at Table VI-1. Net sales measured by quantity decreased from *** in 2004 to *** in 2005 and *** in 2006. Net sales measured by value increased from *** in 2004 to *** in 2005 and then declined to *** in 2006. Id.

[122] See our discussion above regarding Xingfa's contentions that the Petitioners' price suppression claims depend on the credibility of the domestic industry's costs and therefore the industry is not caught in a cost-price

(continued...)

*** of sales in 2004, and increased to *** of sales in 2006.[123] Even though unit sales values increased by *** from 2004 to 2006, this increase only partially offset even ***.[124] As the result of this cost/price squeeze, the industry reported *** in each year of the period examined.[125]

While the domestic industry's financial performance improved in interim period 2007 compared to interim period 2006, the industry still reported ***, at the operating and net levels.[126] Net sales quantities were *** higher in interim period 2007 compared to the same period in 2006, but increases in net sales values were at a slower rate (***), resulting in a *** lower unit sales value in interim period 2007. The *** in interim period 2007 were reduced to some extent by lower unit costs, most notably ***, but the domestic industry's sales values ***.[127]

Based on the record in the final phase of this investigation, we conclude that subject imports had an adverse impact on the condition of the domestic industry during the period of investigation. In particular, we find that the absolute and relative volume of subject imports are significant, have gained market share at the expense of the domestic industry, have undersold domestic product, and have suppressed domestic prices to a significant degree. The pattern of consistent underselling, which suppressed domestic prices, has caused declines in the domestic industry's financial performance over the period of investigation. While the domestic industry's performance improved to some extent in the most recent period, as U.S. shipments of subject imports declined slightly, the industry still was unable to ***. Moreover, the *** increases in U.S. inventories of subject imports and continued underselling indicate that any improvements may be short-lived.

IV. APPLICATION OF THE *BRATSK ALUMINUM SMELTER v. UNITED STATES* REPLACEMENT/BENEFIT TEST

Having reached an affirmative determination by application of the statutorily mandated factors, the Federal Circuit's decision in Bratsk Aluminum Smelter v. United States requires that we turn to an additional analysis which can, in some circumstances, negate an affirmative determination.[128] The Federal Circuit directed the Commission to undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market."[129] The additional inquiry required by the Bratsk panel, which we refer to as the Bratsk replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."[130]

As noted in other investigations, we respectfully disagree with the Bratsk panel that the statute requires any analysis beyond that already included in our discussion of volume, price, and impact above,

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[122] (...continued)
squeeze. See Xingfa's Prehearing Brief at 15-17; Xingfa's Posthearing Brief at 6-8, 9-12 and Attachment 1 at 3-12.

[123] CR/PR at Table VI-1.

[124] CR/PR at VI-1, VI-6, and Table VI-1.

[125] Capital expenditures for the domestic industry were ***, which is an indication that the domestic industry is ***. CR at VI-11; PR at VI-4; and CR/PR at Tables VI-1 and VI-5. *** research and development expenses were reported. Id.

[126] CR/PR at Table VI-1.

[127] CR/PR at Table VI-1.

[128] 444 F.3d at 1369 (Fed. Cir. 2006).

[129] Bratsk, 444 F.3d at 1375.

[130] Bratsk, 444 F.3d at 1375.

and do not reiterate the Commission's interpretation of the statutory scheme here.[131] The Commission has a well established approach to addressing causation.[132] However, we apply the Bratsk replacement/benefit test to our analysis because the Federal Circuit has directed us to do so, notwithstanding that, in our considered view, this test is not required by, or consistent with, the statute.[133]

The Bratsk analysis "is triggered whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market."[134] If both Bratsk triggering factors are satisfied, we apply the "replacement/benefit" test required under Bratsk.

Petitioners acknowledge that the first Bratsk trigger is satisfied because "SHMP imports are fungible with domestic SHMP, as well as imports from non-subject countries." They argue that the second trigger is not satisfied because "the volume of non-subject imports is very small" and "imports from non-subject countries entered at prices above the price of dumped Chinese imports."[135] Petitioners point to increases in domestic prices and recaptured sales volume following Commerce's preliminary determination as evidence "that the recent exit of Chinese SHMP from the U.S. market is likely to benefit the U.S. industry, not non-subject imports from other sources," and that "imports from non-subject countries otherwise will not replace dumped imports to the extent that relief will be undermined."[136]

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[131] For a full discussion of our views on the applicability of Bratsk, see our Views in the Remand Determination for Silicon Metal from Russia, Inv. No. 731-TA-991 (Final) (Second Remand), USITC Pub. 3910 (March 2007) and Views of the Commission in Certain Polyester Staple Fiber from China, Inv. No. 731-TA-1104 (Final), USITC Pub. 3922 at 24-26 (June 2007). For a full discussion of Chairman Pearson's views on the applicability of Bratsk, see his Separate and Additional Views in Silicon Metal from Russia. For a full discussion of Vice Chairman Aranoff's views on the applicability of Bratsk, see the Views of the Commission in Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, Inv. No. 731-TA-961 (Final) (Remand), USITC Pub. 3903 (January 2007). For a full discussion of Commissioner Okun's views of the applicability of Bratsk, see her Separate and Dissenting Views in Certain Lined Paper School Supplies from China, India, and Indonesia, Inv. Nos. 701-TA-442-443, 731-TA-1095-1097 (Final), USITC Pub. 3884 (Sept. 2006).

[132] See Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand), USITC Pub. 3910 (Mar. 2007), at 3-8 (articulating in detail the Commission's long-standing interpretation of the "by reason of" causation standard).

[133] Chairman Pearson and Commissioner Okun discern two possible interpretations of the Bratsk opinion, which differ substantially. The so-called "replacement/benefit test" is noted above. The second one is that Bratsk is an elaboration of the causation analysis prescribed by Gerald Metals. Under this interpretation, the Bratsk decision stands to remind the Commission of its obligation under Gerald Metals that the Commission may not satisfy the "by reason of" causation requirement by showing that subject imports contributed only "minimally or tangentially to the material harm." In other words, the Bratsk Court's relatively short discussion of the underlying determination may not have established a new and rigid replacement/benefit test. Rather, the Court may have discussed the triggering factors as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports. See Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States in, Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Preliminary), USITC Pub. 3912 (April 2007). This analysis is included in the Commission's affirmative causation analysis.

[134] Bratsk, 444 F.3d at 1375.

[135] Petitioners' Prehearing Brief at 33-35. Petitioners acknowledge that "imports from Mexico and the Netherlands entered at price levels near the dumped Chinese imports." But, they maintain that, "imports from the Netherlands were negligible in quantity." Id. at 35-36.

[136] Petitioners' Prehearing Brief at 37-40. Petitioners point to the SHMP production capacity in Mexico, and to events in 2005 when the shortage in Chinese production/imports resulted in increases in Mexican SHMP imports, and maintain that "even if Chinese imports were eliminated from the market, Mexican imports would not fill the void." Id. at 38. Regarding European SHMP production, Petitioners contend that "the European market for SHMP differs from the U.S. market in that ***." Petitioners' Prehearing Brief at 33, 35, and 39-40; see also Petitioners'

(continued...)

Chinese producer Xingfa maintains that "this is really not a Bratsk case . . . it's almost the anti-Bratsk in some ways. It seems to us that the problem here is not that there's a bunch of off-shore potential for a lot of other sodium hex to come into the United States, but just the opposite."[137] Xingfa contends that "the capacity does not exist in other foreign countries to make up *** in the U.S. market."[138]

While we find that the first Bratsk trigger is satisfied, we find that the evidence is mixed regarding whether the second trigger is met.[139] Nonetheless, assuming arguendo that both triggers are met, we find that non-subject imports would have replaced subject imports only to a limited extent during the period of investigation, and thus that elimination of subject imports would have benefitted the domestic industry.

A. Triggering Factors

We find that SHMP qualifies as a commodity product based upon Bratsk's definition of "commodity product" as "meaning that it is generally interchangeable regardless of its source."[140] No party argues otherwise.[141] The record indicates that SHMP is broadly interchangeable regardless of where it is produced. U.S. producers and most importers and purchasers reported that the U.S. product, the subject imports, and non-subject imports are frequently or always comparable.[142]

With respect to the second trigger factor (whether price competitive non-subject imports are a significant factor in the U.S. market), non-subject imports accounted for 18.6 percent of total imports (on a quantity basis) in 2004, 21.9 percent in 2005, and 19.3 percent in 2006.[143] By comparison, subject imports accounted for 81.4 percent of total imports (on a quantity basis) in 2004, 78.1 percent in 2005,

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[136] (...continued)
Posthearing Brief, Response to Questions at 43-45.

[137] Tr. at 140.

[138] Xingfa's Prehearing Brief at 5 (According to Xingfa, "[e]xamining the difference between capacity and production for 2006 for other foreign producers, we find that even if they produced at full capacity they would produce only an additional *** metric tons.").

[139] Consistent with her views in Certain Lined Paper School Supplies from China, India, and Indonesia, Inv. Nos. 701-TA-442-443, 731-TA-1095-1097 (Final), USITC Pub. 3884 (Sept. 2006), Commissioner Lane finds that non-subject imports were not a significant factor in the market during the period of investigation. Thus, she does not join the Commission's finding, here and in any subsequent references below, regarding the significance of non-subject imports nor does she find it necessary to address whether non-subject imports are price competitive.

[140] We note that it is improper to assume that simply because goods are generally interchangeable for purposes of the "reasonable overlap of competition" analysis for cumulation, or are interchangeable for purposes of defining the domestic like product, that they are necessarily "commodities" for purposes of assessing causation, which is the function of the Bratsk-"test." See Silicon Metal from Russia, USITC Pub. 3910 at 10-11 (footnotes omitted), citing BIC Corp. v. United States, 964 F. Supp. 391, 397, 399 (Ct. Int'l Trade 1997) ([L]ike product, cumulation and causation are functionally different inquiries because they serve different statutory purposes . . . . As a result, each inquiry requires a different level of fungibility. Hence the record may contain substantial evidence that two products are fungible enough to support a finding in one context (e.g., one like product), but not in another (e.g., cumulation or causation.")).

[141] Petitioners acknowledge that SHMP is a fungible chemical. Petitioners' Prehearing Brief at 33. Xingfa appears to view SHMP as ***. Xingfa's Prehearing Brief at 13.

[142] CR at II-14 and Table II-4; PR at II-9 and Table II-4.

[143] CR/PR at Table IV-2. Non-subject imports accounted for 21.8 percent of total imports in interim period 2006 and 14.6 percent in interim period 2007. Id.

and 80.7 percent in 2006.[144] The U.S. market share of non-subject imports increased from *** in 2004 to *** in 2006, while that of subject imports ranged from *** in 2004 to *** in 2006.[145] While both non-subject imports and subject imports increased in absolute volume and market share from 2004 to 2006, it is not clear that non-subject imports have been a significant factor in the market on either a volume or market share basis over the period of investigation.[146]

The information in the record on the pricing of non-subject imports also presents a mixed picture. The quarterly pricing data that were collected for non-subject imports show a mixture of overselling and underselling of the domestic like product by non-subject imports.[147] There were, however, wide variations in the pricing of non-subject imports, and the prices of imports from Mexico (which is the largest non-subject supplier) were *** those of subject imports in 2004 and 2005.[148] The average unit values of non-subject imports as a whole, and ***, were higher than those of subject imports throughout the period of investigation.[149] Therefore, we find that the record presents mixed evidence regarding whether non-subject imports were price-competitive and have been a significant factor in the U.S. market.

B. Replacement/Benefit Factors

While it is unclear that the second trigger of the Bratsk test is met, assuming, arguendo, that both Bratsk triggers are satisfied, we consider whether non-subject imports would have replaced subject imports over the period of investigation, without any benefit to the domestic industry.[150] We find that

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[144] CR/PR at Table IV-2. Subject imports accounted for 78.2 percent of total imports in interim period 2006 and 85.4 percent in interim period 2007. Id.

[145] CR/PR at Table IV-5. The U.S. market share of subject imports was *** for non-subject imports, respectively. Id. While the U.S. market share held by subject imports increased each year, the U.S. market share of non-subject imports fluctuated between years, accounting for *** in 2006. Id. The volume of non-subject imports followed a similar trend. CR/PR at Tables IV-4 and IV-5.

[146] See CR/PR at Tables IV-2, IV-4, and IV-5. The largest supplier of non-subject imports is Mexico, which accounted for *** of total U.S. imports in 2004, *** in 2005, and *** in 2006; its share of total U.S. imports was *** in interim 2007. CR/PR at Table IV-2. The U.S. market share held by imports of SHMP from Mexico was *** of apparent U.S. consumption in 2004, *** in 2005, and *** in 2006; its U.S. market share was *** in interim 2007. CR/PR at Table IV-5.

[147] CR/PR at Tables D-1- D-4.

[148] CR/PR at Tables D-1- D-4. In particular, prices for Mexican imports of product 1 (the product with relatively ***) *** prices for subject imports in 2004 and 2005. CR/PR at Table D-1.

[149] CR at IV-9; PR at IV-6; and CR/PR at Table IV-2.

[150] Chairman Pearson and Commissioner Okun note the exact formulation of the Bratsk Court's test is not clear. According to one part of the Bratsk opinion:

> {U}nder Gerald Metals, the Commission is required to make a specific causation determination and in that connection to directly address whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.

Bratsk, 444 F.3d at 1375. Stated this way, the test would require the Commission to analyze replacement/benefit during the period of investigation, i.e., backward looking. The Court also has stated a different formulation that would require the Commission to analyze replacement/benefit in the future, i.e., forward looking:

> {T}he Commission has to explain, in a meaningful way, why the non-subject imports would not replace the subject imports and continue to cause injury to the domestic industry.

(continued...)

although non-subject imports, particularly SHMP imports from Mexico, would have replaced subject imports to a limited extent, the domestic industry still would have benefitted from the elimination of subject imports from the U.S. market.[151]

Regarding replacement of subject imports, the record indicates that there are a limited number of SHMP manufacturers in the world, with the major SHMP producers located in China, Europe, Mexico, and the United States.[152] The Commission received questionnaire data from four non-subject foreign producers – one in France, two in Germany, and one in Mexico.[153]

The total reported production capacity for the largest non-subject supplier, Quimir, the sole producer in Mexico, is ***.[154] Quimir produces *** technical grades similar to product manufactured by U.S. firms.[155] The Mexican producer ships *** and increasing quantities to its home market, with *** of its export shipments to the U.S. market.[156] However, its capacity utilization was at or below *** for each reported year except for ***.[157] Nonetheless, total Mexican capacity to produce SHMP was equivalent to only *** of apparent U.S. consumption in 2006, while subject imports accounted for *** of apparent U.S. consumption for the same year.[158] Moreover, any additional non-subject imports from Mexico diverted from other export markets to the U.S. market or produced from excess capacity could have replaced only about *** of Chinese subject imports in 2006.[159]

With respect to European SHMP suppliers, the producer in France (Prayon) and German producers ship *** volumes of SHMP to the United States.[160] The evidence in the final phase of this investigation indicates that the European producers have *** capacity utilization levels, and that *** of

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[150] (...continued)
Bratsk, 444 F.3d at 1376. It therefore is unclear whether the Court intended to state the same test in different ways, or whether it contemplated that it was establishing two separate criteria. We conclude that Bratsk may require either a backward-looking or a forward-looking analysis depending on the facts (e.g., a forward-looking analysis would be appropriate in the threat context). Thus, for purposes of this determination, we join the Commission's backward-looking approach and note that we would reach the same conclusions were we to analyze the issue of whether non-subject imports are likely to replace subject imports and continue to cause injury to the domestic industry.

[151] Although Commissioner Lane finds that the second trigger of the Bratsk test is not met, she agrees that even if both trigger factors were present non-subject imports would not have replaced subject imports without any beneficial effect on the domestic industry.

[152] CR at VII-12; PR at VII-7.

[153] CR/PR at Tables VII-1, VII-7, E-1, and E-2.

[154] CR/PR at Table VII-7. While Quimir reported that it ***. CR at VII-14 and n. 32; PR at VII-8 and n. 32.

[155] CR at VII-14; PR at VII-8.

[156] CR/PR at Table VII-7. The share of total Mexican shipments to its home market was *** in 2004, *** in 2005, *** in 2006, and was *** in interim period 2006, and *** in interim period 2007; the home market share is projected to be *** in 2007 and *** in 2008. Id.

[157] CR at VII-14 and Table VII-7; PR at VII-8 and Table VII-7. ***.

[158] Calculated from CR/PR at Tables IV-5 and VII-7. As noted above, during the period of investigation, imports from Mexico accounted for a share of apparent U.S. consumption by quantity ranging from ***. CR/PR at Table IV-5.

[159] Calculated from CR/PR at Tables IV-2, IV-4, and VII-7. Accord Tropicana Products, Inc. v. United States, Slip Op. 08-17 at 8-11 (Ct. Int'l Trade, February 5, 2008).

[160] CR at VII-13 and Table IV-1; PR at VII-7 and Table IV-1. Although there is also known production of SHMP in the United Kingdom, there were *** identified U.S. imports of SHMP from the United Kingdom during the period of investigation. Tr. at 113-114.

German production and *** share of the French production is internally consumed or shipped to the home market.[161]

Thus, the evidence shows that the imports from the largest non-subject supplier, Mexico, are priced *** relative to subject imports and, in fact, appeared to replace subject imports in the U.S. market to some degree in 2005. The import pattern in 2005, along with statements by the Mexican producers in its questionnaire response, discussed above, tends to support finding that non-subject Mexican imports would replace some Chinese imports. However, due to the limited Mexican capacity to produce SHMP, equivalent to only about *** of apparent U.S. consumption, such replacement would be only partial.

Moreover, developments since the filing of the petition in this investigation on February 8, 2007 demonstrate that there would have been beneficial effects to the domestic industry if an antidumping order had been in place on subject imports. The industry's performance indicators improved somewhat when the interim 2006 and 2007 periods are compared, although the domestic industry remained in a ***. The domestic industry's market share increased noticeably in interim period 2007 (***) compared to interim period 2006 (***), while that of subject imports was lower in interim period 2007 (***) compared to interim period 2006 (***), and that of non-subject imports also was lower in interim period 2007 (***) compared to interim period 2006 (***).[162] This evidence shows that, while non-subject imports could have replaced subject imports (although they did not do so in interim period 2007), replacement of subject imports by non-subject imports would have occurred to a lesser extent than the replacement of subject imports by the domestic product. Accordingly, we conclude that the domestic industry would likely have benefitted from the elimination of subject imports from the U.S. market over the period of investigation, both from higher prices and higher market share, even if non-subject imports would have partially replaced subject imports. Our affirmative material injury determination therefore is consistent with the Court's holding in Bratsk.

V. CONCLUSION

For the reasons stated above, we find that the domestic industry producing SHMP is materially injured by reason of subject imports of SHMP from China that are sold in the United States at less than fair value.

[161] CR/PR at Tables E-1 and E-2. Petitioners indicated that the European market differs from the U.S. market in that ***. CR at VII-13, PR at VII-7; and Petitioners' Postconference Brief at 46. A purchaser also maintained that the exchange rate and the need for certain customers to meet their exact specifications also have limited shipping European SHMP to the United States. Tr. at 167.

[162] CR/PR at Table IV-5.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed by ICL Performance Products, LP ("ICL"), St. Louis, MO, and Innophos, Inc. ("Innophos"), Cranbury, NJ, on February 8, 2007, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value ("LTFV") imports of sodium hexametaphosphate ("SHMP")[1] from China. Information relating to the background of the investigation is provided below.

Effective date	Action
February 8, 2007	Petition filed with Commerce and the Commission; institution of Commission investigation (72 FR 7458, February 15, 2007)
March 6, 2007	Commerce's notice of initiation of the investigation (72 FR 9926)
April 3, 2007	Commission's preliminary determination (72 FR 17581, April 9, 2007)
July 11, 2007	Commerce's postponement of its preliminary determination (72 FR 37728)
September 14, 2007	Commerce's preliminary determination (72 FR 52544); scheduling of final phase of Commission investigation (72 FR 61677, October 31, 2007)[2]
January 24, 2008	Commission's hearing[3]
February 4, 2008	Commerce's final determination (73 FR 6479)[2]
February 26, 2008	Date of the Commission's vote
March 12, 2008	Commission's determination transmitted to Commerce

ORGANIZATION OF THE REPORT

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

[1] A complete description of the imported product subject to this investigation is presented in the *Subject Product* section of this part of the report.

[2] The *Federal Register* notices are presented in app. A.

[3] The list of witnesses appearing at the hearing is presented in app. B.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> *In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.*
> . . .
> *In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*
> . . .
> *In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to*
> *. . . (I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

Information on the subject merchandise, final margins of dumping, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV and V*, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury and the judicial requirements and information obtained for use in the Commission's consideration pursuant to *Bratsk* rulings.

SUMMARY DATA

A summary of data collected in this investigation for the SHMP market is presented in appendix C. The period of investigation for which data were collected is January 2004 through September 2007.[4]

[4] Petitioners state that it is appropriate for the Commission, in this case, to review data on the U.S. industry in 2003 due to the closure of two U.S. plants manufacturing SHMP in that year. Petitioners' prehearing brief, pp. 2 and 24-25. Petitioners present data for 2003 in their petition (*see* table 10, p. 46, for profit and loss data and table 12, p. 51, for employment); in their prehearing brief (*see* table 3, p. 23, for apparent consumption and market shares; table 4, p. 41, for sales data; and table 5, p. 43, for capacity, production, and capacity utilization). Additional information on the closed plants is presented in Part III of this report. Counsel for respondent Hubei Xingfa argues that including data for 2003 onward is not reasonable since the closure of one of the plants (Trenton, NJ) was by a predecessor firm
(continued...)

U.S. industry data are based on questionnaire responses of two firms that accounted for *** U.S. production of SHMP during the period examined. Data on U.S. imports of SHMP are based on official Commerce statistics, as adjusted in Part IV of this report.

PREVIOUS AND RELATED INVESTIGATIONS

The Commission has not previously conducted an import injury investigation concerning SHMP. SHMP is, however, manufactured from phosphoric acid (and soda ash). An antidumping duty and countervailing duty order with respect to industrial phosphoric acid from Israel and an antidumping duty order with respect to industrial phosphoric acid from Belgium were issued in August 1987. The orders were revoked effective January 1, 2000.

NATURE AND EXTENT OF SALES AT LTFV

Commerce calculated final LTFV margins of 92.02 percent for both Jiangyin Chengxing International Trading Co., Ltd. ("Chengxing") and Sichuan Mianzhu Norwest Phosphate Chemical Co., Ltd. ("Norwest"). It further calculated a PRC-wide LTFV margin of 188.05 percent for firms including Yibin Tianyuan Group Co., Ltd. ("Tianyuan"); Mianyang Aostar Phosphorus Chemical Industry Co., Ltd. ("Mianyang Aostar"); and Hubei Xingfa Chemicals Group Co., Ltd. ("Hubei Xingfa").[5] Commerce determined during its preliminary investigation that the PRC-wide entity, then not including Hubei Xingfa, was non-responsive and employed an adverse inference to assign a rate based upon facts available using the calculated margin for Hubei Xingfa, the highest rate calculated of any respondent in its investigation.[6] [7] Counsel for Hubei Xingfa indicated that the dumping margin calculated for the firm during Commerce's preliminary investigation resulted from Commerce's use of surrogate values from India in non-market economy investigations as a proxy for Chinese costs.[8]

Hubei Xingfa notified Commerce in a letter dated September 28, 2007 that it was no longer participating in Commerce's investigation and, accordingly, was not subject to Commerce's verification of its data. Commerce applied adverse facts available ("AFA") in its final determination for Hubei Xingfa but determined to base the rate on information supplied by Hubei Xingfa in the preliminary determination, with adjustments made for clerical errors, rather than on the lower petition rates. Commerce also used AFA for the margins for for Chengxing and Norwest but relied on information from the petition.[9]

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[4] (...continued)
to ICL (Astaris) prior to ICL's acquisition of Astaris. Hearing transcript, p. 161 (Neeley).

[5] *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China,* 73 FR 6479, February 4, 2008.

[6] *Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China,* 72 FR 52544, September 14, 2008.

[7] The dumping margins as alleged by petitioner and revised by Commerce ranged from 76.69 percent to 103.62 percent *ad valorem*. *Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China,* 72 FR 9926, March 6, 2007. The notice provides a description of Commerce's adjustments that resulted in the alleged margin.

[8] Respondent Hubei Xingfa's prehearing brief, p. 3.

[9] *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China,* 73 FR 6479, February 4, 2008.

THE SUBJECT PRODUCT

Definition of the Subject Product

Commerce has defined the imported merchandise subject to investigation as:[10]

> *Sodium hexametaphosphate (SHMP), a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating $NaPO_3$ units. SHMP has a P_2O_5 content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution . . . The American Chemical Society, Chemical Abstract Service ("CAS") has assigned the name "Polyphosphoric Acid, Sodium Salt" to SHMP. The CAS registry number is 68915-31-1. However, SHMP is also commonly identified by CAS No. 10124-56-8 in the market. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.*
>
> *The product covered by this investigation includes SHMP in all grades, whether food grade or technical grade. The product covered includes SHMP without regard to chain length, i.e., whether regular or long chain. The product covered also includes SHMP without regard to physical form, whether glass, sheet, crushed, granule, powder, fines or other form, and whether or not in solution. However, the product covered by this investigation does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.*

As indicated above, SHMP imported in a blend with materials where SHMP accounts for less than 50 percent by volume of the finished product is excluded from the scope of the investigation. Petitioners stated during the preliminary phase of the investigation that this scope language, also contained in Commerce's initiation notice, was "intended" to refer to SHMP blends "as they are typically known and defined in the market."[11] Blends of SHMP and other phosphates (commonly sodium tripolyphosphate, sodium acid pyrophosphate, and tetrasodium pyrophosphate) are used in meat, seafood, and poultry processing to improve the color, yield, texture, and flavor. Both ICL and Innophos offer phosphate

[10] Ibid.

[11] Petitioners' postconference brief, p. 9. (Only petitioners submitted a postconference brief during the preliminary phase of the investigation; all further references in this report to the "postconference brief" are to that document). According to petitioners, the one exception is a SHMP blend called BAC-N-FOS that is used in meat processing. BAC-N-FOS is a mixture of SHMP and sodium bicarbonate. It is produced by Innophos but accounts for *** percent of Innophos' sales. Postconference brief, p. 9, note 7.

blends where SHMP accounts for 10 to 20 percent of the volume of the blend. Petitioners are not aware, however, of any imports of similar blends from China.[12]

Petitioners subsequently requested that Commerce amend the scope language to exclude only blends of SHMP and other sodium phosphates where SHMP accounts for less than 50 percent of the total volume. The scope as written excludes all products that contain less than 50 percent by volume of SHMP. Petitioners argued that the scope language in Commerce's notice of initiation and preliminary determination covering blends referred to "known" blends where the function of the product was different from that for SHMP. Petitioners further argued that new SHMP blends with an inert or inactive material could be developed in order to circumvent any antidumping duty order.[13] Commerce denied the request as untimely since the amendment would serve to expand the scope of its proceeding after the date of its preliminary determination. Commerce also noted its disagreement with petitioners' assertion that their original intent was to exclude only blends of SHMP and other sodium phosphates where SHMP accounted for less than 50 percent. It further stated that petitioners' proposed amendment is a change to the chemical composition of the types of products originally requested to be excluded, with an uncertain impact on its analysis of industry support at the initiation stage.[14]

Petitioners also argued before Commerce that SHMP sold in liquid form, whether water or another solvent is added to SHMP to form a solution, should not be considered a "blend" of sodium phosphates and thus should not be subject to the 50-percent exclusion test. Commerce agreed with petitioners that the scope language provided for SHMP in liquid solution and found it appropriate to add language that the subject merchandise includes SHMP "whether or not in solution" as a clarification to the scope in the final determination.[15]

U.S. Tariff Treatment

SHMP is imported under the Harmonized Tariff Schedule of the United States ("HTS") subheading 2835.39.50, and is dutiable at 3.7 percent under the Column 1-General duty rate, which applies to imports from China. SHMP may also be imported as a blend or mixture under HTS subheading 3824.90.39.[16]

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[12] Conference transcript (March 1, 2007), pp. 24-25 (Treinen) and postconference brief, p. 10. Petitioners state that the physical characteristics, performance, and uses of the blends are not the same as those for SHMP. The blends that are mixed by the petitioners are prepared on equipment other than that used to make SHMP. Blends are primarily produced by the end users of SHMP, who are the customers of ICL and Innophos. Postconference brief, p. 10.

[13] *Issues and Decision Memorandum for the Final Determination of Sales at Less than Fair Value: Sodium Hexametaphosphate from the People's Republic of China*, A-570-908, January 28, 2008, pp. 1-2.

[14] Ibid., pp. 3-5.

[15] Ibid., pp. 2 and 5.

[16] While the HTS subheadings are provided for convenience and clarity, the written description of the scope of this investigation is dispositive.

THE DOMESTIC LIKE PRODUCT

The Commission's determination regarding the appropriate domestic product that is "like" the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. Petitioners contend that the domestic like product is coextensive with the scope of the subject merchandise as defined by Commerce, which consists of SHMP.[17] No alternate domestic like product was proposed during the preliminary phase of the investigation, as no respondent entered a notice of appearance in that phase.[18] In its preliminary views, the Commission found that there is a single domestic like product consisting of all forms of SHMP, coextensive with the scope of the investigation.[19] Respondent Hubei Xingfa, the leading Chinese producer and exporter of the subject merchandise, indicates that it agrees with the definition of like product found in the Commission's preliminary determination.[20]

Table I-1 presents information provided by the petitioners with respect to the domestic like product factors. Additional information on the description and uses and the production process for SHMP follows. The comparability of domestically produced SHMP and that imported from China are also addressed in this section of the report.

Table I-1
SHMP: Domestic like product factors

Physical Characteristics and Uses
SHMP is a glassy phosphate that can easily be dissolved in water. No other phosphates share this characteristic. The product has a unique chemical formula and its own C.A.S. number (68915-31-1). SHMP is reported to be purchased within each of its end-use markets for its unique properties. For example, in water treatment, only SHMP simultaneously functions as a corrosion inhibitor, scale inhibitor and water softener. Other phosphates are not as soluble as SHMP and would not cause clay particles to disperse as uniformly and dissolve in water in clay mining.
Common Manufacturing Facilities and Production Employees
SHMP is manufactured in dedicated plants on production equipment that is not used to produce other products. The lack of interchangeability in equipment also applies to SHMP blends. Both of the domestic producers manufacture blends. However, the actual blending does not occur on the equipment that is used in the manufacture of SHMP.
Interchangeability and Customer and Producer Perceptions
Petitioners state that end users do not substitute SHMP for other phosphates or replace other phosphates with SHMP.
Channels of Distribution
The end users of SHMP may also purchase other sodium phosphates or phosphoric acids. However, petitioners emphasize in their postconference brief that each phosphate has a specific application.
Price
See exhibit 1 of the postconference brief (p. 61) for ***.
Source: Postconference brief, pp. 5-11 and exh. 1, and petitioners' prehearing brief, pp. 5-8.

[17] Petition, p. 35, and petitioners' prehearing brief, p. 8.

[18] The Chinese manufacturer Hubei Xingfa entered an appearance on October 24, 2007.

[19] *Sodium Hexametaphosphate From China, Investigation No. 731-TA-1110 (Preliminary),* USITC Publication 3912, April 2007, p. 7.

[20] Respondent's prehearing brief, pp. 1-2.

Description and Uses

Product Characteristics of SHMP

Sodium hexametaphosphate (or SHMP)[21] is a translucent, solid material that is used in water treatment, food and beverage production, and clay processing, among other applications. SHMP consists of chains of repeating phosphate units, which have negative charges, and positively charged sodium ions. The chemical formula for SHMP can be written as $Na_{n+2}P_nO_{3n+1}$, where different values of *n* represent phosphate chains of different lengths. For example, $n = 10$ is a polyphosphate consisting of 12 sodium (Na) atoms, 10 phosphorus (P) atoms, and 31 oxygen (O) atoms. Commercial SHMP comprises various lengths of polyphosphate chains with values of *n* ranging from 5 to 20 or higher.[22]

Samples of SHMP are typically differentiated by four characteristics: grade, chain length designation, P_2O_5 content, and particle size.[23] The grade can be either food grade or technical grade. Food grade SHMP must meet the requirements of the Food Chemicals Codex ("FCC"). The FCC specifies maximum amounts of possibly toxic contaminants such as arsenic, lead, fluoride, and insoluble materials.[24] The FCC also requires a narrower pH range for food grade SHMP.[25] Production of food grade materials must further meet the standards of the Good Manufacturing Practices ("GMP") of the U.S. Food and Drug Administration; the GMP standards are designed to reduce the risk of contaminants getting into the product.[26] These requirements do not apply to technical grade SHMP.[27]

SHMP is often designated as either "regular chain" or "long chain." These designations refer to the average length of the polyphosphate chains in the sample. Depending on the application, a purchaser may prefer one length designation to the other.[28] The P_2O_5 characteristic for SHMP is closely related to the chain length designation.[29] Higher P_2O_5 content corresponds to a longer average polyphosphate chain length. Therefore, product designated as long chain SHMP will have a higher percentage of P_2O_5 content than regular chain SHMP. The P_2O_5 content of SHMP can vary from 60 percent to approximately 71

[21] Although commonly used in the industry, the name sodium hexametaphosphate is somewhat a misnomer. The name should technically only refer to a six-phosphate polymer chain that forms a ring, but in common usage it refers to a mixture of linear polyphosphates of varying length. *See* David R. Gard, "Phosphoric Acids and Phosphates," Kirk-Othmer Encyclopedia of Chemical Technology, John Wiley & Sons, Inc., 2005.

[22] Petition, p. 9.

[23] Petition, p. 8. At least 60 percent of powdered SHMP will pass through 100 mesh while no more than 20 percent of crushed product will pass through 80 mesh. Petitioners' prehearing brief, p. 10.

[24] Petition, p. 8.

[25] Petition, p. 8. *** indicated that the FCC is a U.S. standard for food and chemical quality and not a certification. U.S. customers also require a UL/NSF60 Certificate insuring water treatment quality, which is issued by Underwriters Laboratories, and, also, that food grade SHMP be certified to KOSHER standards verified by the Orthodox Union. ***.

[26] Conference transcript, p. 9 (Moffatt).

[27] U.S. customers for technical grade SHMP also require a UL/NSF60 certificate. ***.

[28] Conference transcript, p. 115 (Stachiw). Additional information on customer preferences is provided in the section of this report entitled "Data on Product Types" and in Part II.

[29] P_2O_5 content is usually specified as a percentage of the total weight of the sample that is attributable to groups of two phosphorus atoms and five oxygen atoms.

percent.[30] P_2O_5 content is also related to the pH of SHMP, with lower P_2O_5 content corresponding to higher pH.[31]

Finally, SHMP is produced in different particle sizes: glass, granular, and powder.[32] Glass typically has particles that are one-half of an inch in length and width and one-eighth of an inch in thickness.[33] Granular SHMP typically has particles with diameters that are between 149 and 841 microns.[34] Most of the particles of SHMP powder will be less than 149 microns in diameter.[35] SHMP can also be sold in an aqueous solution.[36]

End uses of SHMP

Estimated U.S. consumption of SHMP by application for 2004 is presented in table I-2. Table I-3 presents information on the types of SHMP used for various applications. As shown, one of the major uses is for water treatment. When added to a municipal or industrial water system, SHMP helps to reduce scale formation, corrosion, lead/copper leaching, and biofilm formation in pipes and other equipment.[37] SHMP added to potable water sequesters certain metal oxides, thereby eliminating objectionable colors from the water.[38] Water treatment applications typically require technical grade (regular chain) SHMP.

Technical grade (regular chain) SHMP is also used in industrial applications, including clay processing, drilling fluids, and cleaning products. In clay processing and drilling fluids, SHMP sequesters metal ions in clay slurries and drilling fluids that would otherwise cause clay particles to stick together and form clumps.[39] By eliminating these clumps, SHMP improves the flow properties of the clay slurries and drilling fluid and eases the handling of these fluids. SHMP is added to some industrial cleaners such as the ones used to clean the exteriors of transportation vehicles, particularly trucks and buses.[40]

[30] Petition, p. 9.

[31] Petition, p. 8.

[32] Petition, p. 9.

[33] Petition, exh. AD-2, p. 1.

[34] Petition, exh. AD-2, p. 1.

[35] Petition, exh. AD-2, p. 1.

[36] Petition, p. 9.

[37] Petition, pp. 11-2.

[38] Petition, p. 12.

[39] E.g., conference transcript, pp. 7-8 (Moffatt).

[40] Petition, exh. INJ-1, p. 51.

Table I-2
SHMP: U.S. consumption, by application, 2004

Application	Quantity (*1,000 short tons*)	Share (*in percent*)
Water treatment	16.5	40.7
Industrial and institutional cleaners	6.8	16.8
Meat, seafood, and poultry	6.2	15.3
Dentifrices	0.5	1.2
Other industrial applications[1]	9.1	22.5
Other consumer products	1.4	3.5
Total	40.5	100.0

[1] Other industrial applications include clay processing, copper ore processing, drilling muds, and paper production.

Source: Postconference brief, p. 7.

Table I-3
SHMP: Applications by product type

Market	Regular chain	Long chain
Food grade		
Meat/poultry/seafood	Moderate use	Some use
Beverage	Some use	Moderate use
Dairy	Primary chain length used	-
Dental	Some use	Moderate use
Technical grade		
Water treatment	Primary chain length used	-
Paper (clay dispersion)	Primary chain length used	Some use
Cleaning	Primary chain length used	-
Pet food	Primary chain length used	-

Source: Postconference brief, p. 7.

In personal care products, SHMP is used in bath salts and dentifrices (e.g., toothpastes), in addition to other applications. In bath salts, SHMP helps to soften the water and adjust pH. The use of

SHMP in bath salts is the source of one of its common names, Calgon.[41] In dental care products, SHMP removes calcium from stains on teeth, which allows the protein and carbohydrate components of stains to be removed more easily.[42] Personal care products use both technical and food grade, regular and long chain SHMP.

SHMP is also used in a variety of beverage products. In fruit juices, juice-based drinks, sport drinks, ready-to-drink teas, and carbonated beverages, SHMP helps to enhance flavors, extend shelf life, and improve clarity and carbonation.[43] In dairy-based beverages, SHMP protects proteins and disperses solids. SHMP is also used to provide protein stabilization and flavor enhancement in dairy-based foams and processed cheese.[44] Food grade SHMP are used in these applications. Some beverage producers prefer to use long chain SHMP because it increases the shelf life of their product compared to regular chain.[45]

Food grade (regular and long chain) SHMP is also used in the processing of meats, seafood, and poultry. Here, SHMP is used with other sodium phosphates to retain moisture, enhance flavor, and increase shelf life.[46] This type of SHMP is further used in canned pet foods for protein stabilization and moisture retention and in dry pet foods to reduce tartar buildup on pets' teeth.[47]

Product Shipment

SHMP is a non-combustible material with no significant environmental effects. The product has low oral toxicity and may cause minor irritation to skin, eyes, and the respiratory tract.[48] SHMP is typically packaged in 50- or 100-pound bags or in "supersacks" that can hold up to 2,400 pounds of product.[49] The bags are often lined with plastic to reduce the amount of moisture absorbed by the SHMP.[50] SHMP has a shelf life of about 18 months because it loses effectiveness as it absorbs moisture from the air.[51] Expired SHMP can be recycled to produce a fresh (technical grade) product.[52] Each package of SHMP is accompanied by a certificate of analysis that lists the properties such as P_2O_5 content, average chain length, particle size, maximum levels of impurities, etc.[53]

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[41] Conference transcript, p. 42 (Stachiw).

[42] Petition, p. 12.

[43] Petition, p. 13.

[44] Petition, p. 13.

[45] Hearing transcript, p. 18 (Kemp) and p. 22 (Stachiw).

[46] Petition, p. 13.

[47] Petition, p. 13.

[48] Petition, exh. AD-1.

[49] ***.

[50] Conference transcript, p. 53 (Kemp).

[51] Conference transcript, p. 114 (Stachiw).

[52] Conference transcript, p. 114 (Stachiw).

[53] Conference transcript, pp. 118-119 (Treinen).

Production Process

The production of SHMP is an energy-intensive process that typically uses phosphoric acid and soda ash, or caustic soda, as raw materials.[54] The raw materials are mixed to form a slurry of monosodium orthophosphate, which is then fed into a furnace.[55] Natural gas is used to heat the furnace to a temperature between 800 and 1,100 degrees Celsius.[56] [57] In the furnace, water is boiled off and the monosodium orthophosphate reacts to form molten SHMP, which is removed from the furnace and quickly solidifies into a glassy sheet as it cools. The sheet of solid SHMP is broken into large chunks, which are further milled to produce the granular and powdered products.[58] When SHMP is milled, the ratio of granular material to powdered material may be fixed by the milling equipment and may not be adjustable.[59] Granular SHMP can be further milled into powder. However, domestic producers indicate that this process requires additional equipment and handling, which leads to higher costs of production than if produced as part of balanced production.[60]

Both regular chain and long chain SHMP are produced on the same equipment. To produce the long chain product, the ratio of soda ash to phosphoric acid that is fed to the furnace is adjusted and the length of time that molten SHMP remains in the furnace is increased by about five percent.[61] Given the longer time that the long chain SHMP must remain in the furnace, the energy cost per unit of production is higher for the long chain product and, therefore, it sells for a higher price.[62] Innophos indicated that it typically produces regular chain SHMP for 20 to 25 days and switches to long chain SHMP production for 5 days.[63] This production cycle results in an annual output of about 80 percent regular chain and 20 percent long chain product.[64]

Both technical-grade and food-grade SHMP can be made on the same equipment. Innophos uses the same furnace for production of both grades.[65] ICL has two furnaces, either of which can be used to produce food-grade or technical-grade SHMP.[66]

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[54] Conference transcript, p. 8 (Moffatt).

[55] Conference transcript, pp. 8-9 (Moffatt).

[56] Conference transcript, p. 9 (Moffatt).

[57] In all U.S. production of SHMP, natural gas is used to heat the furnace. Conference testimony indicated that a furnace in Canada, which is no longer producing SHMP, used fuel oil. Conference attendees did not know what fuel is used for SHMP production in China. *See* conference transcript, p. 116 (Moffatt and Treinen).

[58] Conference transcript, p. 9 (Moffatt).

[59] Conference transcript, p. 20 (Treinen).

[60] Conference transcript, p. 62 (Treinen) and p. 69 (Kemp).

[61] Hearing transcript, p. 17 (Kemp).

[62] Hearing transcript, p. 18 (Kemp). Innophos reports its long chain SHMP costs approximately *** per metric ton more than its regular chain SHMP. For ICL, the cost difference is *** per metric ton. Petitioners' posthearing brief, exh. 2, p. 2.

[63] Conference transcript, p. 68 (Treinen). ***.

[64] Conference transcript, pp. 67-68 (Treinen).

[65] Conference transcript, p. 64 (Kemp).

[66] Hearing transcript, p. 26 (Stachiw). Previously, ICL used recycled phosphoric acid in one of its furnaces and only sold the product of that furnace as technical grade. ICL no longer uses recycled phosphoric acid, so both grades can be made in either furnace.

DATA ON PRODUCT TYPES

Tables I-4 and I-5 provide data on U.S. shipments of both domestic product and of U.S. imports of SHMP from China for the following categories of SHMP: food grade (with separate breakouts for average chain lengths 9-16 and 17-26) and technical grade (with separate breakouts for average chain lengths 9-16 and 17-26).[67] As shown in the tables, technical grade (average chain length 9-16) comprised *** category[68] for domestically produced SHMP while *** subject merchandise fell into the technical grade (average chain length 17-26) category during the period examined. This, at least on the surface, differs with data gathered during the preliminary phase of the investigation, where technical grade, regular chain comprised *** category for both domestically produced SHMP and subject imported merchandise.[69]

Table I-4
SHMP: U.S. shipments of domestically produced product, by grade and by average chain length, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Table I-5
SHMP: U.S. shipments of U.S. imports from China, by grade and by average chain length, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

The data on product categories gathered during the preliminary and final phases of the investigation are not, however, directly comparable because of varying methods of collecting data. U.S. imports by *** accounted for almost *** of U.S. imports from China in 2006; ***.[70] ***.[71] ***.[72]

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[67] In the questionnaire used during the preliminary phase, the Commission did not specify chain lengths (or P_2O_5 ranges) but instead requested data for "regular" and "long" chain SHMP and asked that each respondent provide the range of the chain lengths used by their firm to classify SHMP into those categories. As discussed on pp. I-15-I-16 of the confidential staff report in the preliminary phase (INV-EE-029, March 19, 2007), the various responding firms did not always employ the same ranges in classifying product into regular or long chain. According to ***, firms do not sell to specific chain lengths but within an average range of chain lengths. ***.

[68] The word "category" should be understood to be used imprecisely here for there do not appear to be precisely defined categories of chain length ranges.

[69] *See* pp. I-12-I-16 in the confidential staff report in the preliminary phase (INV-EE-029, March 19, 2007).

[70] *** importer questionnaire response, question II-6a.

[71] ***. *** reported a *** volume of "technical grade, long chain" shipments in ***; it indicated that the chain length of that product was ***. Ibid.

[72] ***'s importer questionnaire response, question II-6a. It should also be noted that data for U.S. imports of subject merchandise by product category are also not completely comparable between the preliminary and final phases of the investigation due to varying firm coverage. The four largest U.S. importers of SHMP from China, in 2006, in order of magnitude are: ***. The 2004-06 data for the preliminary phase did not include data for *** (which did not respond to the questionnaire); the annual data for the final phase does include data for *** but does not include data for *** (which responded to the final questionnaire but did not provide the corrections or clarifications to its interim data requested by staff). Further, all of ***'s product is food grade.

*** indicate that SHMP is commonly sold as either regular or long chain. Most customers specify one or the other, but some will purchase SHMP from either chain range.[73] *** stated in its questionnaire response during the preliminary phase that chain length is a critical factor, in that the substitution of alternative lengths requires that end users adjust the formulas used to produce the end products. *** further described Chinese-manufactured SHMP as "typically" 17 to 19 chain length compared to "available" U.S. product of 10 to 12 chain length.[74] The following tabulation provides chain length (and the P_2O_5) ranges used by ICL and Innophos in their questionnaire responses during the preliminary phase to classify their data on SHMP into regular and long chain lengths:[75]

* * * * * * *

As shown, shipments of SHMP in the 17 to 19 chain length range were reported as ***. The absolute volume of U.S. shipments of imported technical grade (chain length 17-26) SHMP from China *** the volume of domestically produced SHMP shipped within that average chain length range (tables I-4 and I-5). Petitioners stated during the preliminary phase that ***.[76] *See* the section of this report entitled "Substitutability Issues" in Part II for additional information on the comparability of various chain lengths.

Both domestic sources and U.S. importers from China shipped food-grade SHMP in various chain lengths to U.S. customers (tables I-4 and I-5). About *** to *** percent of domestically produced SHMP during 2004-06 consisted of food-grade product while about *** percent of U.S. imports of Chinese-produced SHMP were classified as food grade. The domestic share of food grade remained about the same in January-September 2007 at *** percent of U.S. producers' U.S. shipments while the share of subject merchandise accounted for by food grade rose to *** percent of U.S. importers' U.S. shipments.[77]

[73] ***.

[74] *** importer questionnaire response (preliminary). SHMP of different chain lengths are manufactured using the same process at ***. The firm indicated that long chain products require more phosphoric acid and higher temperatures than lower chain SHMP. ***. Similarly, *** indicate that the basic process for producing different chain lengths is the same. ***.

[75] ***. *Compare* table I-4 of this staff report to table I-4 of the confidential staff report in the preliminary phase (INV-EE-029, March 19, 2007).

[76] Postconference brief, p. 22, citing petition exh. INJ-9 and exh. INJ-10.

[77] ***. ***; also, data are available for U.S. shipments of imports from China for almost all U.S. importers for the annual periods but not for the interim periods. *See* Part IV of this report for additional information on questionnaire coverage.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

CHANNELS OF DISTRIBUTION

SHMP is sold by ICL and Innophos to end users as well as to distributors. Both producers and three of 11 responding importers (***) sell SHMP on a nationwide basis. At least *** percent of each of the domestic producers' SHMP is sold to customers located greater than 100 miles but less than 1,000 miles from the distribution center. The geographic market area served by the other eight importers displays a more regional focus. Of the eight importers, 6 serve the Midwest, 5 serve the Southeast, 3 serve the West Coast, 2 each serve the Southwest and Mid-Atlantic, and 1 serves the Rocky Mountain region. Importers shipped 38.3 percent of their SHMP to customers within 100 miles of their storage facility, 45.4 percent to customers located greater than 100 miles but less than 1,000 miles away, and 16.5 percent to customers greater than 1,000 miles away from their storage facilities. Most importers are distributors themselves. Between *** and *** percent of imports of SHMP from China are sold to end users, compared with between *** and *** percent of domestically produced SHMP. Only in very select instances is imported SHMP resold to customers by ***. A representative of ICL noted that ICL imported a small amount of SHMP from Germany during the period of study.[1]

Lead Times

The average lead time for domestic producers and importers of SHMP is usually ***. Innophos sells ***. ICL sells ***. Seven of 10 responding importers deliver their SHMP orders in 5 days or less for sales out of inventory. These sales account for 66.3 percent of deliveries, based on a simple average.[2] The remaining sales are produced to order, and five of six importers deliver SHMP in 6 to 12 weeks from the order.[3]

Internet Sales

No producer or importer replied that they sell SHMP via the internet. One of 25 purchasers bought *** percent of its SHMP via the internet in 2006.

MARKET SEGMENTS

There are two grades of SHMP in the marketplace: technical grade and food grade. Food grade SHMP must meet stricter standards for quality and purity than technical grade SHMP, by requiring production adhering to Good Manufacturing Practices (GMP).[4] Innophos generally produces food grade SHMP, but occasionally switches to technical grade SHMP.[5] ***.[6] ICL has two furnaces, both of which

[1] Conference transcript, pp. 83-84 (Moffatt).

[2] Importer *** sells 95 percent of its SHMP ***. The other five importers' sales *** were between 10 and 40 percent of their sales of SHMP.

[3] Importer *** replied that its lead times for orders that are produced-to-order are between 10 and 15 days.

[4] Petitioners' postconference brief, p. 9.

[5] Conference transcript, p. 58 (Kemp).

[6] ***.

can produce either technical grade or food grade SHMP.[7] Food grade SHMP costs a little more to make because of increased costs associated with extra lab analysis, storage of samples, and other administrative costs.[8]

In addition, due to SHMP's chemical makeup, there are different types of SHMP that can be sold in either technical grade or food grade. SHMP is made up of a chain of phosphates, and this chain can be of varying lengths. In the market, there are two typical types of SHMP sold: regular chain and long chain. Regular chain SHMP consists of approximately 10 links per molecule, whereas long chain consists of about 20 links per molecule.[9] Different customers may require different chain-length SHMP, which is based on the end use and specific chemical formula. Some customers may require their SHMP ***.[10] Long chain SHMP typically sells for a somewhat higher price than regular chain SHMP due to higher costs of production. Long chain SHMP is typically used in beverage, dental, and some meat and clay mining applications, whereas regular chain SHMP is typically used in more industrial applications, as well as some meat, beverage, and dental applications, though there is not a clear line defining each type's uses.[11]

Purchasers were asked about the importance of chain length in their requirements for SHMP. For some purchasers, chain length is of critical importance. For others, it does not matter at all. Table II-1 details the purchasers' responses with respect to chain length.

Table II-1
SHMP: Purchaser responses regarding the importance of chain length in purchase decisions

Purchaser	Purchaser type or use	Chain length importance
***	***	"Unsure."
***	***	"Chain length has little to no impact in our application."
***	***	"Chain length determines performance of the end produce manufactured. A chain length too high or low will adversely effect (sic) performance of the product *** produces."
***	***	"Somewhat, it depends on the end application. For 25% of our requirements, it is very important and the 2 chain lengths are NOT interchangeable."
***	***	"Very."
***	***	"It is important to some customers. I don't know specifics."
***	***	"Chain length is not a significant characteristic of product efficacy."

Table continued on following page.

[7] One furnace had been dedicated more toward technical grade SHMP, and one that is dedicated more toward food grade SHMP. Hearing transcript, p. 26 (Stachiw).

[8] Ibid., p. 59 (Moffatt).

[9] ***.

[10] Ibid.

[11] Conference transcript, p. 115 (Stachiw). *See also* table I-3.

Table II-1--*Continued*
SHMP: Purchaser responses regarding the importance of chain length in purchase decisions

Purchaser	Purchaser type or use	Chain length importance
***	***	"It is our experience that there is little actual difference."
***	***	"For our application, short chain length has proven to work satisfactorily."
***	***	"Not important."
***	***	"Not important in our application."
***	***	"Very important especially for use in kaolin."
***	***	"Unknown."
***	***	"For one of our plants, chain length is extremely important. The 17-19 chain length for our use is not comparable to 10-12 and they can not be used interchangeably."
***	***	"Not important in our application."
***	***	No answer.
***	***	"Don't know."
***	***	No answer.
***	***	"Depends on application and end user's knowledge base."
***	***	"Extremely critical. The chain length required for SHMP is specific to our product use and cannot be changed."
***	***	"We have customers who only take 10-12 and 17-19. We consider this 2 different products."
***	***	"Not critical in tech grade or industrial grade applications."
***	***	"Not knowledgeable of difference interchangeable in distribution sales."
***	***	"Not interchangeable, only one length approved for use."
***	***	"Chain length is extremely important. *** requires average chain length of 18 – 30 for SHMP. Smaller chain lengths cannot be used due to stability in the final products."
Source: Compiled from responses to the Commission's purchaser questionnaires.		

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

There were two producers of SHMP in the United States during the period examined. Both responded to the Commission's questionnaire.

U.S. producers' reported capacity to produce SHMP remained the same from 2004 to 2006. The industry's capacity utilization rate fluctuated, increasing from *** percent in 2004 to *** percent in 2005 before declining to *** percent in 2006. Capacity utilization was higher in the first three quarters of 2007 compared with the first three quarters of 2006: *** percent, compared to *** percent. About

*** percent less long chain SHMP can be produced than regular chain SHMP per day.[12] [13] Innophos has begun a capacity increase of 15 percent.[14]

U.S. producers' export shipments have been increasing compared to shipments to the U.S. market. On a quantity basis, the share of producers' export shipments relative to their total shipments increased to *** percent in 2006 from *** percent in 2004. The share of export shipments was lower in the first three quarters of 2007 compared with the first three quarters of 2006, *** percent compared to *** percent. The decline was mainly due to increased domestic shipments, however, as the quantity of export shipments was *** percent higher in absolute terms.

End-of-period inventories for U.S. producers of SHMP, as a ratio to total shipments, increased between 2004 and 2006 from *** percent to *** percent, and from *** percent to *** percent at the end of the first three quarters of 2006 compared with the end of the first three quarters of 2007. Both petitioners have noted that, because of the production process which produces multiple types of SHMP in each production run, inventory imbalances in one particular type of SHMP (powder, for example) can and have occurred.[15] With excess inventory buildup in a particular type of SHMP, firms will have to find a buyer that can use that particular particle size. In the case of an overstock of powder, a less demanding user might be sought (e.g., purchasers in the water treatment segment). This occurred in 2007 for Innophos, which had to lower its price to balance its sales mix.[16]

U.S. Demand

SHMP is an input into the production of many industrial and consumer products. Technical grade SHMP is used in water treatment, personal care products (e.g., Calgon®), pet food, and other industrial uses (e.g., kaolin, or clay, mining).[17] Food grade SHMP is used in manufactured beverages, fruit drinks, dairy, meat, and dental applications (toothpaste, mouth rinses, and whiteners).[18] [19] As such, the demand for SHMP is a derived demand. According to a representative from Innophos, demand is projected to increase at about the rate of population or GDP growth, in the range of 1 to 2 percent per year.[20] Also, there are some segments that are seeing faster growth, such as the beverage segment, though this segment is relatively small.[21]

In all, five responding importers noted increasing demand for SHMP since 2004, five noted unchanged demand, and one reported decreasing demand. Most of these responses were specific to an

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[12] This may help account for ***.

[13] Hearing transcript, p. 77 (Treinen).

[14] Ibid., p. 86 (Treinen). The improvements are planned to be brought online early in the second quarter of 2008.

[15] Conference transcript, pp. 60-63 (Treinen), p. 70 (Moffatt). Hearing transcript, p. 25 (Stachiw).

[16] Hearing transcript, p. 36 (Treinen).

[17] Petition, pp. 11-12.

[18] Petition, p. 13.

[19] According to SRI Consulting, water treatment makes up 40.7 percent of consumption of SHMP; other industrial applications including clay mining, copper ore processing, drilling fluids, elastomers, and paper make up 22.5 percent; industrial institutional cleaners 16.8 percent; meat/seafood/poultry 15.3 percent; other consumer products 3.5 percent; and dentifrices 1.2 percent. Long chain SHMP is most used in beverage and dental applications. Petitioners' postconference brief, p. 7.

[20] Conference transcript, p. 96 (Treinen). Petitioners also submitted a demand growth estimate for 2004-09 from SRI Consulting of 1.7 percent per year with most of the growth occurring in the water treatment (2.7 percent) and meat/seafood/poultry (3.9 percent) segments. Petitioners' postconference brief, pp. 26-27.

[21] Ibid., p. 94 (Moffatt).

end-use market for SHMP, however. Increases were noted in kaolin mining, cheese/dairy, candy, food, soaps/detergents, and water treatment. Two importers noted that during 2005, Chinese manufacturers had delays in shipping and supply was very tight in the U.S. market.[22]

Eleven of 17 purchasers reported increased demand for their final products since 2004, four reported no change, and two reported a decrease. Eight of the 11 reporting final-product demand increases noted that their demand for SHMP increased as well. One purchaser, ***, reported that its demand increased primarily due to ***. However, it reported that ***.[23]

When asked about changes in product range or marketing changes since 2004, one importer noted that during the period under examination, long chain SHMP was discovered to have increased performance in dairy/cheese applications.[24]

Apparent U.S. consumption of SHMP increased *** over the period of study, from *** metric tons in 2004 to *** metric tons in 2006. Apparent U.S. consumption between the interim periods also increased, from *** metric tons in the first three quarters of 2006 to *** metric tons in the first three quarters of 2007.

Cost Share

SHMP is a chemical that is typically part of a larger process or product. Both producers and two importers gave estimates as to the cost share of end-use goods attributable to SHMP. *** reported that SHMP accounts for 10 percent of the cost of industrial cleaners, less than 2 percent of the cost of chemicals, and less than 1 percent of the cost for kaolin mining and other chemical uses. *** estimates are in line with these: less than 1 percent for food, beverage, detergent, potable water, paper (clay), and paints and coatings, and 3 percent in dental applications. *** estimated the cost share to be higher over all applications: food, beverage, and clay fields less than 5 percent, water treatment 5 percent, and other industrial uses 5 to 10 percent. Purchasers were more specific with their estimations and descriptions of the uses of SHMP. Their estimates vary considerably, and somewhat depend on the industry in which it is used. The reported use and cost shares ranged from 0.0001 percent for titanium dioxide pigment to 5 to 38.6 percent for water treatments to 96 percent for whey processing aids. The largest concentration of cost share was in the less-than-one-percent to six-percent range.

Qualification/Certification

Both domestic producers of SHMP reported that *** of their sales require some sort of certification or qualification. Of the 11 responding importers, nine required qualification or certification for at least some portion of their sales of SHMP.[25] Twenty of 25 responding purchasers require qualification for all of the SHMP that they purchase, two require it for some (20 and 80 percent), and three do not require any kind of qualification. The kaolin market does not typically require the producers

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[22] The one importer which noted a decrease in demand, ***, described that demand for its SHMP increased at that point but has been dropping since, ***.

[23] ***.

[24] In the preliminary phase of this investigation, another importer, ***, reported that in 2004, Innophos developed the first direct substitute for polyacrylates, another chemical product. Two other importers noted the increased presence of Chinese SHMP in the market, one pinpointing it at large users of technical grade SHMP.

[25] One of the importers responding "No," however, did note that a Certificate of Analysis is provided with each shipment, and that the SHMP must match customer specifications. Seven importers noted that all of their SHMP must be qualified, another reported 80 percent (***), and the last importer needs qualification for food grade SHMP, which comprises one percent of its sales (***).

be audited or qualified.[26] Among the different qualifications needed are those of the National Sanitation Foundation, the American Water Works Association, the American National Standards Institute, the Underwriters Laboratories, the International Organization for Standardization, and the Food Chemical Codex (for food grade SHMP). Qualification for a customer takes a variable amount of time. Purchasers reported qualification times from as short as four hours for a chemical analysis to as long as a full year for a site audit and five consecutive shipments that meet the quality requirements. Quality and reliability of on-time delivery were the two most commonly cited factors deemed important in determining certification of a supplier. Since 2004, three of 24 responding purchasers have had some supplier attempt to qualify SHMP and fail.[27]

At the conference in the preliminary phase of the investigation, a representative of one of the domestic producers stated that a certificate of analysis is supplied with every shipment of SHMP to verify that it is the right chemical.[28] Important characteristics included on the certificate of assay as noted by purchasers are: P_2O_5 content, pH, particle size, heavy metals content, percent of particles insoluble in water, loss on drying, chain length, and density. Both producers reported that a chemical assay is required by their customers for all of the SHMP that is sold. Nine of ten responding importers reported that a chemical assay is required for all of their shipments, and is required for 60 percent of the remaining importer's shipments (***). All purchasers noted that a certificate of assay is required on all of their purchases. Purchaser *** also has other requirements of the SHMP that it purchases, which include ***.

At the hearing, a representative of producer ICL reported that from a purchaser's point of view, generally, the most important factor is particle size.[29] Purchasers tend to prefer crushed or granular SHMP, as opposed to powdered SHMP, because it will flow better in their processes. Purchasers may also be blending SHMP with other chemicals and prefer similar particle sizes, or have a process with a preferred rate of dissolution.

Substitute Products

There are few substitutes for SHMP. Producers and importers were asked what other products may be substitutes for SHMP. *** replied that there are no substitutes for SHMP that provide the same chelation, solubility, and dispersion. "Other phosphates can provide possible substitution but would require adjustments in formulations, changes in processes, loss in functionality and potentially higher cost."[30] *** singled out two possible substitutes: polyacrylates in kaolin mining and tetrapotassium pyrophosphate ("TKPP") in limited water treatment applications. In *** stated, however, that the price of these alternatives is higher than that of SHMP, so changes in their prices would have no effect on the SHMP market. *** three other possible chemical substitutes for SHMP: tetrasodium pyrophosphate ("TSPP"), sodium tripolyphosphate ("STPP"), and polyacrylates. *** responded that in 2005-06, acrylic acid supply was short, which drove up polyacrylate prices and increased demand for SHMP by 7 million pounds. Most importers, though, replied that no substitutes exist. *** reported that the prices of TSPP and STPP increased following the increase in the price of SHMP. Six purchasers reported the existence

[26] Hearing transcript, p. 37 (Treinen).

[27] *** attempted to qualify some Chinese material but it failed to meet the chain length/yield requirement. *** is continuing to attempt to qualify ***, but *** has not been able to manufacture the proper mesh size. *** failed to qualify *** because of price considerations.

[28] Conference transcript, pp. 21 and 118-19 (Treinen).

[29] Hearing transcript, p. 24 (Stachiw).

[30] ***.

of five possible (at least partial) substitutes: the three reported by importers, sodium acid pyrophosphate ("SAPP"), and calcium chloride (for pH adjustment and water binding).

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported SHMP depends upon such factors as relative prices, quality, availability, and conditions of sale. Based on data provided in questionnaire responses, staff believes that, given identical specifications, there is a high degree of substitution between domestic SHMP and subject imports from China.

Factors Affecting Purchasing Decisions

Table II-2 summarizes purchasers' responses concerning their top three factors in purchase decisions.[31] [32] As indicated in the table, quality was cited most frequently as purchasers' primary deciding factor in purchasing decisions, while availability and prearranged contracts were the second-most-common factors. Price was the factor most commonly cited as the second- and third-most important factor. For larger customers, security of supply is a key component in the purchasing decision.[33] In fact, a representative of Procter and Gamble testified that availability is of primary importance in its purchasing decisions.[34]

Table II-2
SHMP: Ranking of factors used in purchasing decisions, as reported by U.S. purchasers

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Quality/meets specifications	11	4	4
Availability/lead times	4	2	5
Prearranged contracts	3	0	0
Price	3	13	6
Traditional/customer approved supplier[1]	2	2	2
Reliability of supply/ delivery	0	2	5
Other[2]	1	2	1

[1] Includes quality manufacturing process, technical capabilities, and relationship with supplier.
[2] Other factors include product range, committed volume, supply assurance, contract terms, and packaging.

Note.–Six firms included a fourth factor in their responses: one each noted availability, customer service, payment terms, quality meets specifications, and relationship with supplier.

Source: Compiled from data submitted in response to Commission questionnaires.

[31] Six firms also included a fourth factor.

[32] Twenty–five purchasing firms responded to the Commission's questionnaire. The largest purchasers responding to the Commission's questionnaire were ***.

[33] Hearing transcript, p. 92 (Schewe).

[34] Hearing transcript, p. 163 (Smith). Accordingly, P&G started the qualification process for Hubei Xingfa's SHMP in early 2007 for its Oral Care segment. Ibid., p. 198 (Smith).

When asked how often their firm purchases SHMP that is offered at the lowest price, one of 25 purchasers indicated "always;" 12 "usually;" 12 "sometimes;" and zero "never." Questions concerning purchasers' awareness of the country of origin (whether U.S.-produced or imported) and the supplier of SHMP suggest that both of these factors are of varying importance in purchasing. In this investigation, when asked about their awareness of the firm producing the SHMP, 13 purchasers replied that they are "always" aware of the firm which produces the SHMP, eight are "usually" aware, two are "sometimes" aware, and two are "never" aware. Purchasers of SHMP are somewhat more aware of the country of origin of their purchased SHMP; it is "always" known for 19 of 24 purchasers, "usually" for four purchasers, "sometimes" for one purchaser, and "never" for one purchaser. Purchaser responses revealed that any downstream buyers are less aware of the country of origin. The clients of the purchasers are "always" aware of the country of origin for seven purchasers, "usually" aware for nine purchasers, "sometimes" aware for eight purchasers, and "never" aware for one purchaser. Further details are summarized in table II-3.

Table II-3
SHMP: Awareness of country of origin and manufacturer in purchaser and downstream customers' purchasing decisions

Purchaser/customer decision	Always	Usually	Sometimes	Never
Purchaser aware of the country of origin	19	4	1	1
Purchaser aware of the manufacturer	13	8	2	2
Purchaser's customer aware of the country of origin	7	9	8	1
Source: Compiled from data submitted in response to Commission questionnaires.				

Eleven of 25 responding purchasers reported significantly changing their purchasing pattern since 2004. Four have done so for demand-related reasons, three for supply or reliability reasons, two for cost reasons, and one because of the ITC's preliminary decision.[35] [36] Purchasers typically reported contacting between one and four SHMP suppliers before making a decision, with an average of 2.7 suppliers contacted. Petitioners contend that virtually every customer account purchases or receives regular offers for Chinese-produced SHMP.[37] Fourteen of 25 responding purchasers have changed suppliers at least once since 2004, while eleven have not. The majority of those that have switched reported doing so due to pricing. Other reasons noted include availability, the ITC preliminary decision, adding a new account, concern in 2005 over loss of Chinese supply, "improved economics," and commercial reasons. Six of the 25 responding importers are aware of new suppliers in the market since 2004.

The relative shares of purchases from different sources changed for nine of the 25 purchasers that responded to the Commission's questionnaire. Of the six that reported changing their purchases of domestically produced SHMP, four decreased their purchases due to price/cost reasons, one increased its

[35] Purchasers were also asked if they had changed or planned to change the amount of their purchases of SHMP from China because of the filing of the petition in this investigation and/or because of the Department of Commerce's preliminary determination of sales at less value of SHMP from China. Fifteen of 22 responding purchasers replied in the affirmative.

[36] The other purchaser remarked that it changes its purchasing pattern "frequently."

[37] Petitioners' prehearing brief, p. 4.

purchases due to supply stability, and one first increased, then decreased, then increased again.[38] Five of eight responding purchasers increased their purchases of imported Chinese SHMP due to price/cost reasons, two decreased their purchases (due to unreliable supply, availability, and lead time issues), and one first decreased, then increased, then decreased again.[39] Three of four purchasers increased their relative shares of imported Mexican SHMP for pricing, availability, and lead time issues, while the remaining purchaser first increased then decreased its purchases for pricing reasons.

Three purchasers noted buying only domestically produced SHMP during the period of investigation. Of these purchasers, *** prefers sourcing domestically, while *** only has domestic firms qualified to supply SHMP. Five purchasers only bought SHMP imported from China since 2004.[40] Pricing was the reason noted for four of the five. The other purchaser, ***, noted reliability of supply, available capacity, and lead times as the reason for its single-sourcing.

Fifteen of 23 responding purchasers noted that they had changed their purchasing patterns since the filing of the petition. Some changes noted by purchasers include switching sources (both to nonsubject and domestic sources), changing some chemicals as relative prices change, eliminating SHMP from the production process, and ***. At the hearing, a representative from P&G reported that it has eliminated SHMP from its some of its pet food formulas.[41]

Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports

U.S. producers, importers, and purchasers reported somewhat comparable views regarding the issue of interchangeability of SHMP from various sources. The large majority of each group noted that SHMP from the United States, China, and other countries is always or frequently interchangeable. A few importers and purchasers noted that SHMP from different sources is only sometimes interchangeable, and one purchaser noted that SHMP from other countries is never interchangeable with domestic and Chinese product (table II-4). ***. Sometimes customers specify that domestic sources are needed by buyers. Another purchaser stated that some restrictions are application-specific: some sources may not be National Sanitation Foundation-certified, or do not meet the requirements for food grade.

Table II-4
SHMP: Perceived degree of interchangeability of SHMP produced in the United States, China, and other countries

Country pair	Number of U.S. producers reporting					Number of U.S. importers reporting					Number of U.S. purchasers reporting				
	A	F	S	N	O	A	F	S	N	O	A	F	S	N	O
U.S. - China	***	***	0	0	***	4	4	3	0	0	9	6	3	0	1
U.S. - Other	***	***	0	0	***	4	3	0	0	0	6	4	3	1	3
China - Other	***	***	0	0	***	4	3	1	0	0	7	2	3	1	3

A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.

Source: Compiled from data submitted in response to Commission questionnaires.

[38] This final purchaser is ***, which noted various reasons for its purchasing pattern shifts, among which ***.

[39] This final purchaser is ***.

[40] One of these purchasers, ***, however, made one small purchase from domestic producers in 2004, but bought the great majority of its purchases from China.

[41] Hearing transcript, pp. 154-55 (Smith).

Most SHMP from various sources meets the minimum quality requirements of purchasers, as is demonstrated in table II-5. Also, six of 25 responding purchasers responded that their customers require SHMP from one source in particular over other possible sources, yet only two of the 25 stated that a particular size/grade/etc. of SHMP is only available from a single source. Eighteen of 25 purchasers have purchased SHMP from a higher-priced source, though a comparable lower-priced product was available. Among those purchasers that have done this, the most frequently reported reasons were because of reliability of supply, quality or condition of the product, availability, and to maintain security of supply or avoid single-sourcing.

Table II-5
SHMP: Frequency of meeting purchasers' minimum quality requirements, by country of origin

Country	Number of U.S. purchasers reporting			
	Always	Usually	Sometimes	Never
United States	11	9	0	1
China	12	8	0	1
Mexico	4	4	0	1
Thailand	3	1	1	0
Israel	2	2	0	0
France	0	2	0	0
Belgium	0	1	0	0
"Europe"	0	0	0	1

Source: Compiled from data submitted in response to Commission questionnaires.

Questionnaire responses indicate that, in general, U.S. producers believe that differences other than price between products from various supplying countries are "sometimes" or "never" significant factors in their sales of SHMP in the U.S. market. By contrast, a majority of importers reported that differences other than price are more frequently significant factors in their sales of SHMP than producers believe (table II-6).

Table II-6
SHMP: Perceived importance of differences in factors other than price between SHMP produced in the United States and in other countries in sales of SHMP in the U.S. market

Country pair	Number of U.S. producers reporting					Number of U.S. importers reporting				
	A	F	S	N	O	A	F	S	N	O
U.S. - China	0	0	***	***	0	4	1	5	1	0
U.S. - Other	0	0	***	***	0	2	0	4	1	0
China - Other	0	0	***	***	0	2	1	2	2	0

A = Always, F = Frequently, S = Sometimes, N = Never, O = No knowledge.

Source: Compiled from data submitted in response to Commission questionnaires.

Importer *** reported that domestic SHMP is more soluble in water, and importer *** reported that SHMP from China may have more traceable metals and impurities contained in it than the domestically produced SHMP. Also, importer *** reported that SHMP from China with a chain length of *** works best for its customers. In its questionnaire response in the preliminary phase of the investigation, importer *** noted that customers in the United States have preferences in terms of chain length, which not all suppliers offer. It also stated that sometimes Chinese product tends to have more particulate matter in it, and is often referred to as "dusty," thus commanding a lower price.

Purchasers were asked to rate the importance of a number of factors, such as availability, delivery time, discounts, price, product consistency, product quality, product range, and reliability of supply in their purchasing decisions (table II-7). That the quality of the SHMP meets industry standards was ranked as "very important" by 24 of 25 responding purchasers. Also ranked as very important by 23 of 25 purchasers were availability, price, and product consistency. Further ranked by more than half the purchasers as being very important were reliability of supply and delivery time.

Table II-7
SHMP: Importance of purchase factors, as reported by purchasers

Factor	Very important	Somewhat important	Not important
	Number of firms responding		
Availability	23	2	0
Delivery terms	9	16	0
Delivery time	18	6	1
Discounts offered	5	11	7
Extension of credit	4	8	12
Price	23	2	0
Minimum quantity requirement	4	12	8
Packaging	11	13	1
Product consistency	23	2	0
Quality meets industry standards	24	1	0
Quality exceeds industry standards	8	11	5
Product range	3	10	11
Reliability of supply	21	4	0
Technical support/service	5	8	12
U.S. transportation costs	6	12	6
Other[1]	4	3	0

[1] Other responses from purchasers included: supplier relationship, follow-up time, customer feedback, and total landed cost as very important and sample availability, duration of agreement, and other business with the supplier as somewhat important.

Note.--Not all firms responded to all questions.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were also asked to compare domestically produced SHMP with SHMP imported from subject and nonsubject countries using the same factors (table II-8). The limited number of responses to this question reveal that the U.S.-produced SHMP is generally comparable to subject imports from China in most categories, superior with respect to technical support/service, and inferior with regard to price (i.e., the price of the domestic product is generally higher).

Table II-8
SHMP: Comparisons of U.S. product and subject imported product with subject and nonsubject product, as reported by purchasers

Factor	U.S. vs. China			U.S. vs. Mexico			U.S. vs. other[1]			China vs. Mexico			China vs. other[2]		
	S	C	I	S	C	I	S	C	I	S	C	I	S	C	I
Availability	1	8	3	0	2	1	1	4	0	2	1	0	1	3	0
Delivery terms	1	10	2	1	2	0	0	5	0	1	2	0	1	3	0
Delivery time	5	5	2	0	2	1	2	3	0	0	2	1	0	4	0
Discounts offered	0	9	3	0	2	1	0	5	0	0	3	0	1	3	0
Extension of credit	0	11	1	0	3	0	0	5	0	0	3	0	0	3	0
Price[3]	0	3	9	0	0	3	0	4	1	2	0	1	3	0	1
Minimum quantity requirement	2	6	4	1	1	1	0	5	0	1	2	0	1	2	1
Packaging	1	11	0	0	3	0	0	5	0	0	3	0	0	4	0
Product consistency	0	10	2	0	2	1	0	5	0	1	2	0	1	3	0
Quality meets industry standards	0	11	1	0	3	0	0	5	0	1	2	0	1	3	0
Quality exceeds industry standards	1	10	1	0	3	0	0	5	0	1	2	0	1	3	0
Product range	4	8	0	2	1	0	0	5	0	0	3	0	0	4	0
Reliability of supply	1	9	2	0	3	0	0	5	0	2	1	0	1	2	0
Technical support/service	7	5	0	1	2	0	0	5	0	1	2	0	1	2	0
U.S. transportation costs	0	10	2	0	3	0	2	1	2	0	3	0	0	4	0

[1] Other includes Belgium, France, Israel, and Thailand.
[2] Other includes "Europe," France, and Thailand.
[3] A rating of superior means that the price is generally lower. For example, if a firm reported "U.S. superior," it meant that the price of the U.S. product was generally lower than the price of the imported product.

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior. Not all companies gave responses for all factors.

Source: Compiled from data submitted in response to Commission questionnaires.

In addition, purchasers rated domestically produced SHMP against subject imports from Mexico and other countries. According to these purchasers, the U.S.-produced product generally is considered

comparable to subject imports from Mexico in all categories except lowest price, and generally comparable in all categories to SHMP from countries other than China and Mexico. SHMP produced in China was also rated as comparable to SHMP produced in Mexico and other countries, but superior in terms of lowest price. It was considered superior in availability and reliability of supply to SHMP produced in Mexico.

Importer *** replied that, to it, there is always a difference between domestic and Chinese SHMP, since domestic producers will not sell to it. Importer *** stated that ***'s marketing and distribution plans do not allow it to properly service its customer's (***) requirements. Technical support is available and the quality is very good from both China and Mexico, according to importer ***. In noting frequent non-price differences, importer *** stated that domestic producers have a broader portfolio of grades available, can meet customers' special product specifications, and can provide technical support and product advice to their customers.

ELASTICITY ESTIMATES

U.S. Supply Elasticity[42]

The domestic supply elasticity for SHMP measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of SHMP. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to and from production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced SHMP.

In the short term, SHMP producers are likely to respond to changes in price with moderate changes in the quantity shipped to the U.S. market. Supply responsiveness is currently inhibited by capacity constraints, the product mix that is produced, and the inability to switch from producing other products, but is enhanced by the quantity of inventory on hand, a moderate amount of exports, and a relatively short manufacture time.

U.S. Demand Elasticity

The U.S. demand elasticity for SHMP measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of SHMP, and is likely to be quite low. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of SHMP in the production of any downstream products. There are limited viable substitutes for SHMP with respect to many uses, which limits demand elasticity. SHMP makes up a very small portion of the final cost of the products into which it is incorporated, even chemical blends which are 10 to 20 percent SHMP.[43]

[42] A supply function is not defined in the case of a non-competitive market.

[43] During the staff field visit, representatives of Innophos noted that ***. Staff field trip report, Innophos, February 26, 2007, p. 2.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[44] Product differentiation, in turn, depends upon such factors as quality (both perceived and actual), grade, and conditions of sale. SHMP nearly always requires a certificate of analysis in its applications. Petitioners noted that imported SHMP from China is qualified at many purchasers that use technical grade SHMP, and that qualification is being secured at food grade purchasers.[45] There are, however, purchasers that have tested or tried to qualify Chinese material unsuccessfully, or only have qualified domestic producers.[46] Certain chain lengths are necessary for some customers. Generally, however, most purchasers find that they can use the SHMP imported from China in place of domestic SHMP.[47] Based on available information, the elasticity of substitution between domestic and subject SHMP is likely to be somewhat high for most applications due to the chemical nature of SHMP and the lab certification of the chemical content of SHMP.

[44] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like product to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

[45] Conference transcript, pp. 11-12 (Moffatt).

[46] ***.

[47] Conference transcript, p. 14 (Moffatt).

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the final margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and is based on the questionnaire responses of two firms, ICL (St. Louis, MO) and Innophos (Chicago, IL) that accounted for *** U.S. production of SHMP during the period examined. A third producer, Nalco Co. ("Nalco"), operated a SHMP plant in Ellwood City, PA,[1] until October 2003.[2] ***.[3] Petitioners testified at the Commission's hearing that Nalco maintains two furnaces that can produce SHMP; one furnace is currently being used for internal consumption while the other furnace could, with minor expenditures, be running within two to three months.[4] Respondent Hubei Xingfa states the "principal business" of Nalco is to provide water and waste treatment to industrial and institutional users with its "peripheral" production of SHMP intended for consumption by the company in these end uses.[5] In its response to the purchaser questionnaire, the firm indicated that "***."[6] It further stated in a *** letter to the Commission that "***."[7]

U.S. PRODUCERS

ICL is a *** owned subsidiary of Israel Chemicals Ltd. ("ICL (Israel)"), headquartered in Tel Aviv, Israel.[8] Innophos is the successor to the specialty phosphates division of Rhodia, Inc.; Innophos was established as an independent corporation in 2004 when it was acquired by Bain Capital.[9] ICL is described in the petition as a leading manufacturer of phosphates, phosphoric acid, and phosphorus chemicals. Likewise, Innophos is identified as a major producer of industrial grade phosphoric acid and phosphates.[10] Responding firms' plant locations, and their production and shares of SHMP production in 2006 are shown in table III-1.

[1] Nalco purchased the assets of Calgon, including its SHMP plant in Ellwood City, in 1999. Postconference brief, p. 31, n.17.

[2] ***.

[3] ***.

[4] Hearing transcript, pp. 83-85 (Treinen and Schewe).

[5] Respondent Hubei Xingfa's posthearing brief, attachment 4.

[6] Nalco's purchaser questionnaire response, question II-5.

[7] ***.

[8] ICL (Israel) does not produce SHMP in Israel. Petition, AD exhibit 15.

[9] Petition, p. 6.

[10] Petition, pp. 2-3.

Table III-1
SHMP: U.S. producers, plant location(s), production, and shares of U.S. production in 2006

Firm	Plant location	Production (*metric tons*)	Share of production (*percent*)
ICL Performance Products LP[1]	Lawrence, KS[2]	***	***
Innophos, Inc.[3]	Chicago, IL	***	***
Total	--	***	***

[1] ***.
[2] ***.
[3] ***.

Note.–***.

Source: Compiled from data submitted in response to Commission questionnaires and e-mail from counsel for the petitioners, January 8, 2008.

ICL maintains two separate SHMP furnaces at its Lawrence, KS plant. ***.[11] The Innophos Waterway Plant in Chicago, IL, has one furnace that is usually run continuously under food grade conditions. Petitioners testified at the Commission's conference that there are no significant cost differences to producing to food grade standards.[12]

Until 2003, Astaris, the predecessor firm to ICL, operated a second facility in Trenton, MI within an existing Solutia, Inc. facility that is believed to have had the capacity to produce about *** metric tons of SHMP on an annual basis.[13] Astaris was formed as a joint venture between Solutia, Inc. and FMC Corp. in April 2000.[14] Astaris permanently shut down the Trenton plant in November 2003; its equipment was scrapped or moved to different facilities.[15] Petitioners testified at the Commission's conference and hearing that the closure was related to its predecessor's loss in sales volume and pricing pressure due to Chinese imports. Petitioners further indicated that imports from China filled the void left by the closure of the Trenton plant.[16] [17]

Respondent Hubei Xingfa contends that the closure of the Trenton plant had nothing to do with the importation of SHMP from China, and indeed had nothing to do with SHMP, which allegedly accounted for only a tiny fraction of the plant's capacity before the elimination of another product (STPP)

[11] Petitioners' prehearing brief, p. 9, note 21, and hearing transcript (*in camera*), pp. 245-246 (Cannon).

[12] Conference transcript, pp. 57-59 (Moffatt, Kemp). The primary differences lie in the costs related to the additional required laboratory analysis and extra administrative controls. Ibid.

[13] Postconference brief, p. 32. (Calculated as the difference between ICL's reported capacity in 2003 and in 2004.)

[14] ***.

[15] Hearing transcript, pp. 78-80 (Schewe). Astaris was purchased by ICL in November 2005. Ibid.

[16] Conference transcript, pp. 11 and 28 (Cannon) and hearing transcript, pp. 80-81 (Schewe).

[17] Petitioners further stated in their postconference brief that "***." Petitioners cite industry trends calculated with figures for 2003 to support their argument. Domestic SHMP production for the 2003-06 period is shown below:

* * * * * * *

produced there.[18] Specifically, the respondent states that ***.[19] Hubei Xingfa further maintains the plant was closed as ***.[20]

ICL reported experiencing *** during the period examined.[21] Innophos *** shut down its furnace for an extended period in the summer of 2006 due, ***, to reduced orders from about a dozen customers. The firm continued to supply customers from inventory that was built up prior to the shutdown. Innophos did undertake some maintenance work during the shutdown; however, the shutdown period was "significantly more" than what would have been required by the maintenance alone.[22] ***.[23]

U.S. PRODUCERS' IMPORTS AND PURCHASES

***.[24] ICL did import a minute amount of a specialized grade of SHMP made by BKG, its affiliate in Germany, in 2005 to test whether it would be suitable for use in a downstream blend.[25] ***.[26]

U.S. PRODUCERS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data concerning U.S. producers' SHMP capacity, production, and capacity utilization are shown in table III-2. The calculation (and utilization) of capacity depends upon the mix of SHMP products manufactured. As indicated earlier in the report, long chain SHMP requires more time in the furnace than regular chain product.[27] Petitioners testified at the Commission's conference that it is critical to run plants at or near full capacity in order to be profitable. SHMP plants operate 24 hours a day, seven days a week. Production lines are typically shut down only when the furnaces need to be relined at (optimally) 18-month intervals. More frequent shutdowns shorten the time interval for a re-build.[28] Energy costs are also a factor in operating capacity. Once the furnace is brought up to the required temperature level, it needs to be maintained at that level.[29]

---

[18] Respondent Hubei Xingfa's posthearing brief, attachment 3, pp. 1-4.

[19] Ibid., attachment 3 citing ***.

[20] Ibid., attachment 3 citing ***.

[21] ***. ICL's producer questionnaire response, ***. ***. Petitioners' posthearing brief, p. 13. ***. Ibid., pp. 51 and 53.

[22] Conference transcript, pp. 19-20 and 101-2 (Treinen), and hearing transcript, p. 99 (Treinen). The Innophos plant shutdown lasted from *** to ***. ***. Postconference brief, p. 40, n. 20.

[23] Petitioners' posthearing brief, p. 54.

[24] ICL and Innophos' producer questionnaire responses (question II-15).

[25] Conference transcript, p. 83 (Moffatt).

[26] ICL's producer questionnaire response (question II-15).

[27] *** products other than SHMP are manufactured by either firm in the furnace(s) and on the equipment utilized to produce SHMP.

[28] Conference transcript, p. 10 (Moffatt) and pp. 81-82 (Treinen). ***.

[29] The gas-fired furnaces that manufacture SHMP typically burn at *** degrees centigrade. ***.

Table III-2
SHMP: Capacity, production, and capacity utilization, by firm, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

As shown in table III-2, capacity utilization remained at or below *** percent until January-September 2007 when utilization rose to almost *** percent. ***. ICL was not requested to report separate capacity utilization rates for its two furnaces; ***.[30] As indicated above, Innophos shut down its furnace for an extended period in the summer of 2006.

***. The firms' production of SHMP increased by *** percent from 2004 to 2005 and then fell by *** percent from 2005 to 2006 for a decrease of *** percent from 2004 to 2006. From January-September 2006 to January-September 2007, production increased by *** percent, resulting in the interim 2007 capacity utilization rate of *** percent noted above.[31] Capacity to produce SHMP in the United States was *** apparent U.S. consumption of SHMP throughout the period examined. Innophos reports it is planning to expand its capacity to manufacture SHMP by 15 percent; the capacity will be on-line by the second quarter of 2008.[32]

U.S. PRODUCERS' SHIPMENTS

U.S. producers' shipments of SHMP are presented in table III-3. As shown, the quantity of U.S. producers' shipments followed a somewhat different trend than that of production. Moreover, U.S. producers' U.S. shipments increased by *** percent from January-September 2006 to January-September 2007–a rise of *** than the *** percent interim period increase in production.[33] *** SHMP in the manufacture of phosphate blends. Export shipments accounted for slightly over *** percent of total shipments in 2006.[34]

Table III-3
SHMP: U.S. producers' shipments, by types and by firm, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

The unit values of U.S. producers' U.S. shipments increased steadily from 2004 to 2006 for a net gain of $*** per metric ton while unit values fell by $*** per ton from January-September 2006 to January-September 2007. ***.[35] Counsel for petitioners indicated during the preliminary phase of the investigation that ***:

The following tabulation presents the share of U.S. shipments made through distributors and to end users by the domestic producers:

---

[30] Staff telephone interview with counsel for petitioners, March 13, 2007.

[31] Counsel for the petitioners states that the increase in production in interim 2007 reflects, in part, ***. E-mail from counsel for the petitioners, January 2, 2008. ***.

[32] Hearing transcript, p. 86 (Treinen).

[33] ***. E-mail from counsel for the petitioners, January 2, 2008.

[34] ***. ICL's producer questionnaire response (question II-9) and e-mail from counsel to petitioners, March 13, 2007.

[35] ICL and Innophos' producer questionnaire responses (question II-9). Comparisons for the interim periods are not presented.

* * * * * * *

U.S. PRODUCERS' INVENTORIES

U.S. producers' inventories of SHMP are presented in table III-4. The domestic manufacturers generally don't produce SHMP to customer order but schedule runs based upon their inventory levels of particular grades.[36] As discussed earlier in the report, there is a proportional relationship between the amount of granular product that is produced and the amount of powder. Petitioners testified at the Commission's conference and hearing that a producer must sell a balanced mixture of product textures in order to operate efficiently; lost sales of one product texture will result in an unbalanced inventory. Innophos has ended up with proportionally more granular (long chain) at times while during another period inventorying more powder. (While technologically possible, it is not cost-efficient to grind granular down to powder in an additional production step.)[37] ICL also indicated during the Commission's conference that it has experienced ending up with proportionally more powder than granular product.[38] As indicated earlier, inventory has an 18-month shelf life. There is no difference in shelf life between regular chain and long chain product.[39]

Table III-4
SHMP: U.S. end-of-period inventories, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

End-of-period inventories reported by the domestic manufacturers increased by *** metric tons from 2004 to 2005 and by *** metric tons from 2005 to 2006. From January-September 2006 to January-September 2007, end-of-period inventories rose by *** metric tons.[40] The ratios of inventories to production, U.S. shipments, and total shipments increased for each measure throughout the period examined.

U.S. PRODUCERS' EMPLOYMENT, WAGES, AND PRODUCTIVITY

The average number of PRWs producing SHMP is presented in table III-5. As shown, the majority of the employment indices (number of production and related workers, total hours worked, hours worked per worker, wages paid, and hourly wages) were relatively stable throughout the period examined. In contrast, productivity rose and unit labor costs fell between January-September 2006 and

[36] Conference transcript, p. 67 (Treinen).

[37] Conference transcript, pp. 20-21 and 62 (Treinen), and hearing transcript, p. 36 (Treinen).

[38] Conference transcript, pp. 19-20 (Kemp).

[39] Hearing transcript, p. 95 (Stachiw).

[40] As discussed above, a *** portion of the additional volume of SHMP produced by the U.S. industry in interim 2007 (table III-2) was not commercially shipped during the period examined (table III-3). *See* the previous sections in this part of the report for additional information.

Table III-5
SHMP: Employment-related indicators, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

January-September 2007 as the volume of SHMP produced increased (table III-2). Petitioners state that SHMP production is highly automated and not labor intensive.[41] ***.[42]

[41] Petition, p. 50.

[42] ICL and Innophos' producer questionnaire responses, question II-5.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

SHMP is generally imported by independently owned distributors that then sell to end users. Importer questionnaires were sent to 35 firms identified in Customs documents as entering more than minimal volumes of product from any source[1] for the January 2004 through July 2007[2] period under the HTS number (2835.39.5000) assigned to SHMP (along with certain other nonsubject polyphosphates). An additional seven questionnaires were mailed to firms, identified in the petition as importers, that had not provided a "negative response"[3] during the preliminary phase of the investigation.

Responding firms that were, in fact, importing SHMP are shown in table IV-1. All firms that entered product from China under HTS number 2835.39.5000 returned questionnaires or provided a negative response during the final phase with the exception of ***.[4] [5]

Table IV-1
SHMP: U.S. importers' reported U.S. imports in 2006, shares of the quantity of reported U.S. imports, parent firm(s), and identified foreign manufacturer(s)

* * * * * * *

Of the 18 questionnaires sent to importers from nonsubject countries, 13 firms provided either a completed questionnaire or a negative response. A relatively small number of importers accounted for the majority of U.S. imports of SHMP from China (table IV-1). *** firms imported product manufactured by Hubei Xingfa, although ***.[6]

The following tabulation presents the shares of U.S. shipments made through distributors and to end users by U.S. importers of SHMP from China:

* * * * * * *

U.S. IMPORTS

Calculation of U.S. Imports

U.S. imports of SHMP are presented in table IV-2. As indicated in the source note, data for the annual periods are compiled from official Commerce statistics that have been adjusted to exclude

[1] Seventeen firms on the mailing list imported from China and 18 firms imported from countries other than China.

[2] Customs documents were available only through July 2007.

[3] The term "negative response" is used to indicate that the firm was either a broker or purchaser but not an importer of SHMP or that the firm imported a product other than SHMP.

[4] *** and *** responded to the questionnaire issued during the preliminary phase in which data were collected for January 2004 to December 2006. Commission staff requested that both firms update their responses. Staff telephone interviews with ***, December 10, 2007 and ***, December 7, 2007. *** initially indicated that it would provide a response (staff telephone interview with ***) but did not return a questionnaire. ***.

[5] *** and *** reported that they were importing nonsubject polyphosphates from China.

[6] Petitioners state that the "rising volume" of imports can be "traced" to Hubei Xingfa. Postconference brief, p. 12.

Table IV-2
SHMP: U.S. imports, by sources, 2004-06, January-September 2006, and January-September 2007

Source	Calendar year			January-September	
	2004	2005	2006	2006	2007
Quantity (*metric tons*)					
China (subject)	19,695	22,901	21,017	13,557	19,132
Germany	***	***	***	(1)	(1)
Mexico	***	***	***	2,447	1,229
All other sources[2]	***	***	***	1,327	2,051
Subtotal nonsubject	4,499	6,410	5,042	3,773	3,280
Total	24,193	29,311	26,059	17,330	22,412
Value (*1,000 dollars*)[3]					
China (subject)	12,817	18,779	16,906	11,492	16,236
Germany	***	***	***	(1)	(1)
Mexico	***	***	***	2,319	1,234
All other sources[2]	***	***	***	1,721	3,201
Subtotal nonsubject	3,456	6,553	6,804	4,041	4,435
Total	16,273	25,332	23,710	15,533	20,671
Unit value (*per metric ton*)[3]					
China (subject)	$651	$820	$804	848	849
Germany	***	***	***	(1)	(1)
Mexico	***	***	***	948	1,004
All other sources[2]	***[4]	***	***	1,297	1,561
Average nonsubject	768	1,022	1,349	1,071	1,352
Average	673	864	910	896	922
Share of quantity (*percent*)					
China (subject)	81.4	78.1	80.7	78.2	85.4
Germany	***	***	***	(1)	(1)
Mexico	***	***	***	14.1	5.5
All other sources[2]	***	***	***	7.7	9.1
Subtotal nonsubject	18.6	21.9	19.3	21.8	14.6
Total	100.0	100.0	100.0	100.0	100.0

Table continued on the following page.

Table IV-2
SHMP: U.S. imports, by sources, 2004-06, January-September 2006, and January-September 2007

Source	Calendar year			January-September	
	2004	2005	2006	2006	2007
			Share of value (*percent*)		
China (subject)	78.8	74.1	71.3	74.0	78.5
Germany	***	***	***	([1])	([1])
Mexico	***	***	***	14.9	6.0
All other sources[2]	***	***	***	11.1	15.5
Subtotal nonsubject	21.2	25.9	28.7	26.0	21.5
Total	100.0	100.0	100.0	100.0	100.0
			Ratio of imports to U.S. production (*percent*)		
China (subject)	***	***	***	***	***
Germany	***	***	***	([1])	([1])
Mexico	***	***	***	***	***
All other sources[2]	***	***	***	***	***
Subtotal nonsubject	***	***	***	***	***
Total	***	***	***	***	***

[1] Not shown.
[2] The countries included in "all other sources" consist of (ranked by the order of the quantity of imports in 2006 under HTS number 2835.39.5000): Belgium, France, Netherlands, Malaysia, Hong Kong, Thailand, India, Denmark, Korea, and Chile. Imports (over 1 metric ton in 2004 or 2005) were also reported from: Bulgaria, Australia, and Slovenia.
[3] Landed, duty-paid.
[4] Unit value is distorted by adjustments to U.S. imports from the United Kingdom made using questionnaire data to exclude nonsubject merchandise. The unit value of all other sources calculated directly from official Commerce statistics for HTS number 2835.39.5000 (and excluding the United Kingdom) is $950 in 2004. Imports from the United Kingdom under the HTS item declined sharply after 2004 resulting in minimal distortion to the unit values for all other sources in the succeeding periods.

Note.–Data for Germany are presented for the annual periods but not the interim periods since at the time of the preliminary phase of the investigations it was not known that *** of the relatively substantial volume of U.S. imports from Germany under HTS number 2835.39.5000 are not SHMP. Also, the use of adjusted official Commerce statistics for Mexico for the annual periods but not for the interim periods results in the January-September 2006 figure *** that for full-year 2006.

Source: (1) Annual periods are compiled from adjusted official Commerce statistics (HTS number 2835.39.5000) for all sources except for Germany, which is questionnaire data, and (2) interim periods are official Commerce statistics.

products other than SHMP entered under HTS number 2835.39.5000 and to include SHMP entered under HTS numbers other than 2835.39.5000.[7] The HTS number under which SHMP is entered (HTS 2835.39.5000) is a "basket" category that also includes certain "other" polyphosphates.[8] *** reported imports of nonsubject merchandise from China under HTS number 2835.39.5000 during 2004-06.[9] *** reported importing SHMP from China under an HTS number other than 2835.39.5000.[10] With respect to nonsubject sources, petitioners pointed out during the preliminary phase that U.S. imports entered under reporting number 2835.39.5000 from countries where SHMP is not produced would, by default, consist of nonsubject polyphosphates. SHMP was reported by petitioners to not be produced in Canada, Iceland, Israel, and Taiwan.[11] To identify SHMP imports from the remaining countries, petitioners analyzed average unit customs values and average unit landed cost values separately by month and by port. They stated that, based on a comparison of these values to actual market prices and to the prices of imports from China, reported imports from Japan and Spain under HTS number 2835.39.5000 also did not contain SHMP.[12] U.S. imports from Japan under HTS number 2835.39.5000 are minimal; Commission staff reviewed U.S. imports from Spain under the HTS number 2835.39.5000 and, likewise, determined that the imports were of product other than SHMP.[13] Commission staff further determined during the course of the preliminary phase of the investigation that *** U.S. imports from Germany and the United Kingdom were also of polyphosphate products not including SHMP.[14]

In contrast to the annual periods where import data are, as described above, adjusted Commerce statistics, data for the interim periods presented in this report are unadjusted Commerce statistics. With respect to China, data for *** were unavailable for the interim periods and, as shown in the following tabulation, the net impact of adjusting for nonsubject product within the "basket" and subject product outside the relevant HTS number was minimal for China and for all other sources.[15]

---

[7] These are the figures calculated and presented during the preliminary phase of the investigation. *See* table IV-2 of the confidential staff report in the preliminary phase (INV-EE-029 (March 19, 2007)).

[8] These "other" polyphosphates consist primarily of disodium pyrophosphate (sodium acid pyrophosphate) and tetrasodium pyrophosphate. Conference transcript, p. 46 (Kemp).

[9] ***. *See* p. IV-8 of the confidential staff report in the preliminary phase (INV-EE-029 (March 19, 2007)).

[10] ***. *See* p. IV-8 of the confidential staff report for the preliminary phase (INV-EE-029 (March 19, 2007)).

[11] Petition, p. 18, citing exhibits AD-14 (Declaration of Tim Treinen) and AD-15 (Declaration of Jim Moffatt).

[12] Petition, pp. 18-19, citing exhibits AD-14 (Declaration of Tim Treinen) and AD-15 (Declaration of Jim Moffatt).

[13] Specifically, *** imported *** from Spain under the HTS number. *See* p. IV-6 of the confidential staff report in the preliminary phase (memorandum INV-EE-029, March 19, 2007). The *** U.S. importer of product from Spain (***) returned a questionnaire response in this final phase; that firm, likewise, imports ***. ***'s importer questionnaire response, question II-7.

[14] Specifically, *** imported nonsubject *** from Germany and *** also imported nonsubject product from the United Kingdom. *See* p. IV-7 of the confidential staff report in the preliminary phase (memorandum INV-EE-029, March 19, 2007). Further, with respect to the January-September 2007 interim period, *** of imports from Germany and the United Kingdom continue to be a product or products other than SHMP. This can be seen by comparing the by-firm information in Customs documents for HTS 2835.39.5000 to information on the actual product imported provided to the Commission. For Germany, *see* e-mails from ***. For the United Kingdom, U.S. imports under the HTS number were *** for January-September 2007 but continue to be a product or products other than SHMP. ***.

[15] Petitioners compared official Commerce data by port to ship manifest records and concluded that imports from China under the "basket" category under which SHMP is imported consist entirely or almost entirely of SHMP. Petition, pp. 34 and 38-39.

Item	Calendar year			January-September	
	2004	2005	2006	2006	2007
	Quantity (*metric tons*)				
China:					
Official Commerce statistics	19,115	22,187	20,649	13,557	19,132
Adjusted Commerce statistics	19,695	22,901	21,017	([1])	([1])
Questionnaire data (preliminary)	17,506	20,860	21,126	([2])	([2])
Questionnaire data (final)	17,386	21,544	20,689	9,507[3]	13,477[3]
Mexico:					
Official Commerce statistics	2,979	5,758	2,636	2,447	1,229
Adjusted Commerce statistics	***	***	***	([4])	([4])
Questionnaire data (final)	***	***	***	***	***
All other sources:					
Official Commerce statistics (all sources)[5]	9,181	11,198	15,768	11,976	12,981
Adjusted Commerce statistics	***	***	***	([4])	([4])
Official Commerce statistics (selected sources)[6]	1,256	950	1,969	1,327	2,051

[1] Not available; *** did not provide a questionnaire response in the final phase.
[2] Not available; preliminary questionnaires did not include the interim period.
[3] Interim figures do not include ***.
[4] Not calculated.
[5] Not adjusted to exclude countries that are not a source of U.S. imports of SHMP.
[6] Adjusted to exclude all U.S. imports from Canada, Germany, Iceland, Israel, Japan, Spain, Taiwan, and the United Kingdom under HTS number 2835.39.5000.

Note.–The staff report in the preliminary phase used adjusted Commerce statistics; this staff report in the final phase uses the same set of data for the annual periods but relies on unadjusted Commerce statistics for the interim periods (including only countries other than Canada, Germany, Iceland, Israel, Japan, Spain, Taiwan, and the United Kingdom in the all others category). As shown above, the differences between the two sets of data for the annual periods (where a comparison can be made) are relatively minor, with the possible exception of *** in ***. As will be discussed later in this report, U.S. importers' shipments (and not U.S. imports) were used to calculate domestic consumption. Since the questionnaire data for China in the final phase are less complete than those collected during the preliminary phase, no changes to any of the data compiled during the preliminary phase were made for this report.

Source: Table IV-2 and p. IV-9 of the confidential staff report in the preliminary phase (INV-EE-029, March 19, 2007); table IV-2; and official Commerce statistics.

U.S. Import Trends

As shown in table IV-2, U.S. imports of SHMP from China rose by quantity from 2004 to 2005 and then decreased slightly from 2005 to 2006 for a period increase of 6.7 percent.[16] Subject imports were higher (by 41.1 percent) in January-September 2007 compared with January-September 2006. The following tabulation shows U.S. imports from China compiled directly from importer questionnaire data:

Item	Calendar year			January-September[1]	
	2004	2005	2006	2006	2007
Quantity (*metric tons*)	17,386	21,544	20,689	9,507	13,477
Value (*$1,000*)[2]	12,106	17,883	16,853	7,642	11,414
Unit value (*per metric ton*)	$696	$830	$815	$804	$847

[1] Understated.
[2] Landed, duty-paid.

U.S. imports of SHMP from China, when calculated using questionnaire data instead of adjusted and/or unadjusted Commerce statistics, also increased from 2004 to 2006, but at a greater rate of 19.0 percent.[17] While questionnaire data are understated in the interim periods, the rates of the increase in U.S. imports of subject merchandise for official Commerce statistics and questionnaire data from January-September 2006 to January-September 2007 are comparable (at 41 to 42 percent).

Nonsubject imports rose from 2004 to 2005 and then fell from 2005 to 2006 for a period increase of 12.1 percent and were lower by 13.1 percent in January-September 2007 compared with January-September 2006 (table IV-2). Mexico is the most significant source of SHMP from nonsubject countries; the quantity of imports from Mexico increased by about *** metric tons from 2004 to 2005 and then fell by *** metric tons from 2005 to 2006 and were lower again in the interim period comparison.

Petitioners noted the slight decrease in U.S. imports of subject merchandise from 2005 to 2006 (in official Commerce statistics for HTS number 2835.39.5000) and stated during the preliminary phase that "imports of Chinese SHMP declined in the first half of 2006, apparently due to inventory build up."[18] *** indicated in its questionnaire response that: "***."[19] Respondent Hubei Xingfa attributes the increase in imports in January-September 2007 compared to January-September 2006 to the filing of the petition as firms "anticipated potential shortages."[20]

The following tabulation provides information on purchasing patterns after the filing of the petition provided by U.S. importers of subject merchandise in their questionnaire responses:

[16] The petition also presents import data for 2003. In 2003, 14,411 metric tons of product that petitioners believed consisted of SHMP was imported from China under HTS number 2835.39.5000. *See* petition, attachment INJ-1.

[17] The annual data submitted by U.S. importers of subject merchandise during the final phase generally corresponded both to data provided during the preliminary phase and to by-firm Customs data. There can be variations between the dates of receipt in records maintained by importing firms and the dates of entry recorded by Customs.

[18] Petition, p. 38.

[19] ***'s importer questionnaire response, ***.

[20] Respondent Hubei Xingfa's prehearing brief, p. 7.

Responses to question II-10 of the importers' questionnaire: "Did your firm change the amounts of its imports (or do you plan to change the amounts of your imports) of SHMP from China because of the filing of the petition in this investigation and/or because of the Department of Commerce's preliminary determination of sales at less than fair value of SHMP from China?"
* * * * * * *

The Question of Negligible Imports

The following tabulation presents official Commerce statistics for the 12-month period February 2006 through January 2007:

Period	China	All other[1]	Total[1]
	Quantity in *metric tons*		
U.S. imports	20,835	4,540	25,374

[1] Excludes Canada, Germany, Iceland, Israel, Japan, Spain, Taiwan, and the United Kingdom.

Source: Compiled from official Commerce statistics (HTS number 2835.39.5000).

As indicated above, imports of SHMP from China accounted for 82.1 percent of total U.S. imports.[21]

APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

The actual flow of product to distributors or end users within the U.S. market (i.e., apparent U.S. consumption) is best measured by U.S. shipments of both domestic producers and U.S. importers. Frequently, U.S. import data are used as a proxy for U.S. importers' U.S. shipments when the latter data are not available or, as is often the case, not complete. As was discussed earlier in this section, data from U.S. importers of SHMP from China are believed to be substantially complete for the annual but not the interim periods. Further, as will be addressed in Part VII of this report, inventories held by U.S. importers were reported to fluctuate within the period examined. Any fluctuation in inventory levels will result in a corresponding distortion in apparent U.S. consumption if it is calculated using import data and not importers' U.S. shipments.

As shown in table IV-3, both U.S. imports from China (whether compiled from adjusted or unadjusted Commerce statistics or directly from importer questionnaires) and U.S. shipments of imports from China rose on an overall basis from 2004 to 2006, although by somewhat varying rates of change. In contrast, U.S. imports of subject merchandise continued to increase from January-September 2006 to January-September 2007 by a substantial magnitude while U.S. shipments of those imports fell ***. Apparent U.S. consumption is accordingly, for the purposes of this report, calculated using U.S. importers' U.S. shipments of SHMP from China (and, in the interim periods, for Mexico) and U.S.

[21] The statute (section 771(24)(A)(i) of the Act) provides that imports from a subject country corresponding to the domestic like product are negligible if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition - in this case February 2006 through January 2007.

Table IV-3
SHMP: Comparison of available data on U.S. imports from China and U.S. shipments of imports from China

Data source	Calendar year			Jan.-Sept.		Percentage change	
	2004	2005	2006	2006	2007	2004-06	Interim 2006-07
	Quantity (*metric tons*)						
Commerce statistics for HTS number 2835.39.5000[1]	19,115	22,187	20,649	13,557	19,132	+8.0	+41.1
Adjusted Commerce statistics[1]	19,695	22,901	21,017	([2])	([2])	+6.7	([2])
Importer questionnaires: U.S. imports	17,386	21,544	20,689	9,507	13,477	+19.0	+41.8
U.S. shipments of imports[3]	***[4]	***[4]	***[4]	***	***	+***	-***

[1] As noted earlier, adjusted Commerce statistics are higher than Commerce statistics for HTS number 2835.39.5000 due to the misclassification of subject merchandise by ***.
[2] Not available.
[3] As reported during the final phase of the investigation.
[4] Figures do not exactly equal those presented in table IV-4 since, as indicated previously, the final staff report relies on the adjusted data developed during the preliminary investigation. There are minimal differences between the two sets of data.

imports for all other sources.[22] Interim data are, as discussed earlier, understated but provide a comparable comparison for the January-September 2006 to January-September 2007 periods (i.e., with the same firms reporting).

Apparent U.S. consumption of SHMP for the entire period examined is shown in table IV-4. U.S. apparent consumption, in terms of quantity, was relatively level from 2004 to 2006 while consumption, in terms of value, increased steadily. Consumption was *** higher in interim 2007 compared to interim 2006 as U.S. producers' U.S. shipments rose.[23] Counsel for the petitioners indicated that the consumption of SHMP in the U.S. market is believed to have been stable in the interim period.[24] U.S. producers' market shares, in terms of quantity, declined for a net fall of *** percentage points from 2004 to 2006 but then increased by *** percentage points from January-September 2006 to January-September 2007 (table IV-5). The market share of subject U.S. imports was *** from 2004 to 2005 and rose *** in 2006 for an increase of *** percentage points during 2004-06. Subject market share fell by *** percentage points in January-September 2007 compared with January-September 2006. The market share of U.S. imports of nonsubject SHMP (particularly from Mexico) rose *** from 2004 to 2005 but then declined in 2006 for a period increase of *** percentage points. It was also *** percentage points lower in January-September 2007 than in January-September 2006. In summary, the decline in U.S. producers' market share from 2004 to 2005 was offset by a rise in the market share of nonsubject imports (in particular, Mexico) while the fall in U.S. producers' market share from 2005 to 2006 was offset by a rise in the market share of U.S. imports from China that was large enough to offset the declining share of the U.S. market reported for product imported from Mexico. U.S. producers gained market share in the interim period as imports by suppliers from both China and Mexico fell.

[22] *See* the source note to table IV-2.

[23] ***.

[24] Hearing transcript, pp. 64-65 (Cannon).

Table IV-4
SHMP: U.S. shipments of domestic product, U.S. imports, by source, and apparent U.S. consumption, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Table IV-5
SHMP: Apparent U.S. consumption and market shares, by source, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The main raw materials used to make SHMP are wet phosphoric acid and soda ash or caustic soda. Prices of these raw materials have increased by more than *** percent since 2004.[1] SHMP also requires the use of very high temperatures, so energy is an important part of the production process. Innophos uses ***.[2] At the conference in the preliminary phase of the investigation, petitioners testified that prices for raw materials have been increasing, though the price of natural gas has decreased since 2005.[3] Altogether, raw material costs accounted for approximately *** percent of the cost of goods sold in 2006.

Tariffs and Transportation Costs

Transportation costs for SHMP from China to the United States (excluding U.S. inland costs) are estimated to be approximately 20.5 percent of the customs value for SHMP.[4] These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value. There is a 3.7-percent tariff on all SHMP imported into the United States from countries, such as China, with normal trade relations.

The producers and importers of SHMP were asked to estimate the cost of U.S. inland transportation of their products. Domestic producers noted that transportation costs are between *** and *** percent of the final cost of their product. Eight of 10 responding importers estimated domestic transport costs to be between 2 and 5 percent ***.[5]

Exchange Rates

Quarterly data reported by the Federal Reserve Bank of St. Louis indicate that the nominal value of the Chinese yuan remained stable relative to the U.S. dollar from January 2004 to the middle of 2005 (figure V-1). Since then, the Chinese yuan has been appreciating against the dollar, and was 9.9 percent stronger in the third quarter of 2007 relative to its value in the first three months of 2004.

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[1] Petitioners' posthearing brief, attachment 1, slides 3 and 4.

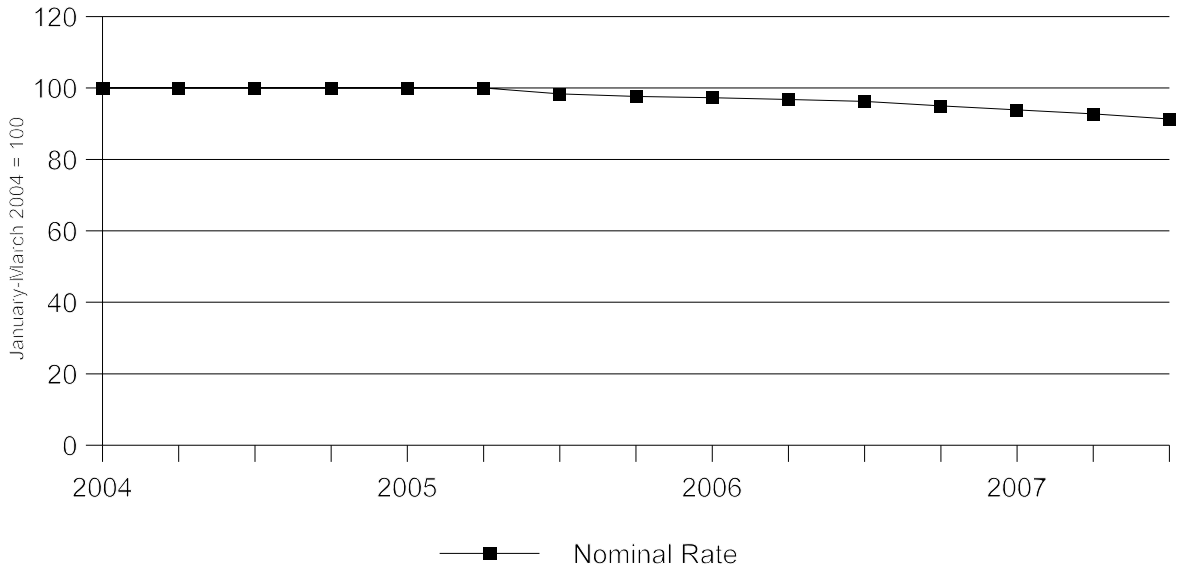
[2] Staff field trip report, Innophos, February 26, 2007, p. 2.

[3] Petitioners' conference exhibit, p. 3.

[4] The 20.5-percent figure is for all goods included in HTS subheading 2835.39.50 in 2006.

[5] The other two importers noted that U.S. inland transportation costs were 7 and 8.5 percent. One further importer reported an incongruent 100 percent.

Figure V-1
Exchange rates: Index of the nominal exchange rate of the U.S. dollar relative to the Chinese yuan, by quarters, January 2004-September 2007



Source: Federal Reserve Bank of St. Louis, retrieved from http://research.stlouisfed.org/fred2/series/EXCHUS, last accessed December 13, 2007.

PRICING PRACTICES

Pricing Methods

***. *** customers in the spot market, ***. ***. Seven of the 11 responding importers noted that they determined price by transaction-by-transaction negotiations. Four (including three that also sell on a transaction-by-transaction basis) sell via contracts. The remaining three determine prices based on market conditions. Typical contract negotiations were described by petitioners in their posthearing brief.[6]

Producer Innophos sells *** percent of its SHMP via short-term contracts, *** percent via long-term contracts, and the remainder on the spot market. ICL sells *** percent of its SHMP via short-term contracts, *** percent via long-term contracts, and *** percent on the spot market. The average duration of its long-term contracts is *** years, and the average duration of short-term contracts for ***. Of the nine responding importers, five sell the majority (76 to 100 percent) of their SHMP via long-term contracts (of one year or greater), one sells the majority (*** percent) via short-term contracts,[7] and three sell the majority (72 to 100 percent) on the spot market. On a simple average basis, 49.2 percent of

[6] Petitioners' posthearing brief, pp. 47-50.

[7] This importer, ***, considered these six-month contracts as long-term contracts, and it described its short-term contracts as ones of less than six months.

imported SHMP is sold via long-term contracts, 15.9 percent via short-term contracts, and 34.9 percent on the spot market.

Typical long-term contracts are one year in length, though one importer replied that its contracts are up to three years in length. As noted by a majority of importers responding to these questions, typical long-term sales contracts fix both price and quantity (though reportedly some prices can be renegotiated during the contract), and do not contain meet-or-release provisions. *** long-term contracts are similar, though ***. *** importers described typical short-term contracts as also fixing price and quantity, though no firm reported price renegotiation during the contract. Meet-or-release provisions are atypical in short-term contracts for all firms except importer ***.[8]

Sales Terms and Discounts

Payments in the SHMP industry are due within 30 days for both importers and producers. ***, but also will ***. Producer Innophos ***. Prices for sales made to distributors are typically *** than prices to end users, based on ***.[9] Five of 11 importers offer no discounts on their sales of SHMP, three offer a small discount for payment within 10 days, one offers a 5-percent distributor discount, one offers volume discounts, and one will meet competitive situations. Two importers sell on an f.o.b. basis, three on a delivered basis, and two on either an f.o.b. or delivered basis.[10] Domestic producers ship on a delivered basis.[11] Delivery is arranged for by producers and by all but four responding importers. *** domestic producers, three of eight responding importers, and one of 23 responding purchasers believe that there has been a change from prices being quoted on a freight-equalized basis[12] towards prices being increasingly quoted on a delivered basis. Prices to distributors tend to be higher than prices to large end users due to volume discounts and competitive pressure.[13]

Price Leadership

Purchasers were asked which firms are price leaders in the SHMP industry. Innophos was mentioned by eight purchasers as a price leader, and ICL/Astaris was mentioned by five purchasers. Some of these purchasers noted that they are the leaders in price increases, whereas none noted that they were leading prices downward. Among other suppliers noted for their price leadership were Univar (noted by four purchasers), Hubei Xingfa (three), Brenntag (three), Wego (two), and one each for China Everstrong, "Chinese," Graham, PCS, Prayon, and Sichuan Chenghong Phosphorous. With regard to Xingfa, the purchasers noted that they "consistently set low benchmark," they were "lowest when bid," and that they were "always competitively priced and consistent with market movements either up or down." With respect to Univar, *** noted that "Univar usually initiates competitive situations at our customers with their import material" and *** noted that they had the lowest cost from 2004 to 2006.

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[8] Also, although it reported meet-or-release provisions in its questionnaire response in the preliminary phase of the investigation, importer *** did not reply to this question in the final phase of the investigation.

[9] Petitioners' posthearing brief, p. 26.

[10] Two importers did not respond to this question, and one responded with respect to its shipping terms from China.

[11] ICL used to ship on a "freight-equalized" basis, i.e., quoting shipping charges at the same point as Innophos to equalize any differences, but ICL has had to absorb the cost recently. Conference transcript, p. 13 (Moffatt).

[12] Freight would be quoted from a common shipping point in the United States.

[13] Hearing transcript, p. 121 (Treinen).

PRICE DATA

The Commission requested U.S. producers and importers of SHMP to provide quarterly f.o.b. data for the total quantity and value of SHMP that was shipped to unrelated purchasers in the U.S. market. Data were requested for the period January 2004 to September 2007. Pricing data were requested for the following four product categories:

***Product 1*.–Sodium hexametaphosphate, technical grade, regular chain**

***Product 2*.--Sodium hexametaphosphate, technical grade, long chain**

***Product 3*.–Sodium hexametaphosphate, food grade, regular chain**

***Product 4*.--Sodium hexametaphosphate, food grade, long chain**

In all, usable pricing data were received from two U.S. producers and 11 importers.[14] Pricing data for SHMP imported from China were received from nine of these importers. Pricing data reported by these firms accounted for *** percent of U.S. producers' commercial shipments of SHMP and 89.3 percent of U.S. shipments of subject imports from China in 2006. Pricing data for products 1 through 4 are shown in tables V-1 to V-4 and figures V-2 to V-5.[15] Pricing data for imports of SHMP from nonsubject countries are presented in appendix D.

Price Trends

In general, prices trended upward during the period examined, as noted by 15 of 22 responding purchasers.[16] For domestic SHMP, prices of all four products increased irregularly, peaking in the first or second quarter of 2006.[17] The greatest increase in price was for product ***, which increased by *** percent between the first quarter of 2004 and the third quarter of 2007, whereas the smallest increase was for product ***, which increased by *** percent. Prices for sales of SHMP imported from China also rose irregularly from the first quarter of 2004 to the third quarter of 2007, by *** percent (product ***) to *** percent (product ***). See tables V-1 to V-4 and figures V-2 to V-5 for more detailed information.

In terms of pricing for technical grade SHMP, pricing for product 1 imported from China increased irregularly from the first quarter of 2004 through the second quarter of 2005, and decreased irregularly from that peak through the end of the period of investigation. Prices in the most recent quarter were *** percent below their peak 2005 level, but 36.1 percent higher than in the first quarter of

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[14] Three importers that provided data in the preliminary phase have not submitted questionnaires in the final phase of this investigation. These importers are ***.

[15] ***. Petitioners argue that Univar is a competitior and a client of Innophos and ICL. As Univar began to import larger volumes of Chinese SHMP, ICL and Innophos competed head-to-head with Chinese imports at Univar, so Univar's import prices should be the metric upon which price comparisons are based. Petitioners' posthearing brief, p. 30. Petitioners further noted that there is a ***. Ibid., p. 31.

[16] This does not include one further purchaser that noted that prices increased and decreased. In contrast, four responding purchasers noted that prices stayed the same, and two noted that prices have decreased. The three that noted price declines gave competition as the reason. For those that offered that prices have increased, the most frequent reasons given were increased energy and raw material costs.

[17] In general, while prices for ***.

Table V-1
SHMP: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling/ (overselling) for domestic and imported product 1,[1] January 2004-September 2007

Period	United States[2]		China[3]		
	Price (*per pound*)	Quantity (*pounds*)	Price (*per pound*)	Quantity (*pounds*)	Margin (*percent*)
2004:					
January-March	$***	***	$0.30	1,604,034	***
April-June	***	***	0.32	890,143	***
July-September	***	***	0.35	787,876	***
October-December	***	***	0.41	1,578,304	***
2005:					
January-March	***	***	0.37	512,279	***
April-June	***	***	***	***	***
July-September	***	***	0.44	2,041,024	***
October-December	***	***	0.45	1,708,459	***
2006:					
January-March	***	***	0.43	4,033,316	***
April-June	***	***	0.39	3,444,014	***
July-September	***	***	0.39	2,307,120	***
October-December	***	***	0.43	1,555,506	***
2007:					
January-March	***	***	0.42	918,146	***
April-June	***	***	0.39	2,263,132	***
July-September	***	***	0.41	1,601,207	***

[1] Product 1 consists of sodium hexametaphosphate, technical grade, regular chain.
[2] Relevant data submitted by ***.
[3] Relevant data submitted by ***.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-2
SHMP: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling/ (overselling) for domestic and imported product 2, January 2004-September 2007

* * * * * * *

Table V-3
SHMP: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling for domestic and imported product 3, January 2004-September 2007

* * * * * * *

Table V-4
SHMP: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling for domestic and imported product 4, January 2004-September 2007

* * * * * * *

Figure V-2
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 1, January 2004-September 2007

* * * * * * *

Figure V-3
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 2, January 2004-September 2007

* * * * * * *

Figure V-4
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 3, January 2004-September 2007

* * * * * * *

Figure V-5
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 4, January 2004-September 2007

* * * * * * *

2004. Prices for domestically produced product 1 were generally rising until the first half of 2006, and have remained at levels within *** percent of that peak.

Prices for product 2 imported from China increased somewhat steadily from the first quarter of 2004 to the first quarter of 2006. After a *** decrease in prices through the fourth quarter of 2006, prices increased again by the third quarter of 2007 to equal the earlier peak, which was *** percent above the prices in the first quarter of 2004. Domestically produced product 2 was also subject to generally increasing prices through most of the period examined, but suffered a *** percent decrease in price in the fourth quarter of 2006 and has generally continued to decrease in price.[18]

For food grade SHMP, pricing for domestically produced products 3 and 4 rose irregularly. While prices for the most part were rising, there were never three consecutive quarters of increasing or decreasing prices. Prices peaked in the first and second quarter of 2006 for products 3 and 4, respectively. In the most recent quarter for which data are available, prices have declined *** and *** percent, respectively, from those peak levels. Prices for product 3 imported from China also generally were rising from the beginning of the period examined until the first quarter of 2005, after which they decreased for two quarters. Pricing of product 3 from China then increased for three quarters until the second quarter of 2006, decreased for three quarters, and rose to the highest level in the most recent quarter, but were still only *** percent higher than in the first quarter of 2004. Prices rose for imported product 4 from China from the first quarter of 2004 to the first quarter of 2005 before declining through

[18] This decline in prices was ***.

the second quarter of 2006. After a one-quarter price spike in the third quarter of 2006, prices nearly returned to their prior levels. Since the first quarter of 2007, prices have been increasing and matched their highest levels in the third quarter of 2007.

Since Commerce's preliminary determination of sales at LTFV in September 2007, there have been increases in volumes and prices for contracts of SHMP that are coming up for renewal.[19] ***.[20]

Price Comparisons

The imported SHMP from China undersold the domestic products in 57 of 60 quarters during January 2004-September 2007. A detailed summary of margins of overselling and underselling is presented in table V-5. Respondent Hubei Xingfa contends, however, that "while prices of Chinese SHMP were consistently lower than U.S. companies {sic} prices, Chinese prices were rising faster than U.S. prices, and U.S. financial performance was moving in the opposite direction than would be expected, based on price changes."[21]

Table V-5
SHMP: Number of quarters of underselling and overselling and highest and lowest margin of underselling and overselling by imported Chinese product, by product

Products	Number of quarters of underselling	Number of quarters of overselling	Lowest margin of underselling *(percent)*	Highest margin of underselling *(percent)*	Lowest margin of overselling *(percent)*	Highest margin of overselling *(percent)*
Product 1	14	1	7.9	27.0	8.6	8.6
Product 2	13	2	5.2	35.2	2.0	4.1
Product 3	15	0	35.1	51.3	--	--
Product 4	15	0	19.8	40.0	--	--

Source: Compiled from data submitted in response to Commission questionnaires.

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of SHMP to report any instances of lost sales or revenues they experienced due to competition from imports of SHMP from China since January 2004. Both U.S. producers ICL and Innophos reported in the petition that they had lost sales and reduced prices in order to keep sales. The Commission contacted all purchasers named in the allegations. The allegations are shown in tables V-6 and V-7. Purchaser comments follow each table.

[19] Hearing transcript, p. 41 (Treinen).

[20] Petitioners' posthearing brief, attachments 9 and 10.

[21] Respondent Hubei Xingfa's posthearing brief, attachment 1, p. 4.

Table V-6
SHMP: U.S. producers' lost sales allegations

* * * * * * *

Table V-7
SHMP: U.S. producers' lost revenues allegations

* * * * * * *

*** disagreed with ***. ***. Additionally, *** explained that it ordered *** pounds of food grade SHMP during *** from *** and would have purchased a larger quantity, but ***.

*** disagreed with the allegation and submitted a letter stating that its total sales for the period of *** were "significantly less than half of the referred to quote."

*** agreed with the allegation and reported the number, type, and price of bags that it purchased.

*** disagreed with ***. ***. The *** were agreed to by ***. With respect to the ***, *** disagreed with ***. The domestic producer lost sales to *** due to *** for the ***. For ***, business was lost to imports from Mexico, not China.

***.[22]

*** partially agreed with the *** lost sales allegation. Though the quantity was correct, the accepted import price was not correct.

*** disagreed with the lost sales allegation. It runs two different applications with SHMP. It uses U.S.-produced SHMP for one and Chinese SHMP for the other. It purchased less U.S.-produced SHMP in ***, but did not replace it with Chinese SHMP. It does not commingle its SHMP.[23] With respect to ***, it cannot confirm the specified price quote in that time period, and noted that its average year-to-date pricing is ***.

*** agreed with the allegations. For the *** and, as a competitor in the world *** market, it needs to seek out the most competitive price on its inputs. For the *** agreed with the change of vendor and that price was pretty much the only consideration.[24]

*** disagreed with the lost sales allegation, stating that there was no such quote offered for SHMP by a domestic producer.

*** also disagreed with the alleged lost sales allegation, mainly for the reason that the time frame was incorrect. It has no documentation of a bid during the ***, nor any reason to bid at that time, since its agreements start in ***. *** did not purchase SHMP at the alleged import price in ***. It does have a quote from *** from a domestic producer at the alleged rejected price, and an email from ***. In *** accepted quotes from 2 Chinese sources.

*** disagreed with ***. ***. Accordingly, revenues were not lost by reason of imports from China.

*** replied that there is no one at the present firm that can answer the question due to staff turnover.

*** disagreed with the lost revenue allegation. When the supplier tried to increase prices, *** representative rejected the increase, stating that it would have to seek other sources if the increase went through as announced. There was no competitive offer known or being considered.

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[22] ***.

[23] Staff interview with ***.

[24] Staff interview with ***.

*** disagreed with the lost revenue allegation. The test run of Chinese material had quality issues that could not be overcome, and *** rejected the imported SHMP based on quality. After it tried the Chinese material, it went right back to using domestic SHMP. Around this time,*** began to talk with the domestic producer's representative about ***.[25]

*** partially agreed with the allegation, but noted a different accepted price per pound.

***.

[25] Staff telephone interview with ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

ICL and Innophos, which together accounted for *** of the U.S. production of SHMP during the January 2004-September 2007 time period, supplied financial data on their SHMP operations. ICL, an affiliate of Israel Chemicals Limited (total 2006 sales of $3.3 billion), reported sales and costs relating to production of SHMP at its Lawrence, KS facility. Innophos, which was created when Rhodia sold its specialty phosphates division to Bain Capital in 2004, reported sales and costs relating to production of SHMP at its Waterway Plant in Chicago, IL. Total net sales for Innophos in 2006 were $542 million. *** of their SHMP ranging from between *** and *** percent of both value and quantity annually. The unit sales values of the *** product were very similar to the unit sales value of ***. Additionally, Innophos reported *** ranging from between *** and *** percent of both value and quantity annually. The unit sales values of *** were also very similar to the unit sales value of ***. ICL and Innophos both have fiscal years ending December 31.

Staff conducted a verification of Innophos on January 7-8, 2008. The relatively minor data changes as a result of the verification have been included in this and other sections of the report.

OPERATIONS ON SHMP

Aggregate income-and-loss data for the U.S. producers are presented in table VI-1 while selected financial data for the individual producers are presented in table VI-2. To summarize, the financial results of the domestic SHMP industry grew steadily worse from 2004 to 2006 before recovering to a limited extent during the first nine months of 2007. Net sales quantities declined in every full-year period, and were down by approximately *** percent from 2004 to 2006. Increases in unit sales values ($*** per metric ton from 2004 to 2006) approximately offset the decline in sales quantities, limiting the decrease in overall sales values to *** percent. However, even *** – resulted in decreased gross profits, ***, and an *** cash flow in every period.

Table VI-1
SHMP: Results of U.S. producers' operations, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Table VI-2
SHMP: Selected financial data, by firm, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Although the financial results improved in January-September 2007 compared to the same period in 2006, the industry still reported ***. Net sales quantities increased by *** percent, while net sales values increased by a smaller amount (*** percent), the result of a $*** per metric ton decrease in unit sales values. Even larger decreases in unit costs (most notably *** ($***), though, resulted in ***.

The individual results for both ICL and Innophos (table VI-2) are ***. ICL reported *** during the full-year periods (***) and then *** between the interim periods (***) as the absolute value of its costs increased and then decreased, respectively, while its revenues remained essentially flat. Innophos, which ***, reported *** between 2004 and 2006 (as ***) and then *** between the interim periods as ***.

From 2004 to 2006, ICL reported *** in unit sales values that *** each other; comparing January-September 2007 data to January-September 2006 data, ICL's sales revenues were ***, as *** were approximately ***. From 2004 to 2006 all three components of ICL's cost of goods sold *** per metric ton. Unit factory costs increased *** partially because of increases in natural gas costs ($*** per metric ton)[1] and partially because increased ***.[2] The increase in raw material costs was ***.[3] From interim 2006 to interim 2007, ICL's unit costs declined by *** of the amount they had *** during the full-year periods. *** decreased the most.

Innophos also reported *** decreases in sales quantities and increases in unit sales values during the full-year periods. However, unlike ICL, the absolute value of its net sales values declined. Innophos' unit costs increased from 2004 to 2006 – unit raw materials costs increased by $***, approximately *** of which was attributable to increases in *** costs with the remaining *** attributable to increases in *** costs;[4] unit other factory costs increased by $***, *** because *** costs were *** of output;[5] unit SG&A costs increased by $***; and unit labor costs increased by $***. From interim 2006 to interim 2007, Innophos' unit costs declined by *** – other factory costs ($*** per metric ton), SG&A expenses ($***), raw materials ($***), and direct labor ($***) all declined. The *** are the result of ***.[6]

ICL and Innophos shared operational similarities and displayed differences. Both companies produce a ***. Based upon domestic shipment data, ICL's average 2004-interim 2007 ratio for sales of *** SHMP was ***, while Innophos' was ***; ICL's ratio of regular and long chain SHMP was *** and Innophos' was ***.[7] [8] Additionally, both companies manufacture SHMP using *** technology.[9] ICL has two furnaces, both of which can be used for either food grade or technical grade (although until recently, one was used for food grade and the other for technical grade),[10] while Innophos has just one furnace.[11]

Despite these similarities, *** were *** (see the discussion in Part III of this report regarding these differences). Also, ICL's *** was ***. The largest single reason for this *** seems to be that ICL *** (total capacity of approximately *** metric tons) while Innophos *** furnace (capacity *** metric

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[1] Petitioners' postconference brief, p. 34.

[2] E-mail from ***, March 2, 2007.

[3] Petitioners' postconference brief, p. 34.

[4] Ibid.

[5] The absolute level of Innophos' *** were *** in 2004 and 2006, while its 2006 sales quantities were *** percent *** than 2004 levels. Producer questionnaire, question III-11.

[6] The absolute level of Innophos' *** by approximately *** percent and *** percent, respectively, in interim 2007 as compared to interim 2006, while its interim 2007 *** were approximately *** percent *** than interim 2006 levels. Producer questionnaire, question III-11.

[7] These ratios are based upon ICL's and Innophos' responses to question II-11 of the producer questionnaire, which asks for quantities and values of domestic shipments of food grade, technical grade, and other grades of SHMP. On a quantity basis, ICL's domestic shipments accounted for *** to *** percent of its total shipments and Innophos' domestic shipments accounted for *** to *** percent of its total shipments. The regular chain/long chain ratios are based upon identifiable regular and long chain shipment data, which accounted for *** to *** percent of ICL's total shipments and *** to *** percent of Innophos' total shipments.

[8] According to ***, food grade SHMP costs $*** per metric ton more than technical grade SHMP. Postconference brief, p. 36. Innophos indicated that its long chain SHMP cost $*** per metric ton more than its regular chain SHMP (posthearing brief at exh. 2, p. 2), while ICL indicated that the difference was $*** per metric ton (postconference brief, pp. 36-37).

[9] Producer questionnaire, question II-13.

[10] Hearing transcript, pp. 26 (Stachiw) and 100 (Schewe).

[11] Conference transcript, pp. 57 (Moffatt) and 58 (Kemp) .

tons).[12] For example, in 2006, ICL's unit *** costs were $***[13] than Innophos'. While part of this *** might be attributable to the fact that ***,[14] and thus did not *** rates, part is attributable to *** at ICL's facility than at Innophos',[15] and part is probably attributable to *** between the two companies. ICL engages in *** to some extent, ***.[16]

In response to questions about the two producers' costs at the hearing,[17] the producers were asked to provide a detailed cost of goods sold breakdown for 2006. The data (in dollars per metric ton) are presented in table VI-3. While there are *** cost (almost all of which is ***). This ***.[18]

Table VI-3
SHMP: U.S. producers' unit cost of goods sold, fiscal year 2006

* * * * * * *

Other *** are at least partially due to the fact that different companies often account for the same costs differently. For example, ICL reported a ***, while Innophos reported $***. ***.[19] Thus at least a portion of this cost includes the cost of receiving and storing raw materials, and the fact that ICL reported this cost separately at least partially explains why *** $*** Innophos'. Similarly, ICL reported an allocated plant services cost of $*** while Innophos reported $***. Allocated plant services are costs related to laboratory, purchasing, environmental safety and health, accounting, IT, service facilities, security, and waste treatment.[20] Innophos might have classified the same costs as indirect labor, which might explain why Innophos' *** $*** ICL's. In sum, ***.

The variance analysis showing the effects of prices and volume on the producers' sales of SHMP, and of costs and volume on their total cost, is shown in table VI-4. The analysis confirms that the decrease in profitability from 2004 to 2006 was the result of per-unit ***, while the increase in profitability in interim 2007 relative to interim 2006 was the result of ***. The summary at the bottom of the table illustrates that from 2004 to 2006 the positive effect of increased *** was *** offset by the negative effect of increased ***; comparing interim 2006 to interim 2007, the negative effect of decreased prices *** was countered by the positive effect of decreased costs and expenses ($***).

Table VI-4
SHMP: Variance analysis of operations of U.S. producers, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * * * *

[12] Producer questionnaires, question II-9.

[13] Petitioners' posthearing brief, exhibit 2, p. 1.

[14] Producer questionnaire, question II-2.

[15] Petitioners' posthearing brief, p. 18 and exh. 3.

[16] Petitioners' posthearing brief, p. 18.

[17] Hearing transcript (Lane) pp. 52-54, 56, 120-121, and 266-268; (Williamson) p. 68; (Pearson) pp. 77 and 108-111; and, (***) pp. 255-257.

[18] Hearing transcript, p. 281 (Cannon) ("***").

[19] February 7, 2007 e-mail from Jim Cannon (ICL's counsel).

[20] Ibid.

Capital Expenditures and Research and Development Expenses

The capital expenditures and research and development (R&D) expenses for ICL and Innophos are presented in table VI-5. Capital expenditures were *** for the domestic industry (table VI-1), an indication that the domestic industry is ***.

*** R&D expenses.

Table VI-5
SHMP: Capital expenditures and R&D expenses, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Assets and Return on Investment

ICL's and Innophos' assets and their return on investment are presented in table VI-6. The book value of the producers' productive assets was ***, while the total value of the assets utilized in the production, warehousing, and sale of SHMP increased *** from 2004 to 2006. At the same time, the *** return on the assets *** as the operating *** increased.

Table VI-6
SHMP: Value of assets and return on investment, fiscal years 2004-06

* * * * * * *

Capital and Investment

The Commission requested U.S. SHMP producers to describe any actual or potential negative effects on their return on investment, or their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of SHMP from China. The firms' comments are as follows:

> Since January 1, 2004, has your firm experienced any actual effects on its return on investment, growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of SHMP from China?

ICL ***.

Innophos ***.

> Does your firm anticipate any negative impact of imports of SHMP from China?

ICL ***.

Innophos ***.

PART VII: THREAT CONSIDERATIONS AND *BRATSK* INFORMATION

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

OVERVIEW OF DATA COLLECTION

The Commission sent foreign producer questionnaires to chemical producer/exporters in China (41 firms) and in nonsubject countries (10 firms) that were identified in the petition, Customs documents, and/or public sources as possibly producing and/or exporting SHMP. The major portion of the data in this part of the report are compiled from firm responses to the foreign producer questionnaire.[1] Export data derived from the Global Trade Atlas ("GTA") are also presented for China. These data are compiled at the 6-digit HTS level and include nonsubject products.[2] The ratios of subject U.S. imports compiled at the 8-digit HTS level to GTA exports to the United States compiled at the 6-digit HTS level for 2006 are as follows:

Country[1]	U.S. imports (10-digit HTS level)	Exports to the United States (6-digit HTS level)	Ratio
	Quantity (*metric tons*)		(*Percent*)
China	20,649	25,700	80.3

[1] Only data for GTA exports for China are presented in this part of the report. As discussed in Part IV, the majority of U.S. imports at the 8-digit HTS level from China are SHMP but this is not the case for other sources (including Germany and the United Kingdom) where *** imports for China under HTS number 2835.39.5000 are polyphosphates other than SHMP. *** of U.S. imports from Mexico at the 8-digit HTS level are SHMP; however, as will be discussed later in this section the sole Mexican manufacturer of SHMP ***.

Source: Compiled from official Commerce statistics (for HTS number 2835.39.5000) and the Global Trade Atlas database (for HTS number 2835.39).

SUMMARY OF DATA PROVIDED

Reporting manufacturers are listed in table VII-1 along with each firm's reported capacity, production, total exports, and exports to the United States in 2006. As shown, *** was the only responding firm other than those in China that ***. There are also SHMP industries in other countries, including Germany and the United Kingdom. However, as discussed in Part IV of this report, *** U.S.

[1] As will be discussed in the section entitled "The Industry in China," one of the two responding Chinese producers is believed to account for the major portion of SHMP production in China.

[2] The included nonsubject merchandise consists of all polyphosphates other than SHMP. Some examples of nonsubject products that would be in this category are tetrasodium pyrophosphate, potassium tripolyphosphate, and ammonium polyphosphate flame retardants.

Table VII-1
SHMP: Foreign producers' capacity, production, total exports, and exports to the United States in 2006, by firm

* * * * * * *

imports from these sources under HTS number 2835.39.5000 are believed to be product other than SHMP. Information on the world production of SHMP is provided in the section of this report entitled "Nonsubject Manufacturers."

THE INDUSTRY IN CHINA

Petitioners contend that, in contrast to the relatively limited number of SHMP manufacturers in the United States, numerous companies produce the subject product in China.[3] The Chinese respondent in this investigation (Hubei Xingfa) indicated that it was aware of four other Chinese SHMP producers in China, each of which maintains a capacity of about 3,000 metric tons and has customers located mainly in China.[4] As shown above (table VII-1), both Hubei Xingfa and Sichuan Mianzhu Norwest provided data in response to the foreign producer questionnaire. Hubei Xingfa (the more substantial of the two SHMP producers) manufactures a broad range of phosphate chemicals other than SHMP.[5] SHMP accounted for *** percent of its total sales in the company's most recent fiscal year. The firm manufactures SHMP in a fully integrated production operation. Hubei Xingfa first mines phosphate rock and then converts the ore to the elemental (yellow) phosphorus that is then processed into the upstream phosphoric acid used to produce SHMP.[6] Most Chinese producers, however, are not integrated but begin the manufacturing process either with elemental phosphorus (which is then converted to phosphoric acid) or directly with locally purchased phosphoric acid.[7]

Hubei Xingfa is the largest source for Chinese-produced SHMP that is exported to the United States.[8] According to the firm, its *** metric tons of production accounted for *** percent of the total production of SHMP in China in 2006 and its exports of *** metric tons accounted for *** percent of the

[3] Postconference brief, exh. 6.

[4] Respondent Hubei Xingfa's posthearing brief, attachment 9. These firms are: (1) Mianyang Qimingxing Phosphorus Chemical Co., Ltd.; (2) Sichuan Lanjian Chemical Co., Ltd.; (3) Sichuan Chenghong Chemical Co., Ltd; and (4) Jiangsu Chengxing Phosphorus Chemicals, Ltd. Ibid. Although Hubei Xingfa was the primary supplier, U.S. importers also reporting purchasing product from *** (table IV-1). *See* Part I of this report for the companies (including firms that may only export) identified by Commerce during its investigation, which also included Yibin Tianyuan Group Co., Ltd.

[5] ***.

[6] ***, and petition, exhibit AD-5. Hubei Xingfa indicated that ***. ***. ***.

[7] Petition, p. 18, and postconference brief, exh. 6. ***.

[8] Petition, p. 18, and Hubei Xingfa's prehearing brief, p. 1.

exports to the United States.[9] [10] [11] Hubei Xingfa was reported in a 2005 trade press article to have been in the process of adding 20,000 metric tons of food grade SHMP capacity to its operations. The project, which was believed to have been scheduled for completion in May 2006, would reportedly have brought Hubei Xingfa's total SHMP production capacity to 70,000 metric tons.[12] Counsel for Hubei Xingfa indicated at the Commission's hearing that the firm had considered adding additional capacity but had concluded that the available market for SHMP would not support the increase.[13] As shown in table IV-1, Hubei Xingfa was the *** supplier for *** reporting U.S. importers.

Chinese-produced SHMP is, according to petitioners, subject to an antidumping duty of 102.22 percent *ad valorem* in Mexico. The antidumping duty order was reported to become effective on August 4, 2004 and covers both food and technical grade product, regardless of chain length.[14] *** also reported that Mexico has placed an antidumping duty order on imports of SHMP from China.[15] *** reported that their exports of SHMP were subject to antidumping findings or remedies in any WTO-member country.[16] Hubei Xingfa indicates that it has never sold SHMP to purchasers in Mexico.[17]

The data provided by the responding Chinese manufacturers on their SHMP operations are presented in table VII-2. Data on production and exports to the United States by product category are shown in table VII-3.

Table VII-2
SHMP: Chinese production capacity, production, shipments, and inventories, 2004-06, January-September 2006, January-September 2007, and projected 2007-08

* * * * * * *

Table VII-3
SHMP: Chinese producers' production and exports to the United States, by grade and by average chain length, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

[9] Hubei Xingfa's foreign producer questionnaire response, question II-9. Sichuan Mianzhu Norwest estimated that it accounted for *** percent of the production of SHMP in China in 2006 and *** percent of total exports to the United States. Sichuan Mianzhu Norwest's foreign producer questionnaire response, question II-9.

[10] As shown in table IV-2, U.S. imports of subject merchandise amounted to 21,000 metric tons in 2006.

[11] ***, China had approximately 170,000 metric tons of installed SHMP capacity in 2006. Home market demand for the product in 2006 was reported at 120,000 metric tons. Postconference brief, p. 44.

[12] HighBeam Research, Inc., China Chemical Reporter, October 26, 2005, attached as exh. 11 to the postconference brief. As shown in table VII-1, capacity to produce SHMP at Hubei Xingfa was reported at *** metric tons in 2006 by the firm. The firm did not, ***, expand its capacity to produce SHMP during the period examined ***. Hubei Xingfa's foreign producer questionnaire response, questions II-1 and II-9. *** and in the notes to table VII-1, Hubei Xingfa's operations are fully integrated; it based its capacity calculation in its response on ***. ***. Hubei Xingfa's foreign producer questionnaire response, question II-3.

[13] Hearing transcript, pp. 204-205 (Neeley).

[14] Postconference brief, p. 47, and petitioners' prehearing brief, p. 51.

[15] ***.

[16] ***.

[17] Respondent Hubei Xingfa's posthearing brief, att. 7.

Reported capacity to manufacture SHMP in China rose *** from 2004 to 2005 as ***. Capacity utilization remained between *** and *** percent for the two firms combined for the 2004-06 period, although this is, in part, a *** in that ***. The below tabulation presents capacity utilization by firm:

* * * * * * *

Capacity utilization for Hubei Xingfa, the primary Chinese manufacturer of SHMP, declined steadily from *** percent in 2004 to *** percent in 2006 and is projected to *** in 2008 as in 2007. A *** portion of the SHMP produced by the firms was shipped within the home market (table VII-2). *** was exported, with an increasing share exported to the United States as shipments to other export markets declined from 2004 to 2006. Relatively more SHMP was exported to markets other than the United States in January-September 2007 compared to January-September 2006. The firms produce both food-grade and technical-grade SHMP in a wide range of chain lengths (table VII-3).

Table VII-4 presents data on China's exports and average unit value of exports for the HTS classification that includes SHMP. In 2006, exports under this classification to the United States accounted for one-third of total Chinese exports. Other significant markets included Spain, Italy, and Belgium. China reduced a VAT rebate on exports from 13 percent to 5 percent on July 1, 2007, which, according to petitioners, led to a rise in import prices.[18]

[18] Hearing transcript, p. 64 (Treinen).

Table VII-4
SHMP: China's exports and average unit values, 2004-06

Destination	Calendar year		
	2004	2005	2006
	Quantity (*metric tons*)		
United States	22,051	25,358	25,700
Other top export markets:			
Spain	2,842	3,270	4,178
Italy	1,918	2,333	4,068
Belgium	2,645	4,467	3,633
World	54,240	68,414	77,380
	Unit value (*per metric ton*)		
United States	$538	$673	$672
Other top export markets:			
Spain	615	763	733
Italy	590	711	624
Belgium	561	662	683
World average	609	726	718
	Share of total (*percent*)		
United States	40.7	37.1	33.2
Other top export markets:			
Spain	5.2	4.8	5.4
Italy	3.5	3.4	5.3
Belgium	4.9	6.5	4.7
Total	54.3	51.8	48.6

Note.–Export figures are quantities reported at the 6-digit level for HTS subheading 2835.39, which includes nonsubject products.

Source: Compiled from Global Trade Atlas database.

IMPORTERS' U.S. INVENTORIES

Importers of Chinese-produced SHMP are reported to maintain substantial inventories due to long lead times for shipping product from China, with some (***) establishing a national network of

warehouses while ***.[19] Reported end-of-period inventories held by U.S. importers of subject merchandise from China are shown in table VII-5.[20] Both the absolute volume and the ratios of subject inventories to U.S. imports and U.S. shipments of imports rose from December 2004 to December 2005 and then declined by December 2006 to levels that remained above those reported for December 2004. End-of-period inventories of subject merchandise for the interim periods increased *** from September 2006 to September 2007. ***.[21] ***.[22] Petitioners testified that importers had prior to Commerce's preliminary determination built enough inventories to carry them into 2008.[23] In contrast to the *** shares of Chinese manufactured SHMP held in U.S. inventories, there are *** inventories of product produced in Mexico.

Table VII-5
SHMP: U.S. importers' end-of-period inventories of imports, by sources, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

INFORMATION ON NONSUBJECT SOURCES

"Bratsk" Considerations

As a result of the Court of Appeals for the Federal Circuit ("CAFC") decision in *Bratsk Aluminum Smelter v. United States* ("Bratsk"), the Commission is directed to:[24]

> *undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market." The additional inquiry required by the Court, which we refer to as the Bratsk replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."*

In its preliminary determination in this investigation, the Commission noted that "{i}n any final phase investigations, we will seek information on the role of nonsubject imports of SHMP in the U.S. market."[25]

---

[19] Respondent Hubei Xingfa's prehearing brief, pp. 6 and 18. Respondent contrasts the relatively *** inventory levels maintained in the United States for Chinese-produced merchandise to the *** U.S. inventory levels of SHMP manufactured in Mexico. Respondent's prehearing brief, p. 18. *See also* conference transcript, p. 23 (Treinen) and postconference brief, pp. 24-25. Petitioners point out that Univar's website lists 81 locations throughout the United States. Id., p. 24, citing www.univarusa.com/quick_facts.htm.

[20] As indicated earlier, SHMP has a shelf life of about 18 months.

[21] E-mail from ***, January 28, 2008.

[22] Staff telephone interview with ***, January 28, 2007. This seasonality in production is ***.

[23] Hearing transcript, p. 33 (Stachiw).

[24] *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand),* USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States,* 444 F.3d at 1375.

[25] *Sodium Hexametaphosphate From China, Inv. No. 731-TA-1110 (Preliminary),* USITC Publication 3912, (April 2007), p. 13, n. 83.

Nonsubject Manufacturers

There are a limited number of SHMP manufacturers in the world.[26] The major world SHMP producers are located in Europe and in Mexico, in addition to those in China and the United States. Table VII-6 presents available data on the SHMP capacity of nonsubject producers.[27] Petitioners stated during the preliminary phase of the investigation that the European market differs from the U.S. market in that ***.[28] The current exchange rate and the need for certain customers to meet their exact specifications also limits shipping SHMP manufactured in Europe to the United States.[29] The producer in France (Prayon) and German manufacturers ship *** volumes of SHMP to the United States; there were *** identified U.S. imports of SHMP from the United Kingdom. The UK manufacturer, Thermophos, maintains two SHMP furnaces in the United Kingdom with a combined capacity of somewhat more than 25,000 metric tons. The firm is reported to not be producing SHMP at its full capacity and, at times, has only run one furnace. Petitioners conjecture that favorable conditions would have to exist before Thermophos could justify bringing up the second furnace.[30]

Table VII-6
SHMP: Production capacity of SHMP by nonsubject producers, 2006

Country	Producer	Capacity (*metric tons*)
Europe:		
France	Prayon SA	***
Germany	BK Giulini	***
Germany	Chemische Fabrik Budenheim	***
Germany	Chemische Werke Piesteritz (Thermaphos Germany)	***
Slovenia	TKI	***
United Kingdom	Thermophos United Kingdom	over 25,000
Total (Europe)	--	***
Mexico	Quimir SA de CV	7,000

Note.–There is also SHMP production in Australia and Thailand.

Source: Conference transcript, pp. 47-48 (Treinen), postconference brief, p. 46, http://tki-hrastnick.com (retrieved March 13, 2007), and petitioners' prehearing brief, p. 33.

[26] Hearing transcript, p. 133 (Neeley).

[27] *See* app. E for data derived from the responses to the foreign producer questionnaire by Prayon (France), BK Giulini ("BKG") (Germany), and Budenheim (Germany). As indicated earlier, ICL is related to BKG.

[28] Postconference brief, p. 46.

[29] Hearing transcript, p. 167 (Smith).

[30] Hearing transcript, p. 113-114 (Treinen).

Mexico, in contrast, has consistently supplied SHMP to the United States. Data on Quimir's operations are presented in tables VII-7 and VII-8.[31] The firm did not expand its capacity to produce SHMP during the period examined and ***.[32] Capacity utilization for 2004-06 was at or below *** percent except for *** when ***.[33] Capacity utilization dropped from January-September 2006 to January-September 2007 but is again projected to reach *** percent in *** with ***. Quimir maintains *** home market shipments. The United States is the destination for *** of Quimir's exported SHMP. Table VII-8 provides data on the types and average chain length ranges of the SHMP both produced in Mexico and exported to the United States. As shown, Quimir produces *** technical grade SHMP *** volumes of the food grade product ***. ***.[34]

Table VII-7
SHMP: Quimir SA de CV's (Mexico) production capacity, production, shipments, and inventories, 2004-06, January-September 2006, January-September 2007, and projected 2007-08

* * * * * * *

Table VII-8
SHMP: Quimir SA de CV's (Mexico) production and exports to the United States, by grade and by average chain length, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

[31] Quimir reported that it accounts for *** production of SHMP in Mexico. ***.

[32] As indicated in the notes to table VII-1, ***. Quimir's foreign producer questionnaire response, question II-1.

[33] *See* the section of this report entitled "Import Trends" for information on U.S. imports by Quimir's related U.S. importer.

[34] The chain range was provided by Quimir in its response to the foreign producer questionnaire (question II-10).

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1110 (Final)]

Sodium Hexametaphosphate From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1110 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of sodium hexametaphosphate, provided for in subheading 2835.39.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of sodium hexametaphosphate from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 8, 2007, by ICL Performance Products, LP (St. Louis, MO) and Innophos, Inc. (Cranbury, NJ).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on January 9, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 24, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 15, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 17, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 16, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 31, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before January 31, 2008. On February 15, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 20, 2008, but such final comments must not contain new factual

information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 15, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21396 Filed 10–30–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China

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

DATES: *Effective Date:* February 4, 2008.

SUMMARY: On September 14, 2007, the Department of Commerce (the ''Department'') published its preliminary determination of sales at less than fair value (''LTFV'') in the antidumping investigation of sodium hexametaphosphate (''SHMP'') from the People's Republic of China (''PRC''). The period of investigation (''POI'') is July 1, 2006, through December 31, 2006. We invited interested parties to comment on our preliminary determination of sales at LTFV. The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Scot Fullerton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1442 or (202) 482–1386, respectively.

Final Determination

We determine that SHMP from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its preliminary determination of sales at LTFV on September 14, 2007. *See Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 52544 (September 14, 2007) (''*Preliminary Determination*'').

On September 11, 2007, Hubei Xingfa Chemicals Group (''Hubei Xingfa'') requested a 60-day extension of the final determination. On September 28, 2007, the Department published the postponement of the final determination. *See Postponement of Final Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 55176 (September 28, 2007). On September 28, 2007, Hubei Xingfa withdrew from participating in the investigation.[1]

On September 17, 2007, the Department received an allegation from Petitioners that the Department made clerical errors in its *Preliminary Determination*.[2] On October 25, 2007, the Department found that it had made a clerical error with regard to its preliminary determination calculation for Hubei Xingfa, but found that the error was not ''significant'' to warrant amending the *Preliminary Determination*.[3]

We invited parties to comment on the *Preliminary Determination.* On November 19, 2007, the Petitioners[4] filed a case brief.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Investigation of Sodium Hexametaphosphate from the People's Republic of China: Issues and Decision Memorandum,'' dated January 28, 2008, which is hereby adopted by this notice (''Issues and Decision Memorandum''). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issue and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://www.trade.gov/ia*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made changes in our margin calculations for the separate rate respondents. Additionally, because Hubei Xingfa refused to participate in verification, we determined to apply total adverse facts available (''AFA'') to Hubei Xingfa. As AFA, we found that Hubei Xingfa did not demonstrate that it was entitled to a separate rate, and is therefore part of the PRC entity. *See Adverse Facts Available* below.

Scope of Investigation

The merchandise subject to this investigation is sodium hexametaphosphate (''SHMP''). SHMP is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating NaPO3 units. SHMP has a P2O5 content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3824.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service (''CAS'') has assigned the name ''Polyphosphoric Acid, Sodium Salt'' to SHMP. The CAS registry number is 68915–31–1. However, SHMP is commonly identified by CAS No. 10124–56–8 in the market. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by this investigation includes SHMP in all grades, whether food grade or technical grade. The product covered by this investigation includes SHMP without regard to chain length i.e., whether regular or long chain. The product covered by this investigation includes SHMP without regard to physical form, whether glass, sheet, crushed, granule,

[1] *See* Letter from Greenberg Traurig to the Department of Commerce, regarding ''Sodium Hexametaphosphate from the People's Republic of China: Withdrawal from Participation,'' dated September 28, 2007 (''Hubei Xingfa Withdrawal Letter'').

[2] *See* Letter from Williams Mullen to the Department of Commerce, regarding ''Sodium Hexametaphosphate from China: Clerical Error Comments,'' dated September 17, 2007.

[3] *See* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9 through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Allegation of Ministerial Errors,'' dated October 25, 2007 (''Ministerial Error Memo'').

[4] ICL Performance Products, LP and Innophos, Inc.

powder, fines, or other form, and whether or not in solution.

However, the product covered by this investigation does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.

Scope Comments

We have addressed comments regarding the Scope in our Issues and Decision Memorandum and have determined to revise the scope of this investigation. *See Issues and Decision Memorandum* at Comment 2.

Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. On September 28, 2007, subsequent to the *Preliminary Determination* and before the commencement of verification, counsel for Hubei Xingfa informed the Department that it would not continue its participation in the instant investigation. *See* Hubei Xingfa Withdrawal Letter dated September 28, 2007. Because Hubei Xingfa ceased participation in the instant investigation, the Department was not able to conduct its verification of Hubei Xingfa's responses. Verification is integral to the Department's analysis because it allows the Department to satisfy itself that it is relying upon accurate information and calculating dumping margins as accurately as possible. By failing to participate in verification, Hubei Xingfa prevented the Department from verifying its reported information, including separate rates information, and significantly impeded the proceeding. Moreover, by not permitting verification, Hubei Xingfa failed to demonstrate that it operates free of government control and is entitled to a separate rate. Therefore, we find the use of facts available, pursuant to sections 776(a)(2)(C) and (D), to be appropriate in determining the applicable rate for Hubei Xingfa.

Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997); *see also Crawfish Processors Alliance* v. *United States*, 343 F. Supp.2d 1242, 1270–1271 (CIT 2004) (approving use of AFA when respondent refused to participate in verification). We find that Hubei Xingfa's late withdrawal from participation and refusal to participate in verification constitutes a failure to cooperate by not acting to the best of its ability to comply with a request from the Department. *See* section 776(b) of the Act. Therefore, pursuant to section 776(b) of the Act, we find that when selecting from among the facts available, an adverse inference is warranted. As AFA, due to its failure to demonstrate separateness, we have, as AFA, treated Hubei Xingfa as part of the PRC-wide entity and thus will receive the rate applicable to PRC-wide entity, which is 188.05 percent. *See* the sections entitled ''The PRC-Wide Rate'' and ''Corroboration,'' below, for a discussion of the selection and corroboration of the PRC-Wide rate.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non-market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''), and Section 351.107(d) of the Department's regulations.

In the *Preliminary Determination*, we found that the separate rate applicants, Jiangyin Chengxing International Trading Co., Ltd. (''Chengxing'') and Sichuan Mianzhu Norwest Phosphate Chemical Company Limited (''Norwest''), demonstrated their eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Chengxing and Norwest demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status.

In the *Preliminary Determination*, we assigned the rate for Hubei Xingfa, who was a cooperating respondent, as a separate rate to Chengxing and Norwest. However, we have found that Hubei Xingfa has not demonstrated entitlement to a separate rate for this final determination. As such, Hubei Xingfa will be assigned the PRC-wide rate, which is based on AFA. Normally the separate rate is determined based on the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. *See* section 735(c)(5)(A). If, however, the estimated weighted average margins for all individually investigated respondents are *de minimis* or based entirely on AFA, the Department may use any reasonable method. *See* section 735(c)(5)(B). In this proceeding, because the rate for all individually investigated respondents is based on AFA, we have relied on information from the petition to determine a rate to be applied to the respondents that have demonstrated entitlement to a separate rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical*

Circumstances: Glycine from Japan, 72 FR 67271 (November 28, 2007) (citing *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527–28 (February 4, 2000) and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999)). Specifically, we have assigned an average of the margins calculated for purposes of initiation as the separate rate for the final determination. *See Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China*, 72 FR 9926 (March 6, 2007) (''*Initiation Notice*''). *See also* Memorandum to the File, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Calculation of the Separate Rate'' dated January 22, 2008.

To corroborate the initiation margins for use as a separate rate, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. See *Initiation Checklist*. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as the separate rate. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the petition to derive margins. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, that corroborates key elements of the export-price and normal-value calculations used in the petition to derive estimated margins. We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition for purposes of initiation are reliable for purposes of calculating the separate rate. We determined in the *Preliminary Determination* that Yibin Tianyuan Group Co., Ltd. (''Tianyuan'') is not entitled to a separate rate. We received no comments on this issue and continue to find that Tianyuan is not entitled to a separate rate.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies and the PRC-wide entity did not respond to our requests for information. In the *Preliminary Determination* we treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also*, ''*Statement of Administrative Action*'' accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (''*SAA*''). We determined that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See*, *e.g.*, *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the ''Final Determination Margins'' section below.

At the *Preliminary Determination*, we assigned to the PRC-wide entity the calculated margin for Hubei Xingfa, the highest rate calculated for any respondent in the investigation. For the final determination, as total AFA, we have assigned to the PRC-wide entity the rate of 188.05 percent, which is the rate based on the information supplied by Hubei Xingfa in the preliminary determination, with adjustments made for clerical errors. *See* Ministerial Error Memo. In selecting the AFA rate for the PRC-wide entity, we did not use the petition rates because we have an alternative that we find to be sufficiently adverse to effectuate the purpose of the AFA provision of the statute. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910, 76912 (December 23, 2004). *See also*, *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Moldova*, 67 FR 55790 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 2 and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela*, 67 FR 62119, 62120 (October 3, 2002). We assigned the rate of 188.05 percent, which was based on information submitted by Hubei Xingfa in its questionnaire responses and database submissions, and remains on the record of this investigation.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted ''corroborate'' to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000); *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). Because the AFA rate is based on information provided to us by a respondent to this investigation, it is not considered to be secondary information, and therefore, needs not be corroborated. We conclude that this data, although unverified, continues to be the best information reasonably available to us to effectuate the purpose of AFA.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

SODIUM HEXAMETAPHOSPHATE FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Jiangyin Chengxing International Trading Co., Ltd.	92.02
Sichuan Mianzhu Norwest Phosphate Chemical Company Limited	92.02
PRC-Wide Rate (including Yibin Tianyuan Group Co., Ltd., Mianyang Aostar Phosphorous Chemical Industry Co., Ltd., and Hubei Xingfa Chemicals Group Co., Ltd.)	188.05

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all imports of subject merchandise that are entered or withdrawn from warehouse, for consumption on or after September 14, 2007, the date of publication of the preliminary determination in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 28, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Scope Revision
Comment 2: Basis for the Final Determination

[FR Doc. E8–1971 Filed 2–1–08; 8:45 am]
BILLING CODE 3510–DS–P

APPENDIX B

HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	Sodium Hexametaphosphate from China
Inv. No.:	731-TA-1110 (Final)
Date and Time:	January 24, 2008 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, DC.

OPENING REMARKS:

Petitioners (**James R. Cannon, Jr.**, Williams Mullen)
Respondents (**Jeffrey S. Neeley**, Greenberg Traurig, LLP)

SESSION 1: PETITIONERS' PUBLIC PRESENTATION (Open to Public)

In Support of the Imposition of Antidumping Duties:

Williams Mullen
Washington, DC
on behalf of

ICL Performance Products, LP
Innophos, Inc.

Angie Schewe, Business Director, Industrial Phosphates, ICL Performance Products, LP
Nancy Stachiw, Director, Technical Service and Applications, ICL Performance Products, LP
Heather K. Luther, Vice President and General Counsel, ICL Performance Products, LP
Tim J. Treinen, Vice President, Performance Chemicals, Innophos, Inc.
William Farran, Vice President and General Counsel, Innophos, Inc.
Russell Kemp, Business Manager, Innophos, Inc.
James McDonnell, Business Manager, Innophos, Inc.

James R. Cannon, Jr.)
Francisco J. Orellana) – OF COUNSEL
Dean Barclay)

SESSION 2: RESPONDENTS' PUBLIC PRESENTATION (Open to Public)

In Opposition to the Imposition of Antidumping Duties:

Lafave Associates
Washington, DC
on behalf of

The Procter & Gamble Company (P&G)

A. Matthew Smith, Senior Purchasing Manager, P&G

Arthur J. Lafave III – OF COUNSEL

Greenberg Traurig, LLP
Washington, DC
on behalf of

Hubei Xingfa Chemical Group Company, Ltd. ("Xingfa")

Jeffrey S. Neeley)
) – OF COUNSEL
Robert D. Stang)

SESSION 3: RESPONDENT XINGFA'S IN CAMERA PRESENTATION (Closed to Public)

SESSION 4: PETITIONERS' IN CAMERA PRESENTATION (Closed to Public)

REBUTTAL/CLOSING REMARKS:

Petitioners (**James R. Cannon, Jr.**, Williams Mullen)
Respondents (**Jeffrey S. Neeley**, Greenberg Traurig, LLP)

APPENDIX C

SUMMARY DATA

Table C-1
SHMP: Summary data concerning the U.S. market, 2004-06, January-September 2006, and January-September 2007

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APPENDIX D

INFORMATION ON PRICES OF SHMP FROM NONSUBJECT COUNTRIES

Nonsubject-Country Volume and Price Data

The following tables contain data from questionnaire responses on the prices and quantities of domestically produced SHMP and on imports of SHMP from China and nonsubject countries.

Table D-1
SHMP: Weighted-average quarterly f.o.b. prices and quantities for domestic and imported subject and nonsubject product 1, January 2004-September 2007

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Table D-2
SHMP: Weighted-average quarterly f.o.b. prices and quantities for domestic and imported subject and nonsubject product 2, January 2004-September 2007

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Table D-3
SHMP: Weighted-average quarterly f.o.b. prices and quantities for domestic and imported subject and nonsubject product 3, January 2004-September 2007

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Table D-4
SHMP: Weighted-average quarterly f.o.b. prices and quantities for domestic and imported subject and nonsubject product 4, January 2004-September 2007

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Figure D-1
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 1, January 2004-September 2007

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Figure D-2
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 2, January 2004-September 2007

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Figure D-3
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 3, January 2004-September 2007

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Figure D-4
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 4, January 2004-September 2007

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APPENDIX E

QUESTIONNAIRE DATA ON THE NONSUBJECT SHMP INDUSTRIES IN FRANCE AND GERMANY

Table E-1
SHMP: Production capacity, production, shipments, and inventories in France, 2004-06, January-September 2006, January-September 2007, and projected 2007-08

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Table E-2
SHMP: Production capacity, production, shipments, and inventories in Germany, 2004-06, January-September 2006, January-September 2007, and projected 2007-08

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