Sodium Hexametaphosphate From China

Investigation No. 731-TA-1110 (Preliminary)

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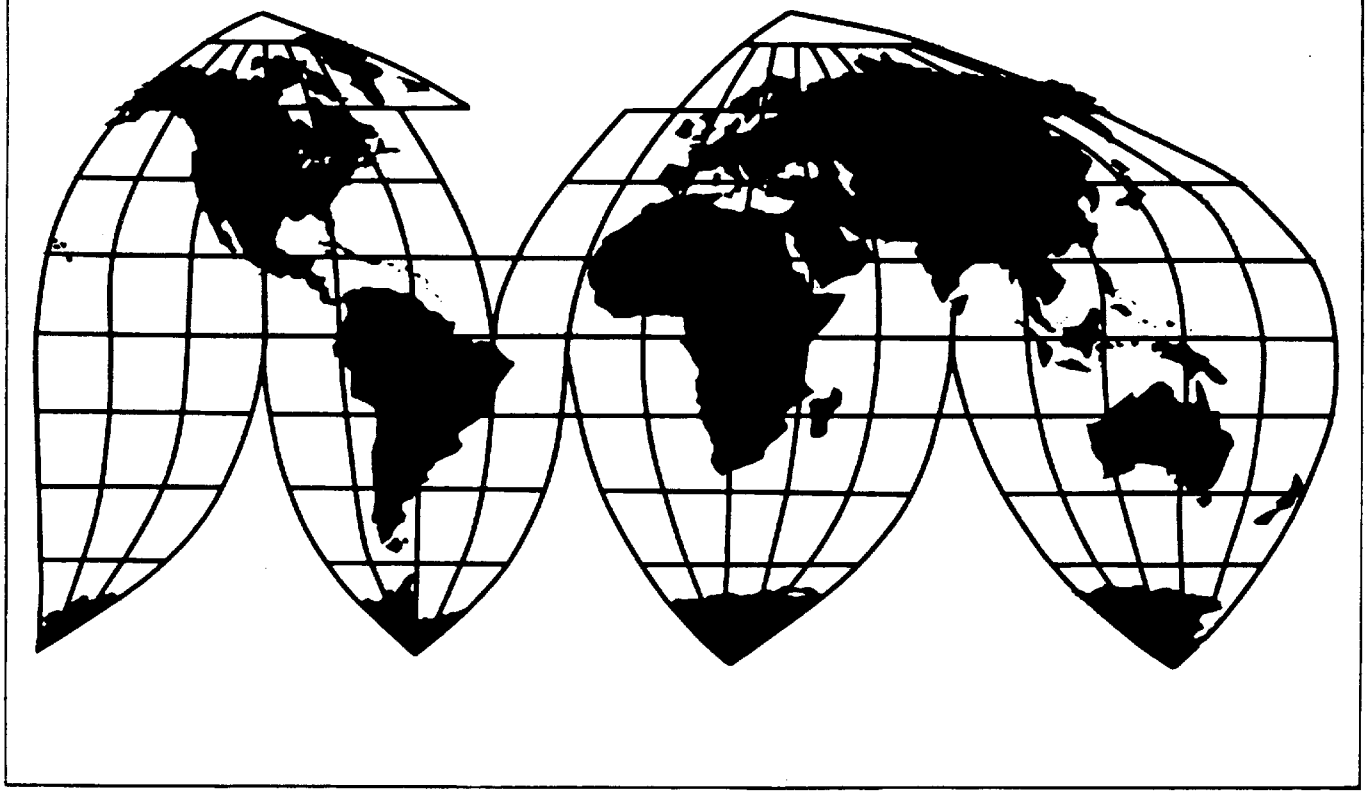
U.S. International Trade Commission



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Appendices

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

Investigation No. 731-TA-1110 (Preliminary)

SODIUM HEXAMETAPHOSPHATE (SHMP) 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 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication 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 3823.90.39 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On February 8, 2007, a petition was filed with the Commission and Commerce by ICL Performance Products, LP, St. Louis, MO, and Innophos, Inc., Cranbury, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of sodium hexametaphosphate from China. Accordingly, effective February 8, 2007, the Commission instituted antidumping duty investigation No. 731-TA-1110 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 72 FR 7458, February 15, 2007. The conference was held in Washington, DC, on March 1, 2007, 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)).

VIEWS OF THE COMMISSION

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

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[1] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[2]

II. BACKGROUND

The petition in this investigation was filed on February 8, 2007. The petitioners, ICL Performance, LP ("ICL") and Innophos, Inc. ("Innophos") ("Petitioners"), domestic producers of SHMP, participated at the March 1, 2007 conference conducted in this investigation and filed a postconference brief.[3]

III. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether there is a reasonable indication that 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."[4] 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."[5] In turn, the Act defines

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[1] 19 U.S.C. § 1673b(a); see also, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

[2] American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[3] These producers account for *** U.S. production of SHMP. Confidential Staff Report ("CR") and Public Staff Report ("PR") at III-1 and Table III-1. A third producer, Nalco Co. ("Nalco") operated a plant until October 2003 and ***. CR/PR at III-1 and n.3. The Commission also received questionnaire responses from importers accounting for almost all of SHMP imports from China in 2006. CR/PR at I-3 and Table IV-1.

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(4)(A).

"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 . . . ."[6]

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 characteristics and uses" on a case-by-case basis.[7] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[8] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[9] 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,[10] the Commission determines what domestic product is like the imported articles Commerce has identified.[11] The Commission must base its domestic like product determination on the record in this investigation. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.[12]

B. Product Description

In its notice of initiation, 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 polyphosphosphate 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;

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[6] 19 U.S.C. § 1677(10).

[7] See, e.g., 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).

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

[9] 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.").

[10] 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).

[11] 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); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[12] Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

> 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 3823.90.3900, 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, powder, fines, or other form.
>
> 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.

C. Domestic Like Product

Petitioners propose that a single domestic like product should be defined to include SHMP in all grades, chain lengths, and particle sizes.[14] Based on the evidence,[15] as discussed below, we define a single domestic like product consisting of SHMP, coextensive with the scope of the investigation.

Physical Characteristics and End Uses. SHMP is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths.[16] Its high degree of solubility sets it apart from other sodium phosphates.[17]

SHMP typically is differentiated by four characteristics: grade, chain length designation, P_2O_5 content, and particle size.[18] 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 (GMP) of the U.S. Food and Drug Administration to reduce the risk of

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[13] Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China, 72 Fed. Reg. 9926 (March 6, 2007).

[14] Petition at 35-37; Petitioner's Postconference Brief at 4-9. They also contend 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. Petitioner's Postconference Brief at 9-10; Conference Tr. at 75.

[15] See CR at I-5-I-12; PR at I-4-I-9.

[16] Petitioners' Postconference Brief at 5.

[17] Petitioners' Postconference Brief at 5.

[18] CR at I-7; PR at I-6.

contaminants in the product.[19] SHMP generally is designated as either "regular chain" or "long chain," which refer to the average length of the polyphosphate chains in the sample.[20] The P_2O_5 content is closely related to the chain-length designation, with longer chain lengths having higher P_2O_5 content.[21] Finally, SHMP is produced in different particle sizes: glass, granular, and powder.[22]

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.[23] Within each of these uses, SHMP has unique applications due to its properties. It is used for water treatment (i.e., added to a municipal or industrial water system) to reduce scale formation, corrosion, lead/copper leaching, and biofilm formation in pipes and other equipment.[24] In the production of meats, seafood, and poultry, SHMP is used with other sodium phosphates to retain moisture, enhance flavor, and increase shelf life.[25] It is used in personal care products, such as bath salts, to soften the water and adjust pH and in dentifrices to remove calcium from stains on teeth.[26]

Interchangeability. There are some limitations on the interchangeability of SHMP resulting from differences in grades, chain length designations, P_2O_5 content, and physical form. In some circumstances the interchangeability may be one way (e.g., food-grade SHMP may be used for technical-grade SHMP, but technical-grade SHMP cannot be used in place of food-grade SHMP). However, there is not a clear line defining the application for each type of SHMP.[27]

Channels of Distribution. Domestically produced SHMP is sold to both end users and distributors.[28] Most imports of SHMP are brought into the United States by SHMP distributors.[29]

Manufacturing Facilities, Production Processes, and Employees. The production of SHMP is an energy-intensive process that typically uses phosphoric acid and soda ash, or caustic soda, as raw materials.[30] The raw materials are mixed to form a slurry of monosodium orthophosphate, which is then fed into a furnace heated by natural gas. The heated slurry reacts to form molten SHMP which when removed from the furnace quickly solidifies into a glassy sheet. The sheet is broken into chunks and further milled to produce the granular and powdered products.

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[19] CR at I-7 and I-11; PR at I-6; Petitioners' Postconference Brief at 23.

[20] CR at I-7; PR at I-6.

[21] CR at I-7; PR at I-6. The P_2O_5 content of SHMP can vary from 60 percent to approximately 71 percent. Id.

[22] CR at I-8; PR at I-6.

[23] CR at I-6, I-8-I-11 and Table I-2; PR at I-5-I-9 and Table I-2.

[24] CR at I-8; PR at I-6.

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

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

[27] CR at I-8 - I-10, II-2 - II-3, and Table I-4; PR at I-6, II-2, and Table I-4.

[28] CR/PR at II-1.

[29] CR/PR at II-1.

[30] See CR at I-11-I-12; PR at I-9.

Both regular-chain and long-chain SHMP are produced on the same equipment, with the length of time in the furnace increased for the production of long-chain SHMP.[31] Both technical-grade and food-grade SHMP also can be made on the same equipment.[32]

Producer and Customer Perceptions. Overall, all forms of SHMP are perceived to be similar products. Nevertheless, depending on the application, a purchaser may prefer one grade, chain length, or physical form to another.[33]

Price. Long-chain SHMP typically sells for a higher price than regular-chain SHMP due to higher costs of production.[34] Similarly, the additional analysis required to meet GMP standards increases the costs of production of food-grade SHMP relative to technical-grade SHMP.[35]

Conclusion. SHMP in all grades, chain lengths, and physical forms share certain general physical characteristics and uses, are interchangeable in most end uses, are sold to end users and distributors, are produced in similar production processes, and are generally perceived to be similar products.[36] Thus, we define a single domestic like product consisting of all forms of SHMP, coextensive with the scope of investigation.

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[31] CR at I-12; PR at I-9; Conference Tr. at 68-69 ("changing from the regular grade to a longer chain, to get through that process is about eight hours of transition, by the time the feed stock gets all the way through, you're then producing into that new grade."). Petitioners indicated that "there is a *** in capacity in operations from regular chain to long chain." Petitioners' Postconference Brief at 33.

[32] CR at I-12; PR at I-9; Conference Tr. at 57-58 (the down time required to switch from technical grade to food grade: ICL - "It's fairly minimal. You want to make sure that things are purged properly . . . . But, it's a fairly quick process;" and Innophos – "We, typically, strive to run under food grade conditions all the time. . . . So the actual conversion time between the two grades, food and tech, is essentially zero.") and 64-65. Innophos uses the same furnace for production of both technical and food grades whereas ICL has two furnaces: one that predominantly produces food grade, and the other that predominantly produces technical grade. CR at I-12; PR at I-9; Conference Tr. at 57-58 and 64-69.

[33] CR at I-7 and II-2; PR at I-6 and II-2.

[34] CR at II-3; PR at II-2.

[35] CR at II-2; PR at II-1.

[36] For the following reasons, we find that the evidence does not support defining a domestic like product broader than the scope of investigation to include blends containing less than 50 percent of SHMP by volume in the finished product. Blends typically only include 10 or 20 percent SHMP by weight and thus do not share similar physical characteristics and uses with SHMP. See Petitioners' Postconference Brief at 9-10; Conference Tr. at 75-79. While both blends and SHMP may be used in the same applications, such as meat, seafood and poultry processing, they are not used for the same reasons and are not interchangeable. The blending process is different from SHMP manufacturing and does not occur on the same equipment used to produce SHMP. There are separate markets for and producers of blends and SHMP. In addition, blends primarily are produced by end users of SHMP (i.e., the customers of domestic producers) and would be considered a downstream product of SHMP. The Commission generally does not expand or broaden the domestic like product to include downstream articles when the scope does not encompass a corresponding subject product. See e.g., Certain Frozen or Canned Warmwater Shrimp from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Preliminary), USITC Pub. 3672 at 14-15 (February 2004).

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."[37] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the 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, for purposes of this preliminary determination we define a single domestic industry consisting of all domestic producers of SHMP.[38]

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS[39]

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[40] 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.[41] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[42] In assessing whether there is a reasonable indication that 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.[43] 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."[44]

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

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[37] 19 U.S.C. § 1677(4)(A).

[38] Petitioners alleged that Nalco purchased Chinese-produced SHMP during the period of investigation. CR/PR at III-1, n.2; Conference Tr. at 41; Petitioners' Postconference Brief at 31, n.17. While a producer that controls large volumes of subject imports may in some circumstances be considered a related party, the current record does not indicate whether Nalco was responsible for the predominant portion of the imports from a significant importer. 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-4; PR at III-1.

[39] 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 81.9 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-10; PR at IV-6.

[40] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[41] 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).

[42] 19 U.S.C. § 1677(7)(A).

[43] 19 U.S.C. § 1677(7)(C)(iii).

[44] 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.[45] SHMP is primarily used for water treatment (40.7 percent of consumption), followed by 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).[46] As discussed above, SHMP is produced in food grade or technical grade,[47] 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).[48] Technical-grade SHMP is used in water treatment, personal care products, and other industrial uses. Food-grade SHMP is used in food and beverage production and dental applications.[49] In general, long-chain SHMP is used in meat, beverage, and some dairy applications, whereas regular-chain SHMP is used more in industrial applications, although there is not a clear line defining each type's uses.[50]

Apparent U.S. consumption of SHMP has fluctuated during the period examined but increased from *** metric tons in 2004 to *** metric tons in 2006, for an overall increase of *** percent.[51] The evidence in the record indicates that U.S. consumption of SHMP is projected to increase 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.[52]

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[45] CR at II-4; PR at II-2-II-3.

[46] 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, ranging from less than one percent to 10 percent. CR at II-5 and II-9; PR at II-3 and II-6.

[47] 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 (GMP). CR at II-2; PR at II-1.

[48] CR at I-7; PR at I-6. 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; PR at II-2; see also CR at I-15; PR at I-10 (domestic producers reported regular chain as *** and long chain as ***, whereas the importers that accounted for the majority of U.S. imports from China reported technical grade, regular chain as ranging from ***).

[49] CR/PR at Table I-3.

[50] CR at I-8 and I-10, II-2 and II-3, and Table I-4; PR at I-6 and I-8, II-2, and Table I-4. Technical-grade, regular-chain product comprised *** category for both domestically produced SHMP and subject imports. In 2006, *** percent of domestically produced SHMP was technical grade, regular chain, *** percent produced in food grade, regular chain, *** percent produced in food grade, long chain, *** percent in technical grade, long chain, and *** percent in all other grades. CR/PR at Table I-4. In 2006, *** percent of subject imported SHMP was technical grade, regular chain, *** produced in food grade, regular chain, *** percent produced in food grade, long chain, and *** percent in all other grades. CR/PR at Table I-5. We note that while *** subject imports of technical-grade, long-chain SHMP were reported by importers, importers provided pricing data for *** quantities of subject imports of technical grade with a chain length of ***. CR at I-15-I-16, and V-4, n.7; PR at I-10 and V-3, n.7.

[51] CR/PR at Tables IV-6 and C-1. Responses from importers were mixed regarding whether demand had increased 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, soaps/detergent production, and global potable water improvements, while decreases were noted for use in textile production. CR at II-4; PR at II-3.

[52] CR at II-4, n.15; PR at II-3, n.15; Petitioners' Postconference Brief at 27, Table 6.

2. Supply Conditions

During the period of investigation, two domestic producers, ICL and Innophos, accounted for *** U.S. production of SHMP.[53] Innophos uses the same furnace for production of both technical- and food-grade SHMP whereas ICL has two furnaces: one that predominantly produces food-grade SHMP, and the other that predominantly produces technical-grade SHMP.[54] The domestic industry's capacity to produce SHMP has remained relatively constant during the period of investigation, although ICL reportedly closed its second SHMP production plant in November 2003 in order to consolidate its production activities.[55] *** domestic SHMP and the majority of imported SHMP is shipped from inventory rather than produced to order.[56] Domestic producers' inventories have increased over the period of investigation and rose as a share of U.S. shipments from *** percent in 2004 to *** percent in 2006.[57]

The domestic industry historically has supplied only a portion of the U.S. market for SHMP, with the remainder supplied by imports.[58] Domestic producers' share of the U.S. market has declined steadily from *** percent in 2004 to *** percent in 2006.[59] Subject imports' share of the U.S. market has increased from *** percent in 2004 to *** percent in 2006.[60] Finally, the U.S. market share held by nonsubject imports fluctuated during the period examined but has increased overall from *** percent in 2004 to *** percent in 2006.[61]

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[53] CR/PR at Table III-1. As noted above, a third domestic SHMP producer, Nalco, operated a plant until October 2003 and ***. Id. at III-1 and nn.1-3, and Petitioners' Postconference Brief at 30-31 and n. 17.

[54] CR at I-12; PR at I-9; Conference Tr. at 57-58 and 64-69.

[55] CR at III-3 and Table III-2; PR at III-1 and Table III-2. ICL reported that it had attempted to operate both the Trenton, NJ plant (closed in November 2003) and its Lawrence, KS facility "but we did not have sufficient orders to keep both plants operating at full capacity." Conference Tr. at 11 and 28; Petitioners' Postconference Brief at 30. In addition, 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-2 and III-3; PR at III-1; Conference Tr. at 19-20 and 101-102; Petitioners' Postconference Brief at 40.

[56] CR/PR at II-1.

[57] CR/PR at Table III-4.

[58] CR at III-5; PR at III-3.

[59] CR/PR at Table IV-6.

[60] CR/PR at Table IV-6.

[61] CR/PR at Tables IV-6 and C-1. The volume of nonsubject imports also has increased overall, by 12.1 percent, from 2004 to 2006. Id. at Tables IV-2, IV-5, and C-1. The leading sources of nonsubject imports are: Mexico, Germany, Belgium, France, Netherlands, Malaysia, Hong Kong, the United Kingdom, Thailand, India, Denmark, Korea and Chile. Id. at Table IV-2 and n. 1.

3. Substitutability and Other Conditions

SHMP is a chemical product sold with a Certificate of Analysis that specifies the tested chemistry and impurities contained in a particular package.[62] 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,[63] 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 interchangeable within form or grade, regardless of where it is produced. U.S. producers and most importers reported that the U.S. product, the subject imports, and non-subject imports are frequently or always comparable.[64]

SHMP's high degree of solubility sets it apart from other sodium phosphates and limits the products that can be substituted for it.[65] Possible substitutes offered for kaolin mining were polyacrylates, tetrasodium pyrophosphate, and sodium tripolyphosphate, and for limited water treatment applications was tetrapotassium pyrophosphate.[66] Substitution of these other chemical products for SHMP, however, would require adjustments in formulations, changes in processes, loss of functionality, and potentially higher costs.[67]

Short-term contracts or spot sales are the predominant basis on which the subject imports and the domestic like product are sold.[68] Finally, petitioners allege that "[w]ith the spread of Chinese SHMP through national chemical distributors," the traditional practice in the U.S. market where "prices were quoted on a freight-equalized basis such that the U.S. producers would quote freight costs from a common shipping point" has gradually disappeared.[69]

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[62] CR at I-7, I-11, and II-5; PR at I-6 and II-4.

[63] Different customers may require different chain-length SHMP, based on the end use and specific chemical formula. CR at II-2; PR at II-1.

[64] CR/PR at Tables II-1 and II-2. Importer *** stated that chain length is a critical factor and contended that there are differences between Chinese SHMP, described as "typically" 17 to 19 chain length, compared to "available" U.S. product of 10 to 12 chain length. CR at I-15-16 and II-8; PR at I-10 and II-5. As discussed above, ***. Id. We will further explore in any final investigation the importance of the differences in characterizations regarding chain length.

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

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

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

[68] CR at V-3; PR at V-2. Domestic producer Innophos sells *** of its SHMP on a *** contract basis; ICL sells *** of its SHMP on a *** contract basis, *** contract basis, and *** on the spot market. On a simple average basis, subject imports are sold 30.1 percent on a long-term contract basis, 19.8 percent on a short-term contract basis, and 50.1 percent on the spot market. Id. In any final phase investigation, we will seek clarification regarding the characterizations used for contract terms.

[69] Petitioners' Postconference Brief at 28. Petitioners contend that "import competition has largely forced U.S. producers to absorb freight costs or quote prices on a delivered basis. Historically, we [ICL] would quote on . . . [a] freight-equalized [basis]. That is, ICL would quote prices at the same shipping point as Innophos to equalize any differences in freight cost." Conference Tr. at 13. Petitioners add that "[b]ecause the Chinese SHMP is located at many distribution points around the country, U.S. producers increasingly quote on a delivered basis." Petitioners' Postconference Brief at 28; see also Conference Tr. at 13.

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."[70]

Subject imports accounted for a large and increasing share of U.S. consumption and increased relative to U.S. production from 2004 to 2006.[71] The market share held by subject imports increased from *** percent in 2004 to *** percent in 2006.[72] The ratio of the quantity of subject imports to U.S. production rose steadily from *** percent in 2004 to *** percent in 2006.[73] The volume of subject imports fluctuated during the period examined, and increased overall by 6.7 percent from 2004 to 2006.[74] The evidence suggests that a portion of subject imports were first placed in inventory in the United States and later shipped into the U.S. market.[75] For example, as the volume of subject imports increased by 16.3 percent from 2004 to 2005,[76] U.S. importers' inventories of subject merchandise increased *** from *** metric tons in 2004 to *** metric tons in 2005;[77] these increases in inventories were followed by *** increases in U.S. shipments of subject imports from 2005 to 2006.[78] U.S. shipments of subject imports increased each year, and overall by *** percent from 2004 to 2006, with the largest increase from 2005 to 2006.[79]

The rate of increase in subject imports was greater than the *** increase in apparent U.S. consumption (*** percent) from 2004 to 2006.[80] Moreover, subject imports made significant gains in market share from 2005 to 2006 at a time of declining consumption.[81] The increase in subject imports' share of the U.S. market from 2004 to 2006 was accompanied by an overall decline in the domestic

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[70] 19 U.S.C. § 1677(7)(C)(i).

[71] We note that the official import statistics covering SHMP involve a "basket" category in which nonsubject merchandise also is classified. Accordingly, we have made appropriate adjustments to the import data on the basis of evidence provided by petitioners and responses to importers' questionnaires. Specifically, we adjusted Commerce statistics to exclude all reported imports from Canada, Iceland, Israel, Japan, Spain, and Taiwan (where there reportedly is no production of SHMP), and made adjustments for imports (i.e., subtracted reported imports of non-SHMP products) from China, Germany, Mexico, and the United Kingdom. See CR at IV-3-IV-8; PR at IV-1 - IV-5; Petitioners' Postconference Brief at 13-18; Petition at 38-39 and Exh. INJ-3.

[72] CR/PR at Table IV-6.

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

[74] CR/PR at Table IV-2. Subject imports were 19,695 metric tons in 2004, 22,901 metric tons in 2005, and 21,017 metric tons in 2006. Id.

[75] 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 when it enters the U.S. market, either directly after importation or after being placed in inventory.

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

[77] CR/PR at Tables VII-2, VII-3, and C-1. U.S. importers' inventories of subject merchandise were: *** in 2006. U.S. 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-2.

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

[79] CR/PR at Table IV-5. U.S. shipments of subject imports were: *** in 2006. Id.

[80] CR/PR at Tables IV-2 , IV-5, IV-6, and C-1.

[81] CR/PR at Table IV-6 and C-1.

producers' market share, from *** percent in 2004 to *** percent in 2006.[82] Nonsubject 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 much smaller than subject imports in absolute terms.[83] [84] [85] In addition, the increase in absolute non-subject import volume over the period of investigation was small relative to the decline in U.S. producer's U.S. shipments by quantity.[86] Thus, subject imports gained market share largely at the expense of the domestic industry.

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

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

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[82] CR/PR at Table IV-6. The U.S. market share held by domestic producers was *** percent in 2006. Id.

[83] CR/PR at Tables IV-2, IV-5, and IV-6. Nonsubject imports were: 4,499 metric tons in 2004, 6,410 metric tons in 2005, and 5,042 metric tons in 2006. Id. at Tables IV-2 and IV-5. The U.S. market share held by nonsubject imports was *** percent in 2006. Id. at Table IV-6.

[84] We note that there is limited information on the record regarding the role of nonsubject imports of SHMP in the U.S. market. In any final phase investigation, we will seek information on the role of nonsubject imports of SHMP in the U.S. market. We invite parties to comment in any final phase investigation on whether the recent decision by the U.S. Court of Appeals for the Federal Circuit, Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), is applicable to the facts of this investigation. The Commission also invites parties to comment on what additional information the Commission should collect to address the issues raised by the Court and how that information should be collected, and to identify which of the various nonsubject sources should be the focus of additional information gathering by the Commission in any final phase investigation.

[85] Chairman Pearson and Commissioner Okun do not join the preceding footnote. The U.S. Court of Appeals for the Federal Circuit did not address the application of its mandate in Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), to preliminary investigations. In that case the Court indicated that, in cases involving commodity products in which imports from non-subject countries are price-competitive and are a significant factor in the U.S. market, in order to establish a causal link between subject imports and material injury the Commission must evaluate whether the non-subject imports would replace subject imports and thereby eliminate the benefit to the domestic industry of an antidumping or countervailing duty order.

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly unfairly traded imports. 19 U.S.C. §§ 1671b(a), 1673b(a) (2000). Thus, Chairman Pearson and Commissioner Okun conclude that they must conduct a Bratsk analysis as they would any other type of causation analysis in a preliminary investigation. Based on the information available in this preliminary investigation, Chairman Pearson and Commissioner Okun find that it is unclear whether Bratsk is triggered. Assuming, arguendo, that it is, they find that non-subject imports would not replace subject imports from China and eliminate the benefit to the domestic industry of an antidumping duty order on imports from the subject producers. See Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States.

[86] U.S. producers' U.S. shipments of SHMP decreased steadily for a decrease of *** metric tons, while U.S. shipments of nonsubject imports increased irregularly for an overall increase of *** metric tons, and U.S. shipments of subject imports increased by *** metric tons over the period examined. Calculated from CR/PR at Table IV-5.

(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.[87]

The record reflects some divergence in views by market participants on the importance of price in purchasing decisions. As noted above, domestic producers and most responding importers found that subject imports were always or frequently interchangeable with the domestic like product.[88] However, while domestic producers reported that non-price differences between subject imports and the domestic like product were only *** in purchasing decisions, a slight majority of responding importers reported that non-price differences were always or frequently an important factor, with the others responding they were sometimes or never a factor.[89]

In this investigation, U.S. producers and importers provided quarterly pricing data for four types of SHMP.[90] The pricing data show a pattern of consistent underselling by subject imports. Subject imports undersold the domestic like product in 45 of the 48 monthly comparisons, with margins of underselling ranging from 0.8 percent to 51.9 percent.[91] Subject imports undersold the domestic like product in all quarterly comparisons of products 2 and 3, in all but one quarterly comparison of product 1, and in all but two quarterly comparisons of product 4.[92] For purposes of this preliminary investigation, we find that there has been consistent price underselling of the domestic like product by subject imports.

We have also considered movements in SHMP prices over the period of investigation. The Commission's pricing data show some fluctuations but generally an overall increase in prices for three of the four domestic products and for all four subject imported SHMP products.[93] Specifically, regarding product 1, the Commission's data show that the price for the U.S.-produced product 1 increased by *** percent from January 2004 to December 2006, while the prices for the corresponding subject imports increased by 32.2 percent for the same period.[94] The pricing data reported for the U.S.-produced product 2 increased by *** percent from January 2004 to December 2006 while the prices for the corresponding subject imports increased by *** percent for the same period.[95] The prices reported for the U.S.-produced product 3 increased by *** percent from January 2004 to December 2006, while the prices for the corresponding Chinese imports increased by *** percent.[96] Finally, the prices reported for U.S.-produced product 4 *** the first quarter of 2004 and the fourth quarter of 2006, after a *** percent decline at the end of the period examined; prices for the corresponding Chinese imports increased overall by *** percent.[97]

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[87] 19 U.S.C. § 1677(7)(C)(ii).

[88] CR/PR at Tables II-1 and II-2.

[89] CR/PR at Tables II-3 and II-4.

[90] 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-4; PR at V-3.

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

[92] CR/PR at Tables V-1-V-5. The margins of overselling for the three quarterly comparisons with overselling reported ranged from 0.6 percent to 1.3 percent. Id. at Tables V-1, V-4, and V-5.

[93] CR/PR at Tables V-1-V-4.

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

[95] CR/PR at Table V-2.

[96] CR/PR at Table V-3.

[97] CR/PR at Table V-4.

While there is evidence of price increases over the period examined, we find a reasonable indication 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 over the period examined.[98] Although unit sales values also increased, these increases were not sufficient to completely offset the increases in unit COGS, which rose steadily from $*** in 2004 to $*** in 2006.[99] 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 ***. This evidence suggests some price suppression in the form of a cost-price squeeze due in part to the subject imports. 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.[100]

For the foregoing reasons, we find for purposes of this preliminary determination 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[101]

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."[102] These factors include output, sales, inventories, ability to raise 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."[103]

We have examined the performance indicators in the trade and financial data for the domestic industry producing SHMP. These data indicate declining overall trends, although some indicators have fluctuated during the period examined.

U.S. production, capacity utilization, shipments, and net sales quantity and value all declined overall from 2004 to 2006. U.S. production of SHMP increased from 2004 to 2005, but declined *** in 2006 for an overall decline of *** percent from 2004 to 2006.[104] Domestic producers' U.S. shipments of

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

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

[100] The Commission confirmed $*** of the alleged $*** in lost sales over the period of investigation. CR at V-13-V-15 and Table V-6; PR at V-7 and Table V-6. The Commission also confirmed $*** of the alleged $*** in lost revenues. CR at V-16 and Table V-7; PR at V-7-8 and Table V-7.

[101] In its notice of initiation, Commerce estimated the dumping margins for imports of subject SHMP from China as ranging from 76.69 percent to 103.62 percent. 72 Fed. Reg. at 9928 (March 6, 2007).

[102] 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.

[103] 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 (Feb. 1999) at 25 n.148.

[104] U.S. production increased from *** in 2004 to *** in 2005 and then declined to *** in 2006. CR/PR at Tables III-2 and C-1.

SHMP declined each year for an overall decline of *** percent from 2004 to 2006.[105] While industry capacity remained flat over the period of investigation, capacity utilization followed production trends and declined overall from 2004 to 2006. Capacity utilization increased from *** percent in 2005, and decreased to *** percent in 2006.[106] Net sales volume declined from *** metric tons in 2004 to *** metric tons in 2006, with *** decrease from 2005 to 2006.[107]

The *** increase (*** percent) in U.S. importers' inventories of subject merchandise from 2004 to 2005 was followed by *** increase (*** percent) in U.S. shipments of subject imports from 2005 to 2006.[108] 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.[109] Consequently, domestic producers' inventories increased by *** percent over the period of investigation and rose as a share of U.S. shipments from *** percent in 2004 to *** percent in 2006.[110]

While the average number of production related workers declined *** from 2004 to 2006, hours worked, hourly wages, and wages paid for producing SHMP experienced steady increases for the same period.[111] Accordingly, the domestic industry's average unit labor costs rose *** over the period examined, after a *** decline initially from 2004 to 2005.[112] Productivity declined overall from 2004 to 2006, despite an initial increase from 2004 to 2005.[113]

The domestic industry's financial indicators – operating income, operating margins, and net sales measured by quantity and value – steadily declined over the period of investigation. Operating *** in each successive year of the period examined.[114] The industry's ratio of operating *** to net sales followed a similar trend, *** from *** in 2004 to *** in 2005 and *** in 2006.[115]

While net sales measured by quantity decreased steadily by *** percent 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 *** percent.[116] As discussed previously, COGS as a ratio to sales increased overall from 2004 to 2006. COGS was *** percent of sales in 2004, and increased to *** percent of sales in 2006.[117] Even though the unit sales values increased by $*** per metric ton from 2004 to 2006, this increase only partially

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[105] U.S. shipments declined from *** metric tons in 2004 to *** metric tons in 2005 and *** metric tons in 2006. CR/PR at Table C-1.

[106] CR/PR at Tables III-2 and C-1.

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

[108] CR/PR at Tables IV-5, VII-2, and C-1.

[109] CR/PR at Tables IV-6 and C-1.

[110] 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-2 and III-3; PR at III-1; Conference Tr. at 19-20 and 101-102.

[111] The average number of production workers declined from *** in 2004 and 2005 to *** in 2006. The hours worked also increased from *** in 2004 to *** in 2006 and the hourly wages increased from $*** in 2004 to $*** in 2006. Accordingly, the wages paid increased from $*** in 2004 to $*** in 2006. CR/PR at Tables III-5 and C-1.

[112] The domestic industry's average unit labor costs were: $*** per metric ton in 2004, $*** per metric ton in 2005, and $*** per metric ton in 2006, for an overall increase of *** percent. CR/PR at Tables III-5 and C-1.

[113] Productivity increased from *** metric tons per 1,000 hours in 2004 to *** metric tons per 1,000 hours in 2005, and then declined to *** metric tons per 1,000 hours in 2006. CR/PR at Table III-5.

[114] CR/PR at Tables VI-1 and C-1. Operating *** in 2004 to *** in 2005 and *** in 2006. Id.

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

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

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

offset even ***.[118] As the result of this cost/price squeeze, the industry reported *** in each year of the period examined.[119]

For purposes of this preliminary determination, 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 suppressed domestic prices, combined with the pattern of consistent underselling, has caused declines in the domestic industry's financial performance over the period of investigation.

CONCLUSION

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

[118] CR/PR at VI-1 and Table VI-1.

[119] Capital expenditures for the domestic industry were the ***, which is an indication that the domestic industry is ***. CR at VI-8 and Tables VI-1 and VI-4; PR at VI-3 and Tables VI-1 and VI-4. *** research and development expenses were reported. Id.

SEPARATE AND ADDITIONAL VIEWS OF CHAIRMAN DANIEL R. PEARSON AND COMMISSIONER DEANNA TANNER OKUN CONCERNING *BRATSK ALUMINUM V. UNITED STATES*

I. Legal Issues Concerning *Bratsk Aluminum Smelter v. United States*

In the recent case of *Bratsk Aluminum Smelter et al. v. United States*, 444 F.3d 1369 (Fed. Cir. 2006) ("*Bratsk*"), the Court of Appeals for the Federal Circuit reaffirmed that the requisite causal link to subject imports is not demonstrated if such imports contributed only "'minimally or tangentially to the material harm.'"[1] Applying that standard to an investigation involving a commodity product, *i.e.*, silicon metal, and the significant presence of non-subject imports, the Court held that the Commission had not sufficiently explained whether non-subject imports simply would have replaced subject imports during the period of investigation had an antidumping order been in place and continued to cause injury to the domestic industry.[2]

As a threshold matter, it is not immediately clear how we should interpret the *Bratsk* opinion in terms of its effect on our analysis of causation in Title VII investigations. We can discern at least two possible interpretations which differ substantially: (1) that *Bratsk* mandates application of an additional test apparently not contemplated by the statute (the so-called "replacement/benefit test"), and (2) that *Bratsk* is a further development of the causation approach prescribed by *Gerald Metals*.

A. Separate Causation Analysis – Replacement/Benefit Test

The statute sets forth specific factors for the Commission to consider in analyzing the volume, price effects and impact of subject imports. 19 U.S.C. § 1677(7). The Uruguay Round Agreements Act Statement of Administrative Action ("SAA") explains further that in analyzing causation the Commission must examine factors other than subject imports to ensure that it is not attributing injury from these sources to the subject imports, but is not required to isolate the injury caused by other factors from injury caused by unfair imports.[3] Beyond this, the statute does not provide any further limitations on how the Commission's causation analysis shall be conducted.

The Court's decision, however, states that the Commission must perform an additional "specific" causation analysis in the form of a replacement/benefit test. Using somewhat varying phrasing, the Court stated that the Commission must determine "whether non-subject imports would have replaced subject imports without any beneficial effect on domestic producers," must "explain why the elimination of subject imports would benefit the domestic industry instead of resulting in the non-subject imports' replacement of the subject imports' market share without any beneficial impact on domestic producers," and must explain "why the non-subject imports would not replace the subject imports and continue to cause injury to the domestic industry."[4]

Such a "replacement/benefit" test is not among the statutory factors Congress has required the Commission to consider. The statutory scheme contemplates that subject imports may remain in the U.S. market after an order is imposed and even that the industry afterward may continue to suffer material

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[1] 444 F.3d 1369, 1373 (Fed. Cir. 2006), *quoting Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997).

[2] *Bratsk*, 444 F.3d at 1375-1376.

[3] H.R. Doc. No. 103-316, Vol. I (1994) at 851-52 ("SAA"); *Taiwan Semiconductor Industry Ass'n v. United States*, 266 F.3d at 1339, 1345 (Fed. Cir. 2001).

[4] *Bratsk*, 444 F.3d at 1375, 1376.

injury.[5] Thus, the decision in *Bratsk* misconstrues the purpose of the antidumping and countervailing duty laws, which is not to bar subject imports from the U.S. market or award subject import market share to U.S. producers, but instead to "level[] competitive conditions" by imposing a duty on subject imports at a level to offset the amount of dumping or subsidization and thus enabling the industry to compete against fairly traded imports.[6] It is not uncommon for subject imports to remain in the U.S. market in significant quantities even after the issuance of an antidumping or countervailing duty order, as shown by the hundreds of millions of dollars in antidumping and countervailing duties collected every year.

Bratsk, therefore, appears to require that the Commission apply an extra-statutory causation test with respect to non-subject imports and to determine that the domestic industry will benefit from the antidumping duty or countervailing duty order. We respectfully disagree with the Court that such a causation analysis is legally required.[7] However, given that the Federal Circuit's mandate has been issued and the decision has become precedent, we discuss *infra* our interpretation of the *Bratsk* standard and perform the analysis based on the record in this preliminary investigation.[8]

B. *Gerald Metals* Causation Analysis

Alternatively, we also find support for interpreting the *Bratsk* decision to be reminding 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."[9]

This may be a reasonable interpretation of the *Bratsk* decision as the Court noted that the "sole point of contention in this appeal is whether the Commission established that the injury to the domestic industry was 'by reason of' the subject imports."[10] In explaining its conclusion, the Court emphasized

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[5] SAA at 851-52, 885, 889-90. The Commission has indicated that the possibility that an order might not be effective does not preclude a finding of present material injury. The Commission also has concluded that the statute does not provide for the Commission to perform an additional injury test to predict the future effectiveness of import relief:

> {W}e note that nothing in the statute or case law requires (or allows) us to consider the likely effectiveness of a dumping order in making our injury determination. The possibility that non-subject imports will increase in the future after an antidumping order is imposed is . . . not relevant to our analysis of whether subject imports are currently materially injuring the industry.

Wooden Bedroom Furniture From China, Inv. No. 731-TA-1058 (Final), USITC Pub. 3743, n.222 (Dec. 2004).

[6] *Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369, 1380 (Fed. Cir. 2003).

[7] The Commission set out in detail its objections to the Court's decision in its petition for rehearing to the Federal Circuit. See Petition for Rehearing en Banc (May 25, 2006), *Bratsk Aluminum Smelter et al. v. United States*, 444 F.3d 1369 (Fed. Cir. 2006)(No. 05-1213) (petition denied July 24, 2006). Commissioner Okun did not participate in that proceeding.

[8] While it is not an issue in this investigation, it is unclear whether the Court intended its approach to apply to analyses of threat of material injury, or only to analyses of present material injury. Given that one of the Court's formulations of the standard is framed in terms of likely future events, we have interpreted the Court's decision as applying both to the context of present injury and threat of injury.

[9] *Gerald Metals*, 132 F.3d at 722.

[10] *Bratsk*, 444 F.3d at 1372.

that the Commission had "dismissed" *Gerald Metals* as being factually distinguishable[11] and explained its holdings in *Gerald Metals* and *Taiwan Semiconductor*.[12] Further, the Court noted that

> *Gerald Metals* thus requires the Commission to explain why – notwithstanding the presence and significance of the non-subject imports – it concluded that the subject imports caused material injury to the domestic industry. While there may be support for the Commission's ultimate determination of material injury in the record here, we find that the Commission did not sufficiently explain its decision in this regard.[13]

Therefore, the Court may not have been creating an extra-statutory causation test, but rather was simply reminding the Commission of its existing obligation under the statute, as explained by Federal Circuit precedent. 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 (*i.e.*, commodity product and price-competitive non-subject imports) and the replacement/benefit factors (*i.e.*, whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers)[14] 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.

The statute requires the Commission to determine whether the domestic industry is "materially injured by reason of" the unfairly traded imports.[15] Thus, the Commission must evaluate the effects of the unfairly traded imports on the domestic industry in order to determine if those imports are causing material injury. In most investigations, there are other economic factors that also may be causing injury to the domestic industry. The statute's legislative history states that the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."[16] The statute is clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury.[17] The Commission must analyze the effects of the unfairly traded imports and other relevant factors in a way that enables the Commission to conclude that it has not attributed the effects of other factors to the subject imports.

If this interpretation of *Bratsk* is correct, then we concur with the Federal Circuit that we are required to identify and assess the competitive effects of subject imports to ensure that they contribute more than "minimally or tangentially to the material harm" of the domestic industry. To the extent that we had the relevant information, this analysis was included in the Commission's causation analysis. We will re-examine this in any final phase of this investigation once the Commission has collected further relevant information (*e.g.*, information about the market from purchasers).

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[11] *Bratsk*, 444 F.3d at 1375.

[12] *Bratsk*, 444 F.3d at 1373-1375.

[13] *Bratsk*, 444 F.3d at 1375.

[14] *Bratsk*, 444 F.3d at 1375.

[15] 19 U.S.C. § 1673d(b).

[16] S. Rep. No. 249, 96th Cong., 1st Sess. 46-47 (1979).

[17] S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47.

II. Under the *Bratsk* Replacement/Benefit Test, Non-subject Imports Likely Would Not Negate the Beneficial Effect of an Order on Subject Imports from China

Having found that there is a reasonable basis to determine that an industry in the United States is materially injured by reason of subject imports from China, we now must assess whether the facts of this investigation trigger a *Bratsk* analysis under the "replacement/benefit test" interpretation of *Bratsk*. Based on the record in this preliminary investigation, it is unclear whether *Bratsk* is triggered. Assuming, however, that it is, we conclude that non-subject imports likely would not replace subject imports and negate the beneficial effect of the order on subject imports from China.

A. *Bratsk* Replacement/Benefit Test

The exact formulation of the *Bratsk* Court's test is not clear. According to one part of the 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.[18]

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.[19]

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.

Based upon our reading of *Bratsk*, we conclude that we now must assess the likely effectiveness of any import relief *vis-a-vis* non-subject imports to determine whether non-subject imports would eliminate the beneficial effect of the order on subject imports, in this case an order on China.

1. Triggering Factors

Bratsk requires a two-step analysis. First, the Commission must determine whether *Bratsk* is triggered based on the facts of the investigation. Second, if it is triggered, then the Commission must consider whether the non-subject imports would have replaced the subject imports and continue to cause injury to the domestic industry.

The *Bratsk* Court states that "{t}he obligation under *Gerald Metals* 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."[20] Thus, the *Bratsk* test purportedly is not required in every case,

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[18] *Bratsk*, 444 F.3d at 1375.

[19] *Bratsk*, 444 F.3d at 1376.

[20] *Bratsk*, 444 F.3d at 1375.

only in cases involving a "commodity product" and where "price competitive non-subject imports are a significant factor in the market."

The *Bratsk* Court refers to a "commodity product" as "meaning that it is generally interchangeable regardless of its source."[21] Thus, the Court's definition of "commodity product" is broad. The second trigger for the *Bratsk* replacement/benefit test is that price competitive non-subject imports are a significant factor in the U.S. market. On the issue of whether the non-subject imports are "price competitive," the *Bratsk* Court refers to the fact that in *Gerald Metals* the non-subject imports had undersold the domestic product just as the subject imports had.[22]

2. Replacement/Benefit Factors

If the Commission determines that *Bratsk* is triggered, the second step in the analysis, assessment of replacement of subject imports by non-subject imports that negates the benefit to the domestic industry, also has two components. First, the non-subject imports must be able to replace the subject imports. In assessing replacement, the Commission should consider not only interchangeability, but the non-subject producers' capacity to fill any void left by subject imports and whether there exists an incentive to do so.

The second step requires that the non-subject imports must negate the benefit of the order to the domestic industry. In assessing benefit, the Court indicated that the price of non-subject imports would be an important consideration in this analysis as non-subject imports may not be priced low enough to negate the benefit to the domestic industry (*i.e.*, "the price of the non-subject imports may be sufficiently above the subject imports such that the elimination of the subject imports would have benefitted the domestic industry").[23] The Court's decision does not specify how complete the replacement of subject imports by non-subject imports must be, or how much of the benefit to the domestic industry must be negated, to require a negative determination.

B. Analysis

1. Triggering Factors

Petitioners acknowledge that *Bratsk* is triggered in that SHMP imports are fungible with domestic SHMP, as well as imports from non-subject countries.[24] Questionnaire responses from both producers and importers indicate that the domestic like product, subject imports, and non-subject imports are always or frequently comparable.[25] Thus, based on the information available in this preliminary investigation, we find that the domestic like product, subject imports, and non-subject imports of SHMP generally are commodity products.[26]

With respect to the second factor, whether price competitive non-subject imports are a significant factor in the U.S. market, the record in this preliminary investigation indicates that non-subject imports were present throughout the period of investigation. Non-subject import volume was 4,499 metric tons in 2004, 6,410 metric tons in 2005, and 5,042 metric tons in 2006.[27] Non-subject imports accounted for 18.6

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[21] *Bratsk*, 444 F.3d at 1371.

[22] *Bratsk*, 444 F.3d at 1374.

[23] *Bratsk*, 444 F.3d at 1376.

[24] Petitioners' Postconference Brief at 42 and Conference Tr. at 88.

[25] CR/PR at Tables II-1 and II-2.

[26] While the grade, chain length 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.

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

percent of total imports (on a quantity basis) in 2004, 21.9 percent in 2005, and 19.3 percent in 2006.[28] The U.S. market share of non-subject imports ranged from *** percent in 2004 to *** percent in 2005 and to *** percent in 2006.[29] We note that subject imports accounted for 81.4 percent of total imports in 2004, 78.1 percent in 2005, and 80.7 percent in 2006.[30] The U.S. market share of subject imports ranged from *** percent in 2004 to *** percent in 2005 and to *** percent in 2006.[31] We note that the volume of subject imports always exceeded the volume of non-subject imports in each year of the period of investigation.[32]

As to whether non-subject imports are price competitive, the Commission requested product-specific price data from non-subject countries in its importers' questionnaires. The Commission received a limited amount of price data for non-subject imports from Australia, France, Germany, and Mexico. These data show a mixture of overselling and underselling of the domestic like product by non-subject imports.[33] There were, however, wide variations in the pricing data of non-subject imports, and the prices of imports from Mexico, which is the largest non-subject supplier, were often below those of subject imports.[34] ***.[35] However, the average unit values of non-subject imports as a whole, and individually for imports from Mexico, were higher than those of subject imports throughout the period of investigation.[36] ***.[37] However, the average unit value of non-subject imports from Mexico were lower than the average unit value of U.S. shipments.[38] Therefore, for purpose of this preliminary determination, it is unclear whether non-subject imports of SHMP, viewed as a whole, are price-competitive. Thus, we cannot determine whether they are a "significant factor" in the U.S. market.

2. Replacement/Benefit Factors

While it is unclear whether the *Bratsk* test is triggered, assuming, *arguendo*, that it is, we now analyze whether non-subject imports are likely to replace subject imports and continue to cause injury to the domestic industry. There is some information in the record on the capacity of non-subject suppliers, but little information on their capacity utilization rates.[39] For example, the total reported production capacity for the largest non-subject supplier, sole Mexican producer Quimir, is 7,000 metric tons, which is equivalent to about *** percent of apparent U.S. consumption.[40] Quimir reportedly produces similar

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

[29] CR/PR at Table IV-6.

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

[31] CR/PR at Table IV-6.

[32] See CR/PR at Tables IV-2, IV-5, and IV-6. The largest supplier of non-subject imports is Mexico, which, in quantity terms, accounted for *** percent of total U.S. imports in 2004, *** percent in 2005, and *** percent in 2006. CR/PR at Table IV-2. The U.S. market share held by imports of SHMP from Mexico was *** percent of apparent U.S. consumption in 2004, *** percent in 2005, and *** percent in 2006. CR/PR at Table IV-6.

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

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

[35] CR/PR at Table D-1.

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

[37] *Compare* CR/PR at Table III-3 to Table IV-2.

[38] *Compare* CR/PR at Table III-3 to Table IV-2.

[39] CR/PR at Table VII-1.

[40] CR/PR at Tables IV-6 and VII-1. As noted above, during the period of investigation, imports from Mexico accounted for a share of apparent U.S. consumption ranging from *** percent to *** percent, in terms of quantity. CR/PR at Table IV-6.

grades to those manufactured by U.S. firms.[41] With respect to European SHMP suppliers, petitioners indicated that the European market differs from the U.S. market in that ***.[42] Based on these limited data and information, we find that non-subject imports are not likely to have sufficient capacity to replace subject imports if the order were to be imposed.[43]

In light of the fact that the prices and average unit values of non-subject imports were generally higher than those of subject imports, with the possible exception of imports from Mexico, and because we determine that non-subject imports lack the capacity to replace subject imports sufficiently, for purpose of this preliminary investigation we determine that non-subject imports would not negate the benefit of the order on subject imports.

[41] CR/PR at VII-2.

[42] CR/PR at VII-2 and Petitioners' Postconference Brief at 46.

[43] The U.S. market share for subject and non-subject imports relative to U.S. producers' share during the period of investigation may provide some indication of the pattern if subject imports were not in the U.S. market. See CR at IV-12. Apparent U.S. consumption was relatively level, in terms of quantity, from 2004 to 2006. The market share of subject U.S. imports was almost level from 2004 to 2005 and then rose *** in 2006. The market share of U.S. imports of non-subject SHMP (particularly from Mexico) rose *** from 2004 to 2005 but then declined in 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 non-subject imports (in particular imports from 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 of SHMP from China that was large enough to simultaneously offset the declining share of the U.S. market reported for product imported from Mexico in 2006 (compared to 2005). These trends, along with statements about the Mexican producer discussed above, may tend to support finding that non-subject Mexican imports would replace Chinese imports at least in part. However, we also note that Mexican capacity to produce SHMP is equivalent to only about *** percent of apparent U.S. consumption, while subject imports accounted for *** percent of apparent U.S. consumption in 2006.

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.[2]

Effective date	Action
February 8, 2007	Petition filed with Commerce and the Commission; institution of Commission investigation (72 FR 7458, February 15, 2007)
March 1, 2007	Commission's conference[1]
March 6, 2007	Commerce's notice of initiation of the antidumping investigation (72 FR 9926)
March 26, 2007	Date of the Commission's vote
March 26, 2007	Commission's determination transmitted to Commerce
April 2, 2007	Commission's views transmitted to Commerce
[1] A list of witnesses appearing at the conference is presented in app. B.	

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.*

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.*

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[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] *Federal Register* notices cited in the tabulation are presented in app. A.

. . .
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, alleged margin 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. The statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury are presented in *Part VII*.

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 December 2006. 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. Data on U.S. consumption of SHMP are derived from (1) questionnaire responses of the two U.S. producers, (2) questionnaire responses of firms that imported almost all U.S. imports from China (and Germany) in 2006, and (3) official Commerce statistics for U.S. imports of SHMP from the other nonsubject countries.

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 ALLEGED SALES AT LTFV

Commerce has initiated an antidumping duty investigation based on petitioners' allegations of LTFV sales of SHMP from China. The dumping margins (in percent *ad valorem*) as alleged by petitioner and revised by Commerce range from 76.69 percent to 103.62 percent *ad valorem*.[3]

THE SUBJECT PRODUCT

Commerce has defined the imported merchandise subject to investigation as:[4]

> *Sodium hexametaphosphate (SHMP), which 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 $NaPO_3$ 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. While the CAS registry number and name are provided for convenience and clarity, the written description of the scope of this investigation is dispositive.*
>
> *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. 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 noted in the above definition, the scope excludes SHMP blends "as they are typically known and defined in the market" {wording provided by petitioners}.[5] Blends of SHMP and other phosphates (commonly sodium tripolyphosphate, sodium acid pyrophosphate, and tetrasodium pyrophosphate) are used in processed meat, seafood, and poultry processing to improve the color, yield, texture, and flavor of

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[3] *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.

[4] *Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 9926, March 6, 2007.

[5] 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 and n.7.

meats. Both ICL and Innophos offer phosphate 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.[6]

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 general duty rate applicable to China. SHMP may also be imported as a blend or mixture under HTS subheading 3823.90.39.[7]

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 co-extensive with the scope of the subject merchandise as defined by Commerce, which consists of SHMP.[8] No alternate domestic like product has been proposed, as no respondents have entered a notice of appearance in the preliminary phase of this investigation. 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 is also addressed in this section of the report.

[6] Conference transcript, 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.

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

[8] Petition, p. 35.

Table I-1
SHMP: Domestic like product factors

Physical Characteristics and Uses
SHMP is a glassy phosphate that is highly soluble and can easily be dissolved in water. No other phosphates share this characteristic. SHMP is reported to be purchased within each of its end-use markets for its unique properties.
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.

Description and Uses

Sodium hexametaphosphate (or SHMP)[9] 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.[10]

Samples of SHMP are typically differentiated by four characteristics: grade, chain length designation, P_2O_5 content, and particle size.[11] 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

[9] 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.

[10] Petition, p. 9.

[11] Petition, p. 8.

materials.[12] The FCC also requires a narrower pH range for food grade SHMP.[13] Production of food grade materials has to meet the standards of the Good Manufacturing Practices ("GMP") of the U.S. Food and Drug Administration, which reduce the risk of contaminants getting into the product.[14] Technical grade SHMP does not have to meet these requirements.

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.[15]

The P_2O_5 characteristic for SHMP is closely related to the chain length designation.[16] 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 P_2O_5 content than regular chain SHMP. The P_2O_5 content of SHMP can vary from 60 percent to approximately 71 percent.[17] P_2O_5 content is also related to the pH of SHMP, with lower P_2O_5 content corresponding to higher pH.[18]

SHMP comes in different particle sizes: glass, granular, and powder.[19] Glass typically has particles that are one-half of an inch in length and width and one-eighth of an inch in thickness.[20] Granular SHMP typically has particles with diameters that are between 149 and 841 microns.[21] Most of the particles of SHMP powder will be less than 149 microns in diameter.[22] SHMP can also be sold in aqueous solution.[23]

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.[24] SHMP added to potable water sequesters certain metal oxides, thereby eliminating objectionable colors from the water.[25] Water treatment applications typically require technical grade, regular chain SHMP.

Technical grade, regular chain SHMP is also used in industrial applications. Industrial uses of SHMP include 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.[26] 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

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[12] Petition, p. 8.

[13] Petition, p. 8.

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

[15] Conference transcript, p. 115 (Stachiw).

[16] 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.

[17] Petition, p. 9.

[18] Petition, p. 8.

[19] Petition, p. 9.

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

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

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

[23] Petition, p. 9.

[24] Petition, pp. 11-2.

[25] Petition, p. 12.

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

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

Applications	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.

some industrial cleaners such as the ones used to clean the exteriors of transportation vehicles, particularly trucks and buses.[27]

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

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.[28] 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.[29] Personal care products use technical and food grade, regular and long chain SHMP.

SHMP is 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.[30] 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.[31] Food grade, regular, and long chain SHMP are used in these applications.

In the production of meats, seafood, and poultry, SHMP is used with other sodium phosphates to retain moisture, enhance flavor, and increase shelf life.[32] SHMP is used in canned pet foods for protein stabilization and moisture retention and in dry pet foods to reduce tartar buildup on pets' teeth.[33] Food grade, regular, and long chain SHMP are used in these applications.

SHMP is a non-combustible material with no significant environmental effects. SHMP has low oral toxicity and may cause minor irritation to skin, eyes, and the respiratory tract.[34] SHMP is typically packaged in 50- or 100-pound bags or in "supersacks" that can hold up to 2,400 pounds of product.[35] The bags are often lined with plastic to reduce the amount of moisture absorbed by the SHMP.[36] SHMP has a shelf life of about 18 months because it loses effectiveness as it absorbs moisture from the air.[37] Expired SHMP can be recycled to produce a fresh (technical grade) product.[38] Each package of SHMP is accompanied by a certificate of analysis that lists the properties of the SHMP such as P_2O_5 content, average chain length, particle size, maximum levels of impurities, etc.[39]

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.[40] The raw materials are mixed to form a slurry of monosodium orthophosphate, which is then fed into a furnace.[41] Natural gas is used to heat the furnace to

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

[29] Petition, p. 12.

[30] Petition, p. 13.

[31] Petition, p. 13.

[32] Petition, p. 13.

[33] Petition, p. 13.

[34] Petition, exh. AD-1.

[35] ***.

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

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

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

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

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

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

a temperature between 800 and 1,100 degrees Celsius.[42] [43] 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 that are further milled to produce the granular and powdered products.[44] When SHMP is milled, the ratio of granular material to powdered material may be fixed by the milling equipment and may not be adjustable.[45] 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.[46]

Both regular chain and long chain SHMP are produced on the same equipment. To produce the long chain product, the length of time that molten SHMP remains in the furnace increases.[47] For example, one U.S. producer indicated that it typically produces regular chain SHMP for 20 to 25 days and switches to long chain SHMP production for 5 days.[48] This production cycle results in an annual output of about 80 percent regular chain and 20 percent long chain product.[49] The other U.S. producer has two furnaces with food grade made primarily made in one and technical grade made in the other.[50]

Both technical grade and food grade SHMP can be made on the same equipment. Innophos uses the same furnace for production of both grades.[51] ICL has two furnaces: one that predominately produces food grade, and another that predominately produces technical grade.[52]

DATA ON PRODUCT TYPES

Tables I-4 and I-5 provide data on U.S. shipments of both domestically produced product and of U.S. imports of SHMP from China for each of the four major product categories of SHMP: food grade (regular chain and long chain) and technical grade (regular chain and long chain).[53] As shown, technical grade, regular chain product comprised *** category for both domestically produced SHMP and subject imported merchandise. However, *** U.S. imports of SHMP from China were categorized as technical grade, long chain SHMP by importers in their responses to the portion of the questionnaire requesting

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

[43] 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).

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

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

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

[47] Conference transcript, p. 104 (Cannon).

[48] Conference transcript, p. 68 (Treinen).

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

[50] Conference transcript, p. 68 (Treinen).

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

[52] Conference transcript, p. 57 (Moffatt).

[53] Commission questionnaires did not specify P_2O_5 ranges or chain lengths but instead requested that each respondent provide the ranges and lengths used by their firm to classify their SHMP into “regular” and “long” chains (and into food and technical grades).

Table I-4
SHMP: U.S. shipments of domestically produced product, by grade and by chain, 2004-06

* * * * * * *

Table I-5
SHMP: U.S. shipments of U.S. imports from China, by grade and by chain, 2004-06

* * * * * * *

data on imports by product type.[54] Petitioners state that ***.[55] Furthermore, according to petitioners, the *** indicates that "***."[56] *See* the section of this report entitled "Nonsubject manufacturers" for available information on the grades imported from nonsubject countries.

The following tabulation provides the P_2O_5 and chain length ranges used by ICL and Innophos in their questionnaire responses to classify their data on SHMP into regular and long chain lengths:

* * * * * * *

The following importers, which accounted for the majority of U.S. imports from China, reported the following P_2O_5 and chain length ranges for technical grade, regular chain in their questionnaire responses: ***. *** states 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.[57] As shown in the above tabulation, shipments of SHMP in the 17 to 19 chain length range was reported as "long-chain" SHMP by *** while ***. *See* the section of this report entitled "Substitutability Issues" in Part II for additional information.

[54] *See* the section of this report entitled "Price Data" in Part V for information concerning how respondents (particularly ***) classified their pricing data.

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

[56] Postconference brief, p. 22.

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

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 distributors. Both producers and four of 14 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 10 importers displays a more regional focus. Of these 10, 5 serve the Midwest, 4 serve the Southeast, 3 each serve the Southwest and West Coast, 2 each serve the Mid-Atlantic and Rocky Mountain regions, and 1 serves the Northwest. Importers shipped 36.6 percent of their SHMP to customers within 100 miles of their storage facility, 55.8 percent to customers located greater than 100 miles but less than 1,000 miles away, and 7.7 percent to customers greater than 1,000 miles away.

Most imports are brought into the United States by SHMP distributors. 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.[1]

Lead Times

The average lead time for domestic producers and importers of SHMP is usually ***. Innophos sells ***. ICL sells ***. Nine of 11 importers deliver their SHMP orders in 5 days or less for sales out of inventory. These sales account for 69.4 percent of deliveries, based on a simple average.[2] The remaining sales are produced to order, and four of six importers deliver SHMP in 6 to 12 weeks from the order.[3]

Internet Sales

No producer and only one responding importer replied that they sell SHMP via the internet. This importer, (***), estimated that internet sales only account for one to three percent of its total sales.

MARKET SEGMENTS

There are two grades of SHMP in the marketplace: technical grade and food grade. Food grade SHMP has to meet stricter standards for quality and purity than technical grade SHMP by requiring production adhering to Good Manufacturing Practices (GMP).[4] Innophos strives to run under food grade conditions at all times, though there are times when it specifically is making technical grade SHMP.[5] ICL has two furnaces - one that is dedicated more toward technical grade SHMP, and one that is dedicated more toward food grade SHMP.[6] Food grade SHMP costs a little more to make due to increased costs associated with extra lab analysis, storage of samples, and other administrative costs.[7]

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

[2] One additional importer, *** sells out of inventory but maintains a lead time of 30 days.

[3] The other two importers, ***, replied that their lead times for orders that are produced to order are 6 to 8 days and 10 to 15 days.

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

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

[6] Ibid., p. 57 (Moffatt).

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

In addition, due to SHMP's chemical makeup, there are different types of SHMP that can be sold in either grade, technical or food. 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.[8] Different customers require different chain-length SHMP, which is based on the end use and specific chemical formula. Some customers may require their SHMP ***.[9] 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 meat, beverage, and some dairy applications, whereas regular chain SHMP is typically used in more industrial applications, though there is not a clear line defining each type's uses.[10]

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 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. About *** percent less long chain SHMP can be produced than regular chain SHMP per day.

U.S. producers' export shipments have been decreasing compared to shipments to the U.S. and other markets. On a quantity basis, the percentage of producers' export shipments relative to their total shipments decreased to *** percent in 2006 from *** percent in 2004.

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. At the conference, both petitioners 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.[11]

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®), dental applications (toothpaste and whiteners), and other industrial uses (kaolin, or clay, mining).[12] Food grade SHMP is used in manufactured beverages, fruit drinks, dairy, meat, and pet food.[13] [14] As such, the demand for SHMP is a derived demand. According to a representative from Innophos, demand is projected to

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[8] ***.

[9] Ibid.

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

[11] Conference transcript, pp. 60-63 (Treinen), p. 70 (Moffatt).

[12] Petition, pp. 11-12.

[13] Petition, p. 13

[14] 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.

increase at about the rate of population or GDP growth, in the range of 1 to 2 percent per year.[15] Also, there are some segments that are seeing faster growth, such as the beverage segment, though this segment is small.[16] In all, four responding importers noted increasing demand for SHMP since 2004, three noted unchanged demand, and two reported decreasing demand. Most of these responses were specific to an end use market for SHMP, however. Increases were noted in kaolin mining, cheese/dairy, soaps/ detergents, and global potable water improvements. Decreases were noted by responding importers in textile production.[17]

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. Another importer, ***, reported that in 2004, Innophos developed the first direct substitute for polyacrylates.

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 2 percent of the cost of meat processing, 1 to 2 percent of the cost of cheese processing, and less than 1 percent 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.

Qualification/Certification

Both domestic producers of SHMP reported that *** of their sales require some sort of certification or qualification. Of the 11 responding importers, 10 required qualification or certification for at least some portion of their sales of SHMP.[18] For six, it is required of all of their sales, and three others reported needing qualification on 60, 80, and 80 to 90 percent of their sales of SHMP. 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 ("ISO"), and the Food Chemical Codex (for food grade SHMP). A certificate of analysis is supplied with every shipment of SHMP to verify that it is the right chemical.[19] Qualification for a customer takes a variable amount of time. Domestic producers of SHMP reported that qualification can take *** or ***. Importers' responses noted the variability of the qualification time. Among replies received, qualification could happen in one day, one week, four to six weeks, two to four months, and three to six months. Importer *** did respond that qualifying for food grade product takes about twice as long as regular certification or qualification.

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[15] 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.

[16] Conference transcript, p. 96 (Moffatt).

[17] One importer which noted a decrease in demand, ***, just described demand for its SHMP, not for the market as a whole.

[18] The one importer responding "No," however, did note that a Certificate of Analysis is provided with each shipment, and that the SHMP must match customer specifications.

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

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."[20] *** singled out two possible substitutes: polyacrylates in kaolin mining and tetrapotassium pyrophosphate (TKPP) in limited water treatment applications. *** 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. *** were three other possible chemical substitutes for SHMP in kaolin mining: 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.

SUBSTITUTABILITY ISSUES

Interchangeability

Producers and importers of SHMP were asked if U.S.-produced SHMP and imported SHMP are used interchangeably. Results are shown in tables II-1 and II-2.

Table II-1
SHMP: Producer responses to interchangeability between country pairs

* * * * * * *

Table II-2
SHMP: Importer responses to interchangeability between country pairs

Country pairs	Always	Frequently	Sometimes	Never	No knowledge
U.S. - China[1]	4	2	4	0	2
U.S. - Other	3	1	0	0	2
China - Other	4	1	0	0	2

[1] *** responded both "frequently" and "sometimes," based on the fact that for water treatment, the two are interchangeable. For kaolin mining, though, it has found that *** works best for its customers, and if it provided domestic SHMP to its customers, they would have to change their product formulas.

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

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.

[20] ***.

Non-Price Differences

Producers and importers were asked if differences other than price (i.e., quality, availability, transportation network, product range, etc.) between SHMP produced in the United States and in other countries were a significant factor in their sales of the products. Results are shown in tables II-3 and II-4.

Table II-3
SHMP: Producer responses to non-price differences between country pairs

* * * * * * *

Table II-4
SHMP: Importer responses to non-price differences between country pairs

Country pairs	Always	Frequently	Sometimes	Never	No knowledge
U.S. - China	4	1	3	1	2
U.S. - Other	1	0	3	1	2
China - Other	1	0	2	2	2

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

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 chain length is a critical factor, as the products are different at a molecular level. There are frequent differences between the Chinese SHMP that it sells typically having a chain length of ***, as compared to a domestic chain length of ***. Also, domestic producers have a broader portfolio of grades available, can meet customer's special product specifications, and can provide technical support and product advice to its customers, according to importer ***.

ELASTICITY ESTIMATES

U.S. Supply Elasticity[21]

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 inhibited by capacity constraints *** 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.

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

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. 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.[22]

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[23] Product differentiation, in turn, depends upon such factors as quality (both perceived and actual), grade, and conditions of sale. SHMP normally 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.[24] There are, however, purchasers that have tested or tried to qualify Chinese material unsuccessfully, or only have domestic producers qualified.[25] ***.[26] Generally, however, most purchasers find that they can use the SHMP imported from China in place of domestic SHMP.[27] 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 chemical content of SHMP.

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

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

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

[25] ***.

[26] Staff field trip report, Innophos, February 26, 2007, p. 3.

[27] 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 alleged 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]

U.S. PRODUCERS

ICL is a *** subsidiary of Israel Chemicals Ltd., headquartered in Tel Aviv, Israel.[4] Innophos is the successor to the specialty phosphates division of Rhodia, Inc., which was established as an independent corporation in 2004 when it was acquired by Bain Capital.[5] 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.[6] Responding firms' positions on the petition, plant locations, and their production and shares of SHMP production in 2006 are shown in table III-1.

ICL maintains two separate SHMP furnaces at its Lawrence, KS plant, with one primarily dedicated to the production of food grade and the other to manufacturing technical grade. 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.[7] 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.[8]

Until 2003, Astaris, the predecessor to ICL, operated a second plant in Trenton, NJ that had the capacity to produce *** metric tons of SHMP on an annual basis.[9] The Trenton facility was permanently shut down in November 2003; its equipment was scrapped or moved to different facilities. Petitioners

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

[2] ***. Postconference brief, p. 31, n.17. Nalco (Calgon) is also reported to purchase Chinese-manufactured SHMP. Conference transcript, p. 41 (Treinen).

[3] ***.

[4] ICL does not produce SHMP in Israel. Petition, AD exhibit 15.

[5] Petition, p. 6.

[6] Petition, pp. 2-3.

[7] 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.

[8] Conference transcript, pp. 19-20 and 101-102 (Treinen). The plant shutdown lasted from *** to ***. ***. Postconference brief, p. 40, n.20.

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

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	--	***	100.0

[1] ICL is ***-percent owned by Israel Chemicals Ltd., Tel Aviv, Israel. ICL is related to BK Giulini (Germany), a manufacturer of SHMP.
[2] ICL also operates a technical center in Webster Groves, MS, for research and development of food and technical grade phosphate salts and acids.
[3] ***. Innophos is not related to any firms that also manufacture SHMP.

Note.–***.

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

testified at the Commission's conference that Astaris had suffered a substantial loss in sales volume to Chinese imports. ICL reported that it had attempted to operate both the Trenton plant and its Lawrence, KS, facility "but we did not have sufficient orders to keep both plants operating at full capacity." Petitioners further testified that imports from China filled the void left by the closure of the Trenton plant.[10] [11]

U.S. PRODUCERS' IMPORTS AND PURCHASES

***.[12] ICL did import a minute amount of a specialized grade of SHMP made by its affiliate in Germany in 2005 to test whether it would be suitable for use in a downstream blend.[13] ***.[14]

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

[10] Conference transcript, pp. 11 and 28 (Cannon).

[11] 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:

* * * * * * *

[12] ICL and Innophos' producer questionnaire responses.

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

[14] ICL's producer questionnaire response, questions II-8 and II-14.

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

* * * * * * *

than regular chain product.[15] 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.[16] 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.[17]

As shown in table III-2, capacity utilization remained at or below ***. ICL was not requested to report separate capacity utilization rates for its two furnaces; ***.[18] ***. Production of SHMP increased by *** percent from 2004 to 2005 and then fell by *** percent from 2005 to 2006 for a period decrease of *** percent. Capacity to produce SHMP in the United States was *** apparent U.S. consumption of SHMP in each of the years 2004-06.

U.S. PRODUCERS' SHIPMENTS

U.S. producers' shipments of SHMP are presented in table III-3. As shown, the quantity of U.S. producers' commercial shipments followed a different trend than production in that commercial shipments, measured by quantity, declined steadily throughout the period examined and did not rise (as did production) from 2004 to 2005. The decrease in commercial shipments was *** percent from 2004 to 2006, compared with the period decrease of *** percent in production. *** SHMP in the manufacture of phosphate blends. Export shipments accounted for slightly over *** percent of total shipments in 2006.[19] Internal consumption of SHMP and export shipments also fell from 2004 to 2006 by *** percent and *** percent, respectively. The unit values of U.S. producers' commercial shipments increased steadily from 2004 to 2006 for a net gain of $*** per metric ton. ***.[20]

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

* * * * * * *

As shown in the following tabulation, counsel for petitioners indicated that ***:

* * * * * * *

[15] As indicated earlier, no products other than SHMP are manufactured by either firm in the furnace(s) and on the equipment utilized to produce SHMP.

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

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

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

[19] ***. ICL and Innophos' producer questionnaire responses and e-mail from counsel to petitioners, March 13, 2007.

[20] ICL and Innophos' producer questionnaire responses.

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

* * * * * * *

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.[21] 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 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) during the period examined. (While technologically possible, it is not cost-efficient to grind granular down to powder in an additional production step.)[22] ICL, in contrast, has ended up with proportionally more powder than granular product.[23] As indicated earlier, inventory has an 18-month shelf life.

Table III-4
SHMP: U.S. end-of-period inventories, 2004-06

* * * * * * *

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. Likewise, 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 are presented in table III-5. As shown, the number of production and related workers was relatively stable while total hours worked, hours worked per worker, wages paid, and hourly wages each increased steadily by *** percent, *** percent, *** percent, and *** percent, respectively. Productivity and unit labor costs both fluctuated, with productivity showing a net decline of *** percent from 2004 to 2006 while unit labor costs increased by *** percent during the period examined. ***.[24] Petitioners state that SHMP production is highly automated and not labor intensive.[25] ***.[26]

Table III-5
SHMP: Employment-related indicators, 2004-06

* * * * * * *

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

[22] Conference transcript, pp. 20-21 and 62 (Treinen).

[23] Conference transcript, p. 70 (Moffatt).

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

[25] Petition, p. 50.

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

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

U.S. IMPORTERS

The subject product is imported by independently owned distributors. Importer questionnaires were sent to 26 firms identified in Customs documents as entering more than minimal volumes of product from any source[1] for the January 2004 through September 2006 period[2] under the HTS number (2835.39.5000) assigned to SHMP (along with certain other nonsubject polyphosphates). An additional nine questionnaires were sent to firms identified in the petition as importers as well as to each of the U.S. producers. 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 with the exception of ***.[3] [4] *** of the firms that were listed in the petition as importers only (i.e., that were not also identified in Customs records) indicated that they, in fact, imported SHMP. Of the 10 questionnaires sent to importers from nonsubject countries, 8 firms responded.[5]

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

* * * * * * *

As shown both in Customs documents and in table IV-1, a relatively small number of importers accounted for the majority of U.S. imports of SHMP from China. The most substantial U.S. importers of subject merchandise from China during January 2006 to September 2006 in order of the quantity of their U.S. imports recorded in Customs documents were: ***. According to year-end questionnaire data, *** also imported a substantial volume of SHMP from China in 2006 (table IV-1). *** firms imported product manufactured by Hubei Xingfa, although ***.[6]

U.S. IMPORTS

Calculation of U.S. Imports

Official (adjusted) Commerce statistics for SHMP are presented in table IV-2. As noted above, the HTS number under which SHMP is entered (HTS 2835.39.5000) is a "basket" category that also includes certain "other" polyphosphates.[7] Petitioners point out that U.S. imports entered under this

[1] Sixteen firms on the mailing list imported from China and 10 firms imported from countries other than China.

[2] Customs documents were available only through September 2006.

[3] ***.

[4] ***.

[5] Additionally, ***. Staff telephone interview with ***.

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

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

Table IV-2
SHMP: U.S. imports, by sources, 2004-06

Source	Calendar year		
	2004	2005	2006
	Quantity (*metric tons*)		
China (subject)	19,695	22,901	21,017
Germany	***	***	***
Mexico	***	***	***
All other sources[1]	***	***	***
Subtotal, nonsubject	4,499	6,410	5,042
Total	24,193	29,311	26,059
	Value (*1,000 dollars*)[2]		
China (subject)	12,817	18,779	16,906
Germany	***	***	***
Mexico	***	***	***
All other sources[1]	***	***	***
Subtotal, nonsubject	3,456	6,553	6,804
Total	16,273	25,332	23,710
	Unit value (*per metric ton*)[2]		
China (subject)	$651	$820	$804
Germany	***	***	***
Mexico	***	***	***
All other sources[1]	***	***	***
Subtotal, nonsubject	768	1,022	1,349
Average	673	864	910
	Share of quantity (*percent*)		
China (subject)	81.4	78.1	80.7
Germany	***	***	***
Mexico	***	***	***
All other sources[1]	***	***	***
Subtotal, nonsubject	18.6	21.9	19.3
Total	100.0	100.0	100.0

Table continued on the following page.

Table IV-2
SHMP: U.S. imports, by sources, 2004-06

Source	Calendar year		
	2004	2005	2006
	Share of value (*percent*)		
China (subject)	78.8	74.1	71.3
Germany	***	***	***
Mexico	***	***	***
All other sources[1]	***	***	***
Subtotal, nonsubject	21.2	25.9	28.7
Total	100.0	100.0	100.0
	Ratio of imports to U.S. production (*percent*)		
China (subject)	***	***	***
Germany	***	***	***
Mexico	***	***	***
All other sources[1]	***	***	***
Subtotal, nonsubject	***	***	***
Total	***	***	***

[1] 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, United Kingdom, Thailand, India, Denmark, Korea, and Chile. Imports (over 1 metric ton in 2004 and 2005) were also reported from: Bulgaria, Australia, and Slovenia.
[2] Landed, duty-paid.

Source: Compiled from adjusted official Commerce statistics (HTS number 2835.39.5000) for all sources except for Germany, which is questionnaire data.

reporting number from countries where SHMP is not produced would, by default, consist of nonsubject polyphosphates. SHMP is reported by petitioners to not be produced in Canada, Iceland, Israel, and Taiwan.[8] 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 do not contain SHMP.[9] In contrast, the average unit values of import data for China under the basket HTS were "indicative" of

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

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

SHMP.[10] Petitioners also compared official Commerce data by port to ship manifest records[11] and concluded that imports from China under the basket category consist entirely or almost entirely of SHMP.[12]

The following tabulation presents official Commerce statistics, in 2006, for all products (i.e., SHMP and "other" polyphosphates) under HTS number 2835.39.5000, organized by whether a country has or has not been included within the import data for SHMP in this report:

Status	Country	Quantity (*metric tons*)	Share of quantity (*percent*)
Included as a source of SHMP (subject)	China	20,649	52.9
Excluded on the basis of no known production of SHMP	Canada	4,020	10.3
	Iceland	93	0.2
	Israel	5,933	15.2
	Taiwan	511	1.3
Excluded on the basis of unit value analysis	Japan	52	0.1
	Spain[1]	602	1.5
Included as a source of SHMP (nonsubject)	Germany[2]	2,511	6.4
	Mexico	2,636	6.7
	All others	2,046	5.2
Imports under HTS 2835.39.5000	Total	39,053	100.0

[1] ***. On the basis that (1) *** and (2) petitioners' assertions that the unit values for Spain are an indication that the U.S. imports under the basket are not primarily SHMP, staff has also excluded Spain from the data compiled on U.S. imports. Staff similarly excluded Japan, for which imports are minimal.

[2] The majority of U.S. imports from Germany entered under the basket category were, in order of their volume of imports, imported by ***. Each of these firms either returned an importer questionnaire or otherwise provided information to the Commission on its imports. ***.

Note.–Total U.S. imports from all countries under the basket HTS number were 39,053 metric tons in 2006. Total U.S. imports from all countries other than those excluded as an entity (i.e., Canada, Iceland, Israel, Taiwan, Japan, and Spain) are 27,842 metric tons. Total U.S. imports of SHMP after the basket HTS number is further adjusted to exclude reported imports of nonsubject merchandise but to include misclassified subject merchandise) are 26,059 metric tons in 2006, as shown in table I-2 (also see below).

As shown above, Commission staff has supplemented information presented in the petition with that obtained from importer questionnaire responses and through staff telephone interviews (*see* notes to the above tabulation) and adjusted official Commerce statistics to exclude all reported imports from Canada, Iceland, Israel, Taiwan, Japan, and Spain, but not from Germany.

[10] Petition, p. 19.

[11] Petition, p. 34.

[12] Petition, pp. 38-39.

Commission staff next adjusted official Commerce statistics to subtract importer questionnaire data reported for "non-SHMP" products imported under HTS number 2835.39.5000 for China, Mexico, and the United Kingdom,[13] as shown in the following tabulation:

* * * * * * *

U.S. Import Trends

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 (table IV-2).[14] [15] Nonsubject imports likewise rose from 2004 to 2005 and then fell from 2005 to 2006 for a period increase of 12.1 percent. Mexico is the most significant source of product 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.

Petitioners note 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 state that "imports of Chinese SHMP declined in the first half of 2006, apparently due to inventory build up."[16] *** indicated in its questionnaire response that: "***."[17] Table IV-3 presents U.S. imports under HTS number 2835.39.5000 for the January 2004-December 2006 period, by month, for China and Mexico.

[13] ***.

[14] 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.

[15] The following tabulation shows U.S. imports from China compiled directly from importer questionnaire data:

Item	2004	2005	2006
Quantity (*metric tons*)	17,506	20,860	21,126
Value (*$1,000*)	11,193	16,462	16,091
Unit value (*per metric ton*)	$639	$789	$762

U.S. imports of SHMP from China, when calculated using questionnaire data instead of adjusted Commerce statistics, also increased by quantity from 2004 to 2005, but instead of decreasing in the next year, rose slightly from 2005 to 2006 for a period increase of 20.7 percent.

[16] Petition, p. 38.

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

Table IV-3
Sodium hexametaphosphate: U.S. imports from China and Mexico, by month, 2004-06

Month	Calendar year					
	2004		2005		2006	
	China	Mexico	China	Mexico	China	Mexico
	Quantity (*metric tons*)					
January	1,368	210	1,611	426	2,458	175
February	2,159	86	769	366	1,529	477
March	1,566	149	521	475	1,017	284
April	1,170	217	1,073	468	1,411	157
May	996	175	2,213	442	1,299	435
June	2,449	335	2,695	366	1,470	205
July	1,142	226	2,542	431	1,168	205
August	1,564	206	3,550	678	1,825	344
September	1,651	226	1,772	525	1,381	164
October	1,905	422	1,912	399	2,184	40
November	1,417	342	1,774	465	2,760	97
December	1,730	384	1,754	718	2,149	53
Total	19,115	2,979	22,187	5,758	20,649	2,636

Note.–The following U.S. imports were entered under HTS number 2835.39.5000 for January 2007: 2,643 metric tons from China and 40 metric tons from Mexico.

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

The Question of Negligible Imports

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

Item	China	All other[1]	Total[1]
	Quantity in *metric tons*, except as noted		
U.S. imports	20,836	4,613	25,449

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

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

As indicated above, imports of SHMP from China accounted for 81.9 percent of total U.S. imports.[18]

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. Further, as will be discussed 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-4, U.S. imports from China (whether compiled from adjusted Commerce statistics or directly from importer questionnaires) rose from 2004 to 2005 (while U.S. shipments of imports from China remained comparatively level). From 2005 to 2006, U.S. imports from China either declined slightly (if calculated from adjusted Commerce statistics) or increased slightly (if calculated directly from importer questionnaires), while U.S. shipments of imports from China rose by a more substantial volume.

Table IV-4
SHMP: Comparison of available data on U.S. imports from China and U.S. shipments of imports from China

Data source	2004	2005	2006	Percentage change		
				2004-05	2005-06	2004-06
	Quantity (*metric tons*)			*Percent*		
Commerce statistics for HTS number 2835.39.5000[1]	19,115	22,187	20,649	16.1	- 6.9	8.0
Adjusted Commerce statistics[1]	19,695	22,901	21,017	16.3	- 8.2	6.7
Importer questionnaires: U.S. imports	17,506	20,860	21,126	19.2	1.3	20.7
U.S. shipments of imports	***	***	***	***	***	***

[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 ***.

Apparent U.S. consumption was, for the purposes of this report, calculated using U.S. importers' U.S. shipments of SHMP from China, and U.S. imports for all other sources.

Table IV-5 presents the apparent U.S. consumption of SHMP for the period examined. U.S. apparent consumption, in terms of quantity, was relatively level from 2004 to 2006 while consumption, in terms of value, increased steadily. U.S. producers' market shares, in terms of quantity, declined throughout the period examined, for a net fall of *** percentage points (table IV-6). The market share of

[18] 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.

subject U.S. imports was almost level from 2004 to 2005 and then rose *** in 2006 for a period increase of *** percentage points. 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 point. 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 of SHMP from China that was large enough to virtually offset the declining share of the U.S. market reported for product imported from Mexico in 2006 (compared to 2005).

Table IV-5
SHMP: U.S. shipments of domestic product, U.S. imports, by source, and apparent U.S. consumption, 2004-06

* * * * * * *

Table IV-6
SHMP: Apparent U.S. consumption and market shares, by source, 2004-06

* * * * * * *

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. SHMP also requires the use of very high temperatures, so energy is an important part of the production process. One domestic producer uses ***.[1] At the conference, petitioners testified that prices for raw materials have been increasing, though the price of natural gas has decreased since 2005.[2] 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.[3] 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 to the United States under this tariff subheading for 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. Seven of 11 responding importers estimated domestic transport costs to be between 2 and 5 percent ***. The remaining four importers estimated domestic transportation costs to be in the range of 7 to 12 percent.

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 6.1 percent stronger in the first two months of 2007 relative to its value in the first three months of 2004.

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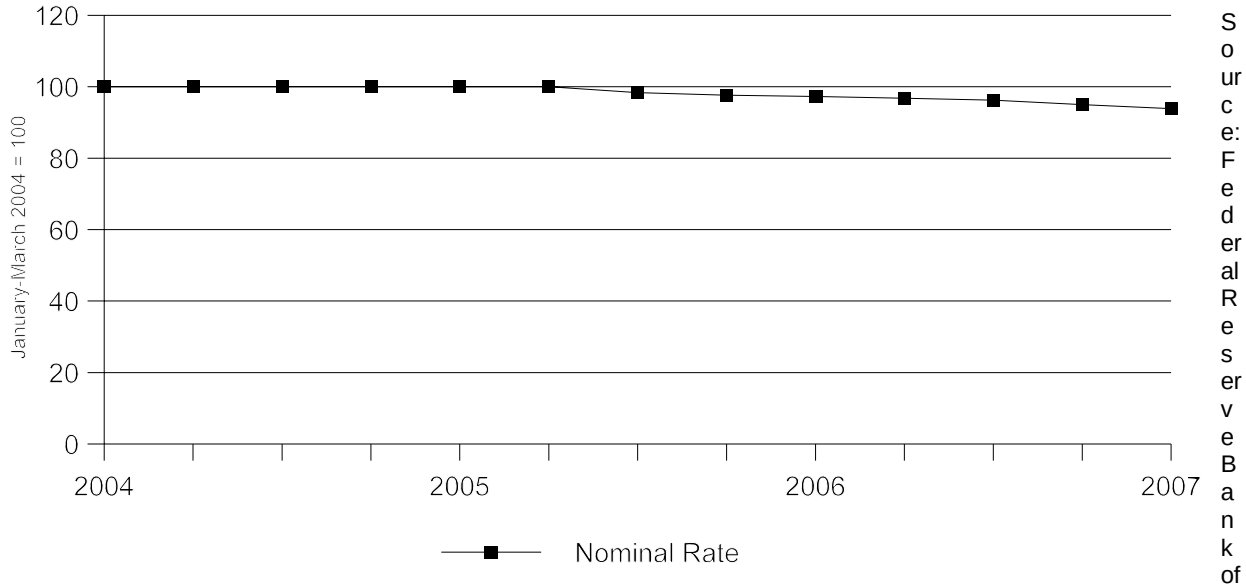
[1] Staff field trip report, Innophos, February 26, 2007, p. 2.

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

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

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-February 2007



Source: Federal Reserve Bank of St. Louis, retrieved from http://research.stlouisfed.org/fred2/series/EXCHUS, last accessed March 14, 2007.

PRICING PRACTICES

Pricing Methods

***. *** customers in the spot market, ***. ***. Nine of the 12 responding importers noted that they determined price by transaction-by-transaction negotiation. The remaining three determine prices based on costs and/or market conditions.

Producer Innophos sells *** percent of its SHMP via *** contracts, with the remainder on the spot market. ICL sells *** percent of its SHMP via *** contracts, *** percent via *** contracts, and *** percent on the spot market. Of the ten responding importers, five sell via long-term contracts (of one year or greater), five via short-term contracts (of between one month and one year), and eight on the spot market. Only importer *** does not sell on the spot market, as all of its sales are via long-term contract, though it renegotiates prices every six months.[4] On a simple average basis, 30.1 percent of imported SHMP is sold via long-term contracts, 19.8 percent via short-term contracts, and 50.1 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 the price usually cannot be renegotiated during the contract period. Producers and importers described typical short-term contracts as also fixing price and quantity, though no firm reported price

[4] Importer *** did not provide data with respect to percentage sold via long-term contract, short-term contract, and on the spot market, but did include data about its long-term contracts.

renegotiation during the contract. Meet-or-release provisions are atypical in short-term contracts for all firms except importer ***.

Sales Terms and Discounts

Payments in the SHMP industry are due within 30 days for both importers and producers. ***, but also will ***. Producer Innophos ***.[5] No responding importer offers discounts on SHMP, with the exception of two which offer a 1-percent discount for payment within 10 days. Three importers sell on an f.o.b. basis, four on a delivered basis, and three on either an f.o.b. or delivered basis. Domestic producers ship on a delivered basis.[6] Delivery is arranged by producers and importers for all firms but two responding importers.

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 December 2006. 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 12 importers. 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' shipments of SHMP and 102.4 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.[7] 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. For domestic SHMP, prices of three of the four products increased irregularly. The greatest increase in price was for product ***, which increased by *** percent between the first quarter of 2004 and the last quarter of 2006. Prices for domestic product ***, however, ***, though this is mostly due to a ***-percent decline in the last quarter of the period examined. Prices for sales of SHMP imported from China also rose irregularly from 2004 to 2006, by *** percent (product ***) to *** percent (product ***). See tables V-1 to V-4 and figures V-2 to V-5 for more detailed information.

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[5] Innophos' producer questionnaire response, section ***.

[6] 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 (Mr. Moffatt).

[7] ***.

In terms of pricing for technical grade SHMP, pricing for product 1 imported from China increased from the first quarter of 2004 through the second quarter of 2005, and has since declined. Prices for domestically produced product 1 were generally rising until the first half of 2006, but have also declined since that time. Prices for product 2 imported from China also were rising from the beginning of the period examined until the first half of 2006, after which they decreased ***. 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.[8]

For food grade SHMP, pricing for domestically produced products 3 and 4 rose somewhat cyclically. While prices for the most part were rising, there were never four consecutive quarters of increasing or decreasing prices. Pricing for product 3 imported from China decreased *** in the first and second quarters of 2006, but rose in the third and fourth quarters to a level above that of the previous year. The price of product 4 imported from China was highest in 2005, with a *** decline in 2006.[9]

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-December 2006

Period	United States[2]		China[3]		
	Price (*per pound*)	Quantity (*pounds*)	Price (*per pound*)	Quantity (*pounds*)	Margin (*percent*)
2004:					
January-March	$***	***	$0.31	2,847,684	***
April-June	***	***	0.33	2,232,528	***
July-September	***	***	0.35	1,572,161	***
October-December	***	***	0.40	2,362,385	***
2005:					
January-March	***	***	0.38	881,885	***
April-June	***	***	0.47	1,326,661	***
July-September	***	***	0.44	2,944,663	***
October-December	***	***	0.43	2,943,004	***
2006:					
January-March	***	***	0.43	5,002,352	***
April-June	***	***	0.40	4,307,107	***
July-September	***	***	0.39	3,221,444	***
October-December	***	***	0.41	2,283,377	***

Notes on the following page.

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

[9] One importer accounted for ***. It estimated all of its shipments for 2004-06, but noted that 2006 was a particularly bad year for being able to track and attribute accurately its inland shipping costs to its warehouse so an average method for 2006 would be the most accurate way to compute prices, as its computer system is not equipped to accurately attribute these costs on a quarterly basis. Staff interview with ***.

Continuation.

[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 for domestic and imported product 2, January 2004-December 2006

* * * * * * *

Table V-3
SHMP: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling for domestic and imported product 3, January 2004-December 2006

* * * * * * *

Table V-4
SHMP: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling/ (overselling) for domestic and imported product 4, January 2004-December 2006

* * * * * * *

Figure V-2
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 1, January 2004-December 2006

* * * * * * *

Figure V-3
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 2, January 2004-December 2006

* * * * * * *

Figure V-4
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 3, January 2004-December 2006

* * * * * * *

Figure V-5
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 4, January 2004-December 2006

* * * * * * *

Price Comparisons

The imported SHMP from China undersold the domestic products in 45 of 48 quarters in which comparisons were possible. All of the overselling occurred in products 1 and 4 in 2004 and 2005. A detailed summary of margins of overselling and underselling is presented in table V-5.

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

Products	Number of quarters of underselling	Number of quarters of overselling	Lowest margin of underselling	Highest margin of underselling	Lowest margin of overselling	Highest margin of overselling
China						
Product 1	11	1	7.2	24.9	0.9	0.9
Product 2	12	0	15.3	37.5	--	--
Product 3	12	0	24.1	51.9	--	--
Product 4	10	2	0.8	21.5	0.6	1.3
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.

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

* * * * * * *

*** disagreed with ***. ***. Additionally, *** explained that it ordered *** pounds of food grade SHMP during 2006 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.

***.

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

*** disagreed with the lost sale 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.[10]

*** agreed with the allegation, noting that as a competitor in the world *** market, it needs to seek out the most competitive price on its inputs.

*** 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 sale, 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 2006. It does have a quote from *** from a domestic producer at the alleged rejected price.

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

* * * * * * *

*** 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.

*** 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 ***.[11]

[10] Staff interview with ***.

[11] 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 2004-06, supplied financial data on their SHMP operations. ICL, an affiliate of Israel Chemicals Limited (total 2005 sales of $3.0 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 2005 were $536 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 ***.

ICL and Innophos both have fiscal years ending December 31.

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. The financial results of the domestic SHMP industry grew steadily worse from 2004 to 2006, as net sales quantities and values declined by approximately *** and *** percent, respectively. While the unit sales price increased by $*** per metric ton from 2004 to 2006, this only partially offset even ***. Thus, the *** levels in 2004 deepened each subsequent year.

Table VI-1
SHMP: Results of U.S. producers' operations, fiscal years 2004-06

* * * * * * *

Table VI-2
SHMP: Selected financial data, by firm, fiscal years 2004-06

* * * * * * *

The individual results for both ICL and Innophos (table VI-2) are ***. ICL reported *** decreases in sales quantities (*** percent) and increases in unit sales values (*** percent) that *** each other, resulting in *** sales revenues. ICL also reported increases in unit costs from 2004 to 2006, particularly *** ($***). Unit factory costs increased *** partially because of increases in natural gas costs ($***)[1] and partially because increased *** were spread over fewer units of output.[2] The increase in raw material costs was ***.[3] As ICL's costs *** its revenues, its ***. Of the two primary input materials – *** – ICL *** of its phosphoric acid from *** in 2006.[4] These *** and did not distort ICL's costs.[5]

Innophos also reported *** decreases in sales quantities (*** percent) and increases in unit sales values (*** percent), but ***, its sales revenues declined. Its unit costs also increased, although ***. The company reported *** as its unit costs *** its unit sales prices. Unit raw materials costs increased by

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

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

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

[4] Petitioners' postconference brief, exh. 15.

[5] ICL's producer questionnaire, questions III-6 to III-9, and petitioners' postconference brief, p. 34 and exh. 15.

$***, approximately *** of which was attributable to increases in *** costs with the remaining *** attributable to increases in *** costs;[6] unit other factory costs increased by $***, *** because *** costs were *** of output;[7] unit SG&A costs increased by $***; and unit labor costs increased by $***. Innophos *** of its primary input materials from unrelated parties.

ICL and Innophos shared operational similarities and differences. Both companies produce a ***. Based upon domestic shipment data, ICL's average 2004-06 ratio for sales of *** SHMP was ***, while Innophos'was ***; ICL's ratio of regular and long chain SHMP was *** and Innophos' was ***.[8] [9] Additionally, both companies manufacture SHMP using *** technology.[10] ICL has two furnaces, one for food grade and one for technical grade, while Innophos has just one furnace.[11]

Despite these similarities, *** was *** (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 *** (capacity *** metric 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 probably also attributable to *** between the two companies.

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-3. The analysis confirms that the decrease in operating income is the result of ***. The summary at the bottom of the table illustrates that from 2004 to 2006 the effect of *** was more than offset by ***; increases in *** accounted for most of the total cost increase.

Table VI-3
SHMP: Variance analysis of operations of U.S. producers, fiscal years 2004-06

* * * * * * *

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

[7] Innophos *** the absolute level of its other factory costs by *** percent from 2004 to 2006, but its 2006 sales quantities were *** percent *** than 2004 levels. Producer questionnaire, question III-11.

[8] 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.

[9] According to ***, food grade SHMP costs $*** per metric ton more than technical grade SHMP. Innophos indicated its long chain SHMP cost $*** per metric ton more than its regular chain SHMP, while ICL indicated the difference was $*** per metric ton. Postconference brief, pp. 36-37.

[10] Producer questionnaire, question II-13.

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

[12] Producer questionnaires, question II-9.

[13] Compare ICL's cost of $*** (postconference brief, p.34) with Innophos' cost of $*** (e-mail response from Jim Cannon, March 15, 2007).

[14] Producer questionnaire, question II-2.

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-4. Capital expenditures were the *** for the domestic industry (table VI-1), an indication that the domestic industry is ***.

Table VI-4
SHMP: Capital expenditures and R&D expenses, fiscal years 2004-06

* * * * * * *

*** R&D expenses.

Assets and Return on Investment

ICL's and Innophos' assets and their return on investment are presented in table VI-5. 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-5
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

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.

THE INDUSTRY IN CHINA

In contrast to the relatively limited number of SHMP manufacturers in the United States, numerous companies produce the subject product in China.[1] The Commission sent foreign producer questionnaires to 31 companies in China that were identified in the petition, Customs documents, and/or public sources as either producing SHMP or exporting the product to the United States. No producers provided data in response to the foreign producer questionnaire.[2]

The petition identified Hubei Xingfa Chemicals Group Co. as the largest source for Chinese-produced SHMP that is exported to the United States.[3] Attached to the petition (as exhibit AD-5) is an excerpt from Hubei Xingfa's website that describes the firm's fully integrated production operations. Hubei Xingfa first mines phosphate rock and then converts the ore to the elemental phosphorus that is then processed into the upstream phosphoric acid used to produce SHMP. 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.[4]

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 scheduled for completion in May 2006, would bring Hubei Xingfa's total SHMP production capacity to 70,000 metric tons.[5] ***, China had approximately 170,000 metric tons of installed SHMP capacity in 2006. Home market demand, in 2006, for the product was reported at 120,000 metric tons.[6]

Chinese-produced SHMP is subject to an antidumping duty of 102.22 percent *ad valorem* in Mexico. The antidumping duty order became effective on August 4, 2004 and covers both food and technical grade product, regardless of chain length.[7]

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[1] Postconference brief, exh. 6.

[2] One response was received from an exporter (***). *** exports SHMP manufactured by Hubei Xingfa Chemicals Group Co., Ltd. (Hubei Xingfa). In addition, *** has inquired about entering a notice of appearance. E-mail from ***.

[3] Petition, p. 18.

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

[5] HighBeam Research, Inc., China Chemical Reporter, October 26, 2005, attached as exh. 11 to the postconference brief.

[6] Postconference brief, p. 44.

[7] Postconference brief, p. 47.

NONSUBJECT MANUFACTURERS

The major SHMP producers are, in addition to those in China and the United States, located in Europe and in Mexico. Table VII-1 presents available data on the SHMP capacity of nonsubject producers. Petitioners state that the European market differs from the U.S. market in that ***.[8] With respect to Mexico, Quimir reportedly produces similar grades to those manufactured by U.S. firms.[9] Mexico is a supplier of SHMP to the United States (table IV-2). ***.

Table VII-1
SHMP: Production 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	***
Total (Europe)	--	***
Mexico	Quimir SA de CV	7,000

Source: Conference transcript, pp. 47-48 (Treinen) for Mexico and postconference brief, p. 46, and http://tki-hrastnick.com (retrieved March 13, 2007) for all other sources.

***.[10] German manufacturers ship *** volumes of SHMP to the United States; ***.[11]

IMPORTERS' U.S. INVENTORIES

Importers of Chinese-produced SHMP are reported by petitioners to maintain substantial inventories with some (***) establishing a national network of warehouses while ***.[12] Reported end-of-period inventories held by U.S. importers of subject merchandise from China are shown in table VII-2.[13] In contrast to the *** shares of Chinese-manufactured SHMP held in U.S. inventories, there are *** inventories of product produced in Mexico. Both the absolute volume and the ratios of subject inventories to U.S. imports and U.S. shipments of imports rose from 2004 to 2005 and then declined in

[8] Postconference brief, p. 46.

[9] Conference transcript, pp. 47-48 (Treinen).

[10] ***'s importer questionnaire response.

[11] ***'s importer questionnaire response.

[12] 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.

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

2006 to levels that remained above those reported for 2004. Petitioners state that *** built up inventory in late 2005 and then reduced its imports in 2006 as it sold product from inventory into the U.S. market in the first half of 2006. They state "{i}t follows that commercial shipments of the Chinese material in the U.S. market will be somewhat lower than the volume of imports in 2005, but somewhat higher in 2006."[14] Table VII-3 presents inventory, import, and shipment data separately for (1) *** and (2) all other U.S. importers. As shown, ***'s imports of SHMP from China in 2005 *** its U.S. shipments of those imports *** metric tons. This pattern was *** for the other importers. *** accounted for *** percent of end-of-period subject inventories in 2004, *** percent in 2005, and *** percent in 2006.

Table VII-2
SHMP: U.S. importers' end-of-period inventories of imports, by sources, 2004-06

* * * * * * *

Table VII-3
SHMP: Product flow of U.S. imports from China, by importer grouping, 2004-06

* * * * * * *

ANTICIPATED SHIPMENTS OF SHMP FROM CHINA

The following tabulation presents information provided by importers on the anticipated importation of SHMP from China for delivery after December 31, 2006:

* * * * * * *

[14] Petition, pp. 40-41.

APPENDIX A

FEDERAL REGISTER NOTICES

Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 5, 2007, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain NAND flash memory devices or components thereof, or products containing same, by reason of infringement of one or more of claims 2 and 5 of U.S. Patent No. 6,703,658; claims 1–4 of U.S. Patent No. 6,424,588; and claims 46–49 of U.S. Patent No. 5,627,782, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Toshiba Corporation, 1–1 Shibaura 1-Chome, Minato-Ku, Tokyo 105–8001 Japan.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hynix Semiconductor Inc., San 136–1, Ami-Ri Bubal-eub, 1 chon-si, Kyoungki-do, Korea.

Hynix Semiconductor America Inc., 3101 North First Street, San Jose, California 95134.

(c) The Commission investigative attorney, party to this investigation, is Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–Q, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: February 9, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–2605 Filed 2–14–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

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

Sodium Hexametaphosphate (Shmp) From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1110 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that 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 imports from China of sodium hexametaphosphate (SHMP), provided for in subheading 2835.39.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by March 26, 2007. The Commission's views are due at Commerce within five business days thereafter, or by April 2, 2007.

For further information concerning the conduct of this investigation 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 B (19 CFR part 207).

EFFECTIVE DATE: February 8, 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 on 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.—This investigation is being instituted in response to 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 (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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 this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 1, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than February 26, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 6, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must 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 FR 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).

In accordance with sections 201.16(c) and 207.3 of the 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 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 12, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–2676 Filed 2–14–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on February 5, 2007, a proposed consent decree (''Consent Decree'') in the matter of *United States* vs. *Agrium U.S. Inc. and Royster-Clark, Inc.,* Civil Action No. 1–07–CV–0089, was lodged with the United States District Court for the Southern District of Ohio, Western Division.

The Consent Decree would resolve claims of the United States against Agrium U.S. Inc. and Royster-Clark, Inc. (collectively ''Defendants'') asserted in a complaint filed against the Defendants pursuant to Sections 113(b) and 167 of the Clean Air Act (''the Act''), 42 U.S.C. 7413(b) and 7477, for injunctive relief and the assessment of civil penalties for violations at a nitric acid production facility located at 10743 Brower Road, Hamilton County, North Bend, Ohio (''Facility'') of: The Prevention of Significant Deterioration (''PSD'') provisions of the Act, 42 U.S.C. 7470–92, and the PSD regulations incorporated into the federally approved and enforceable Ohio State Implementation Plan (''Ohio SIP''); the New Source Performance Standards (''NSPS'') of the Act, 42 U.S.C. 7411; the Title V Permit requirements of the Act, 42 U.S.C. 7661, *et seq.,* and Title V's implementing Federal (40 CFR Part 70) and Ohio regulations (OAC Chapter 3745–77); and the Ohio SIP Permit to Install requirements (OAC 3745–31–02(A)).

The proposed Consent Decree would require, among other things, that the Defendants: Install a selective catalytic reduction device and achieve specified emission limits to control the emissions of nitrogen oxides (''NO_x'') from the nitric acid plant at the Facility upon a schedule specified in the Consent Decree; install a continuous emissions monitoring system to measure NO_x emissions at the Facility's nitric acid plant; apply for a permit to install from Ohio's permitting authorities incorporating various requirements of the Consent Decree and submit all necessary applications to revise the Facility's Clean Air Act Title V operating permit to incorporate certain requirements specified in the Consent Decree; and, pay a civil penalty to the United States in the amount of $750,000.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Agrium U.S. Inc. and Royster-Clark, Inc.,* DOJ Ref. 90–5–2–1–08469.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, 221 East 4th Street, Suite 400, Cincinnati, Ohio 45202 and at the offices of the United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 07–688 Filed 2–14–07; 8:45 am]

BILLING CODE 4410–15–M

Dated: February 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Adjustments to Husteel's G&A Expense Ratio
2. Husteel's Profit and Selling Expense Ratios for Constructed Value
3. Husteel's CEP Profit
4. Treatment of Inventory Carrying Costs Incurred in Korea for U.S. Sales
5. CEP Offset to SeAH
6. Interest Expenses Associated with U.S. Selling Operations
7. G&A Expense for Further Manufacturing
8. Interest Expense for Further Manufacturing
9. Further Manufacturing Freight Expenses
10. Calculation Issues

[FR Doc. E7–3893 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China

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

EFFECTIVE DATE: March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Erin Begnal, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3441 or (202) 482–1442, respectively.

Initiation of Investigation

The Petition

On February 8, 2007, the Department of Commerce (''Department'') received a petition on imports of sodium hexametaphosphate (''SHMP'') from the People's Republic of China (''PRC'') filed in proper form by ICL Performance Products, LP and Innophos, Inc. (''Petitioners''). The period of investigation (''POI'') is July 1, 2006, through December 31, 2006.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioners alleged that imports of SHMP from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to materially injure an industry in the United States. The Department issued supplemental questions to Petitioners on February 12, 2007, and February 21, 2007. Petitioners filed their responses on February 16, 2007, and February 23, 2007.

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 $NaPO_3$ 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 3823.90.3900, 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, powder, fines, or other form.

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.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed by an interested party described in subparagraph (C), (D), (E), (F) or (G) of section 771(9) of the Act, by or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the domestic industry, the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) if there is a large number of producers in the industry the Department may determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the ''domestic like product'' as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that SHMP constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Investigation Initiation Checklist: Sodium Hexametaphosphate from the People's Republic of China (''PRC'') at Attachment I (''Initiation Checklist''), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support representing at least 25 percent of the total production of the domestic like product, and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. Therefore, the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Initiation Checklist at Attachment I (Industry Support).

The Department finds that Petitioners filed the petition on behalf of the domestic industry because they are an interested party as defined in sections 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. See Initiation Checklist at Attachment I (Industry Support).

Export Price

Petitioners provided numerous U.S. price quotes for SHMP manufactured in the PRC and offered for sale in the United States. However, the Department notes that a number of these prices, as quoted, were prior to the POI. Therefore, the Department has only examined prices within the POI or more contemporaneous. These prices were for SHMP within the scope of this Petition, for delivery to the U.S. customer within the POI. Petitioners deducted the costs associated with exporting and delivering the product, including ocean freight and insurance charges, foreign inland freight costs, and foreign brokerage and handling from the prices. See Initiation Checklist at 6–7.

In addition, while Petitioners also calculated margins using a U.S. price based on the average unit values (''AUVs'') of imports during the POI available from the International Trade Commission for HTSUS subheading 2835.39.5000, because adequate pricing information is available using the above-detailed price quotations, the Department need not address the AUV margin calculations for this initiation, consistent with the Department's prior practice. See Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 68 FR 42686 (July 18, 2003). However, should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Normal Value

Petitioners stated that the PRC is a non-market economy (''NME'') and no determination to the contrary has been made by the Department to date. Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC. See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy (May 15, 2006). In addition, in a recent antidumping duty investigation, the Department also determined that the PRC is a NME. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners selected India as the surrogate country. Petitioners argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the PRC and is a significant producer of SHMP. Based on the information provided by Petitioners, we believe that its use of India as a surrogate country is

appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated normal values based on consumption rates for producing SHMP experienced by U.S. producers for producing SHMP in an integrated facility and a non-integrated facility. See Initiation Checklist. In accordance with section 773(c)(4) of the Act, Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioners used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, the Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly-available, non-industry specific export subsidies. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. For valuing other factors of production, Petitioners used the same sources, where appropriate, recently used in the Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 71 FR 77373 (December 26, 2006), and inflated these values to be contemporaneous with the POI where necessary.

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioners used information from the wholesale price indices (''WPI'') in India as published by the Reserve Bank of India (''RBI'') for input prices during the period preceding the POI. In addition, Petitioners made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI, as reported on the Department's Web site. See *http://ia.ita.doc.gov/exchange/index.html.*

For the normal value calculations, Petitioners derived the figures for factory overhead, selling, general and administrative expenses (''SG&A''), and profit from the financial ratios of two Indian producers of SHMP or comparable merchandise.[1] Petitioners derived these financial ratios from Gujarat Alkalies and Chemicals Ltd. for the integrated production process and from the Aditya Birla Group for the non-integrated production process.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of SHMP from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of supported export prices to the two normal values, calculated in accordance with section 773(c) of the Act, the estimated calculated dumping margins for SHMP from the PRC range from 76.69 percent to 103.62 percent. See Initiation Checklist at 9–10 for these calculations.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by the decline in customer base, market share, domestic shipments, prices and financial performance. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist at Attachment II.

Separate Rates Application

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (Separate Rates and Combination Rates Bulletin), (April 5, 2005), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf* (''Separate Rates and Combination Rates Bulletin''). The process requires the submission of a separate-rate status application. Based on our experience in processing the separate rates applications in, for example, the antidumping duty investigations of Certain Lined Paper products from India, Indonesia, and the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China, 70 FR 58374, 58379 (October 6, 2005) (''Lined Paper Initiation''), Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, 70 FR 35625, 35629 (June 21, 2005) (''Sawblades Initiation''), and Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China, 70 FR 21996, 21999 (April 28, 2005) (''Artist Canvas Initiation''). The specific requirements for submitting the separate-rates application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate rates application is due no later than May 4, 2007.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the petition. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline. Therefore, in addition, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies who manufacture and export subject merchandise to the United States, as well as to manufacturers who produce the subject merchandise for companies who were engaged in exporting subject

[1] For a description of the comparable merchandise, as described by Petitioners, see Petition at 23–24.

merchandise to the United States during the period of investigation. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rates application by the respective deadlines in order to receive consideration for separate-rate status. Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than April 4, 2007. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration's Web site, *http://ia.ita.doc.gov/ia-highlights-and-news.html.* The Department will also send the quantity and value questionnaire to those exporters identified in Exhibit AD–3 of the petition and the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin, at page 6.

Initiation of Antidumping Investigation

Based upon our examination of the petition on SHMP from the PRC, we find that this petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of SHMP from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations. See section 733(b)(1)(A) of the Act.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of SHMP from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 733(a)(2)(A)(i) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Where it is not practicable to examine all known producers/exporters of subject merchandise because of the large number of exporters or producers included in the investigation, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (*see* scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period July 1, 2006, through December 31, 2006.

Market	Total quantity	Terms of sale	Total value
United States 1. Export Price Sales 2. a. Exporter name b. Address c. Contact d. Phone No. e. Fax No. 3. Constructed Export Price Sales 4. Further Manufactured Total Sales			

Total Quantity:

• Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

• Please report all sales on the same terms (*e.g.*, free on board).

Total Value:

• All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

• Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

• Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

• Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801]

Solid Urea from Russia: Notice of Initiation of Antidumping Duty New–Shipper Review

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

EFFECTIVE DATE: March 6, 2007.

SUMMARY: On January 25, 2007, the Department of Commerce received a request to conduct a new–shipper review of the antidumping duty order on solid urea from Russia. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d) (2005), we are initiating an antidumping duty new–shipper review.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Minoo Hatten at (202) 482–0410 and (202) 482–1690, respectively, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1987, the Department of Commerce (the Department) published its final determination in the investigation of solid urea from the Union of Soviet Socialist Republics (Soviet Union), finding dumping margins of 68.26 percent for Soyuzpromexport, 53.23 percent for Phillip Brothers, and 68.26 as the country–wide rate (52 FR 19557). On July 14, 1987, following an affirmative injury determination by the International Trade Commission, the Department issued an antidumping duty order on solid urea from the Soviet Union. Following the break–up of the Soviet Union, the antidumping duty order on solid urea from the Soviet Union was transferred to the individual members of the Commonwealth of Independent States. See *Solid Urea from the Union of Soviet Socialist Republics; Transfer of the AD Order on Solid Urea from the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 FR 28828 (June 29, 1992). The rates established in the most recently completed administrative review for the Soviet Union (which, because there were no shipments of urea during the review period, remained the same as those found in the investigation) were applied to each new independent state, including Russia. On September 3, 1999, the Department published the final results of the first sunset review of solid urea from Russia finding likelihood of continued or recurring dumping at the rates established in the original investigation. See *Final Results of Expedited Sunset Reviews: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan*, 64 FR 48357 (September 3, 1999). On January 5, 2006, the Department published the final results of the second sunset review of solid urea from Russia finding likelihood of continued or recurring dumping at the rates established in the original investigation. See *Notice of Continuation of Antidumping Duty Orders: Solid Urea from the Russian Federation and Ukraine*, 71 FR 581 (January 5, 2006). There have been no administrative reviews since the issuance of the antidumping duty order.

On January 25, 2007, the Department received a timely request for a new–shipper review of the antidumping duty order on solid urea from Russia from MCC EuroChem (EuroChem). On January 31, 2007, EuroChem submitted additional certifications to supplement its request for a new–shipper review in response to our telephone call of the same. See memorandum to file dated January 31, 2007. EuroChem certified that it is both the producer and exporter of the subject merchandise upon which the request for a new–shipper review is based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(b)(2)(i), EuroChem certified that it did not export solid urea to the United States during the period of investigation (POI). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), EuroChem certified that, since the initiation of the investigation, it has never been affiliated with any Russian exporter or producer who exported solid urea to the United States during the POI, including those not individually examined during the investigation.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), EuroChem submitted documentation establishing the date on which EuroChem first shipped solid urea for export to the United States and the date on which the solid urea was first entered, or withdrawn from warehouse, for consumption, the volume of its first shipment, and the date of its first sale to an unaffiliated customer in the United States.

The Department conducted a query of the U.S. Customs and Border Protection (CBP) database to confirm that EuroChem's shipment of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties. The Department also corroborated EuroChem's assertion that it made no subsequent shipments to the United States by reviewing CBP data.

On February 16, 2007, the Ad Hoc Committee of Domestic Nitrogen Producers (the petitioner) submitted a letter arguing that the respondent was not eligible for a new–shipper review because the producer of the subject merchandise to be reviewed, OJSC Nevinnomysskiy Azot (Nevinka), was affiliated with the exporter and producers during the POI. The petitioner also argued that the request was incomplete because EuroChem did not also file a certification from Nevinka certifying that it never shipped subject merchandise to the United States during the POI.

Initiation of Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that EuroChem's request meets the threshold requirements for initiation of a new–

DEPARTMENT OF COMMERCE

International Trade Administration

A–421–811

Purified Carboxymethylcellulose from the Netherlands: Rescission of Antidumping Duty Administrative Review in Part

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

SUMMARY: In response to a request from petitioner Aqualon Company, a division of Hercules Incorporated (''Aqualon''), a U.S. manufacturer of carboxymethylcellulose (''CMC''), the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on CMC from the Netherlands. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). This administrative review covers the period December 27, 2004, through June 30, 2006. We are now rescinding this review with respect to Akzo Nobel Surface Chemistry BV and Akzo Nobel Functional Chemicals B.V. (collectively, ''Akzo'') due to the withdrawal of Aqualon's review request with respect to Akzo.[1]

EFFECTIVE DATE: March 13, 2007.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0193, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on CMC from the Netherlands on July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the period December 27, 2004, through June 30, 2006, on July 3, 2006. *See* 71 FR 37890. Petitioner Aqualon requested that the Department conduct an administrative review of the antidumping duty order on CMC from the Netherlands on July 27, 2006. In response to this request from petitioner, the Department published the initiation of the antidumping duty administrative review on CMC from the Netherlands on August 30, 2006. *See* 71 FR 51573. The Department received petitioner's request for withdrawal of the administrative review with respect to Akzo on February 15, 2007.

Rescission of the Administrative Review

Pursuant to 19 C.F.R. § 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. Petitioner's request is past the 90-day time limit; however, we find that it is reasonable to extend the deadline because the Department has not yet devoted significant time or resources to this review. In response to petitioner's withdrawal of its request for an administrative review, as well as the fact that we have not yet issued preliminary results, the Department hereby rescinds the administrative review of the antidumping duty order on CMC from the Netherlands for the period December 27, 2004, through June 30, 2006, with respect to Akzo.

The Department intends to issue appropriate assessment instructions to Customs and Border Protection 15 days after the date of the publication of this notice. The Department will direct CBP to assess antidumping duties for Akzo at the cash deposit rate in effect on the date of entry for entries during the period December 27, 2004, through June 30, 2006.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. § 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 C.F.R. § 351.213(d)(4).

Dated: March 5, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–4497 Filed 3–12–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Department notes that this administrative review will continue with respect to CP Kelco BV and Noviant BV.

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–908

Notice of Correction of Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China

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

EFFECTIVE DATE: March 13, 2007.

FOR FURTHER INFORMATION CONTACT: Erin C. Begnal or Christopher D. Riker, AD/CVD Operations, Office 9, 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) 482–3441, respectively.

CORRECTION:

On March 6, 2007, the Department of Commerce (''Department'') published the notice of initiation of the antidumping duty investigation of sodium hexametaphosphate from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 9926 (March 6, 2007) (''Initiation Notice''). Subsequent to the signature of the Initiation Notice, we identified an inadvertent error in the above–referenced notice.

Specifically, the case number listed in the Initiation Notice was incorrect. It should read A–570–908.

Conclusion

This notice serves solely to correct the case number as it was listed in the *Initiation Notice*. The Department's findings in the *Initiation Notice* remain unchanged. This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: March 6, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–4501 Filed 3–12–07; 8:45 am]

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APPENDIX B

CONFERENCE WITNESSES

CALENDAR OF PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference:

Subject: Sodium Hexametaphosphate from China

Inv. Nos.: 731-TA-1110 (Preliminary)

Date and Time: March 1, 2007 - 9:30 a.m.

The conference in connection with this investigation was held in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties:

Williams Mullen
Washington, DC
on behalf of

ICL Performance Products, LP

James R. Moffatt, President, Performance Products North America

Heather K. Luther, Vice President and General Counsel,
ICL Performance Products, LP

Nancy Stachiw, Director Technical Service and Applications,
ICL Performance Products, LP

Innophos, Inc.

Tim J. Treinen, Vice President, Performance Chemicals, Innophos, Inc.

Russell Kemp, Business Manager, Innophos, Inc.

James R. Cannon, Jr., Esq.)
Francisco J. Orellana, Esq.) – OF COUNSEL
Dean A. Barclay, Esq.)

APPENDIX C

SUMMARY DATA

Table C-1
SHMP: Summary data concerning the U.S. market

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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 of the prices and quantities of domestically produced, Chinese, and nonsubject countries' imports of SHMP.

Table D-1
SHMP: Weighted-average quarterly f.o.b. prices and quantities for domestic and imported subject and nonsubject product 1,[1] January 2004-December 2006

Period	United States[2]		China[3]		Australia[4]		Mexico[5]	
	Price (*per pound*)	Quantity (*pounds*)	Price (*per pound*)	Quantity (*pounds*)	Price (*per pound*)	Quantity (*pounds*)	Price (*per pound*)	Quantity (*pounds*)
2004:								
Jan.-Mar.	$***	***	$0.31	2,847,684	$***	***	$***	***
Apr.-June	***	***	0.33	2,232,528	***	***	***	***
July-Sept.	***	***	0.35	1,572,161	***	***	***	***
Oct.-Dec.	***	***	0.40	2,362,385	***	***	***	***
2005:								
Jan.-Mar.	***	***	0.38	881,885	***	***	***	***
Apr.-June	***	***	0.47	1,326,661	***	***	***	***
July-Sept.	***	***	0.44	2,944,663	***	***	***	***
Oct.-Dec.	***	***	0.43	2,943,004	***	***	***	***
2006:								
Jan.-Mar.	***	***	0.43	5,002,352	--	--	***	***
Apr.-June	***	***	0.40	4,307,107	***	***	***	***
July-Sept.	***	***	0.39	3,221,444	--	--	***	***
Oct.-Dec.	***	***	0.41	2,283,377	--	--	***	***

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

Note.– Data for Germany were also submitted by ***. All quarterly data were averages of yearly data. In 2004, each quarter was *** pounds; in 2005, *** pounds; and in 2006, *** pounds. The associated prices per pound were: $***, respectively.

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

Table D-2
SHMP: Weighted-average quarterly f.o.b. prices and quantities for domestic and imported subject and nonsubject product 2, January 2004-December 2006

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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-December 2006

* * * * * * *

Table D-4
SHMP: Weighted-average quarterly f.o.b. prices and quantities for domestic and imported subject and nonsubject product 4, January 2004-December 2006

* * * * * * *

Figure D-1
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 1, January 2004-December 2006

* * * * * * *

Figure D-2
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 2, January 2004-December 2006

* * * * * * *

Figure D-3
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 3, January 2004-December 2006

* * * * * * *

Figure D-4
SHMP: Weighted-average quarterly f.o.b. prices of domestic and imported product 4, January 2004-December 2006

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