

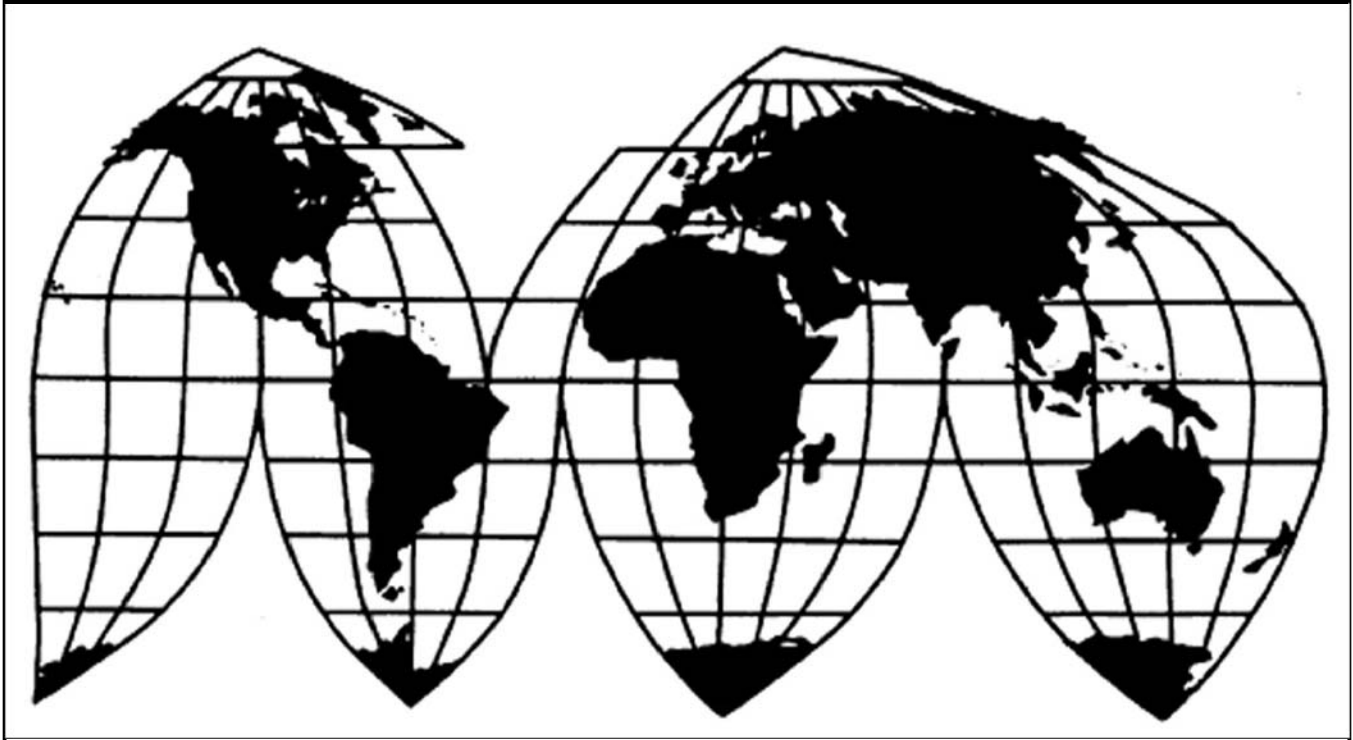
Certain Sodium and Potassium Phosphate Salts from China

Investigation Nos. 701-TA-473 and 731-TA-1173 (Preliminary)

Publication 4110

November 2009

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Shara L. Aranoff, Chairman
Daniel R. Pearson, Vice Chairman
Deanna Tanner Okun
Charlotte R. Lane
Irving A. Williamson
Dean A. Pinkert

Robert A. Rogowsky
Director of Operations

Staff assigned

Jennifer Merrill, Investigator
Jack Greenblatt, Industry Analyst
Craig Thomsen, Economist
Justin Jee, Accountant
David Goldfine, Attorney
Douglas Corkran, Supervisory Investigator

Special assistance from

Mara Alexander, Statistician

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

Certain Sodium and Potassium Phosphate Salts from China

Investigation Nos. 701-TA-473 and 731-TA-1173 (Preliminary)

Publication 4110



November 2009

CONTENTS

	<i>Page</i>
Determinations	1
Views of the Commission	3
Separate views of Commissioner Charlotte R. Lane regarding TKPP	55
Part I: Introduction	I-1
Background	I-1
Statutory criteria and organization of the report	I-1
Statutory criteria	I-1
Organization of the report	I-2
U.S. market summary	I-2
DKP	I-3
MKP	I-3
STPP	I-3
TKPP	I-4
Summary data and data sources	I-4
Previous and related investigations	I-4
Nature and extent of alleged subsidies and sales at LTFV	I-4
Alleged subsidies	I-4
Alleged sales at LTFV	I-5
The subject merchandise	I-5
Commerce's scope	I-5
Tariff treatment	I-6
The product	I-7
Overview	I-7
Description and applications	I-8
Production processes	I-9
Domestic like product issues	I-10
Physical characteristics and uses	I-11
Manufacturing facilities and employees	I-12
Interchangeability and customer and producer perceptions	I-12
Channels of distribution	I-13
Price	I-13
Part II: Conditions of competition in the U.S. market	II-1
U.S. market characteristics	II-1
Channels of distribution	II-2
Geographic markets	II-3
Supply and demand considerations	II-3
Supply	II-3
Demand	II-10
Substitutability issues	II-15
Lead times	II-15
Comparison of domestic products, subject imports, and nonsubject imports	II-16

CONTENTS

	<i>Page</i>
Part III: U.S. producers' production, shipments, and employment	III-1
U.S. producers	III-1
U.S. capacity, production, and capacity utilization	III-2
U.S. producers' shipments	III-2
U.S. producers' inventories	III-3
U.S. producers' imports and purchases	III-3
U.S. employment, wages, and productivity	III-4
 Part IV: U.S. imports, apparent U.S. consumption, and market shares	 IV-1
U.S. importers	IV-1
U.S. imports	IV-3
Negligibility	IV-5
Apparent U.S. consumption	IV-5
U.S. market shares	IV-6
Ratio of imports to U.S. production	IV-6
 Part V: Pricing and related information	 V-1
Factors affecting prices	V-1
Raw material costs	V-1
U.S. inland transportation costs	V-2
Pricing practices	V-2
Pricing methods	V-2
Sales terms and discounts	V-3
Price data	V-3
Price trends	V-10
Price comparisons	V-10
Lost revenues and lost sales	V-11
DKP lost sales and lost revenues	V-11
MKP lost sales	V-12
STPP lost sales and lost revenues	V-12
TKPP lost sales and lost revenues	V-12
General information on purchasing behavior	V-13
 Part VI: Financial condition of U.S. producers	 VI-1
Background	VI-1
Operations on DKP, MKP, STPP, and TKPP	VI-1
Capital expenditures and research and development expenses	VI-4
Assets and return on investment	VI-4
Capital and investment	VI-5

CONTENTS

	<i>Page</i>
Part VII: Threat considerations and information on nonsubject countries	VII-1
The industry in China	VII-2
U.S. importers' current orders	VII-5
U.S. inventories of phosphate salts from China	VII-5
Antidumping and countervailing duty investigations in third-country markets	VII-7
Information on nonsubject sources	VII-7
Appendixes	
A. <i>Federal Register</i> notices	A-1
B. Conference witnesses	B-1
C. Summary data	C-1
D. Quarterly domestic, subject, and nonsubject-country price data comparisons	D-1

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 Nos. 701-TA-473 and 731-TA-1173 (Preliminary)

CERTAIN SODIUM AND POTASSIUM PHOSPHATE SALTS FROM CHINA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry producing monopotassium phosphate (“MKP”), provided for in subheading 2835.24.00 of the Harmonized Tariff Schedule in the United States, is materially injured or threatened with material injury by reason of imports from China, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).^{2 3} In addition, the Commission determines that there is a reasonable indication that industries producing dipotassium phosphate (“DKP”) and tetrapotassium pyrophosphate (“TKPP”), provided for in subheadings 2835.24.00 and 2835.39.10, respectively, of the Harmonized Tariff Schedule of the United States, are threatened with material injury by reason of imports from China, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).⁴ Finally, the Commission determines that there is no reasonable indication that an industry producing sodium tripolyphosphate (“STPP”), provided for in subheading 2835.31.00 of the Harmonized Tariff Schedule of the United States, is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of imports from China, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission’s rules, the Commission also gives notice of the commencement of the final phase of its investigations. 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 affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 investigations.

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

² Commissioners Charlotte R. Lane, Irving A. Williamson, and Dean A. Pinkert determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

³ Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports.

⁴ Commissioner Charlotte R. Lane determines that there is a reasonable indication that an industry producing TKPP is materially injured by reason of subject imports.

BACKGROUND

On September 24, 2009, a petition was filed with the Commission and Commerce by ICL Performance Products LP, St. Louis, MO and Prayon, Inc., Augusta, GA alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of certain sodium and potassium phosphate salts from China. Accordingly, effective September 24, 2009, the Commission instituted countervailing duty investigation No. 701-TA-473 and antidumping duty investigation No. 731-TA-1173 (Preliminary).

Notice of the institution of the Commission's investigations 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 October 1, 2009 (74 FR 50817). The conference was held in Washington, DC, on October 15, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of Sodium Tripolyphosphate (“STPP”) from China that are allegedly sold at less than fair value and subsidized by the Government of China. We also find that 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 anhydrous Monopotassium Phosphate (“MKP”) from China that are allegedly sold at less than fair value and subsidized by the Government of China.¹ We also find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of Tetrapotassium Pyrophosphate (“TKPP”) and anhydrous Dipotassium Phosphate (“DKP”) from China that are allegedly sold at less than fair value and subsidized by the Government of China.²

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 or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.³ 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.”⁴

II. BACKGROUND

The petitions in these investigations were filed by domestic producers ICL Performance Products LP (“ICL”), St. Louis, MO, and Prayon, Inc. (“Prayon”), Augusta, GA, (collectively referred to as “the Petitioners”) on September 24, 2009. Representatives from these firms appeared at the staff conference accompanied by counsel and submitted a postconference brief. Representatives and counsel for Chinese producers Hubei Xingfa Chemical Group Co., Ltd., Sichuan Mianzhu Norwest Phosphate Chemical Co. Ltd., Wuhan Waking Lion Chemicals Co., Ltd., Thermphos (China) Food Additive Co., Ltd., and Lianyungang Natiprol Co., Ltd., (collectively referred to “the Chinese Respondents”) appeared at the staff conference and submitted a postconference brief. The Commission received questionnaire responses from three firms that accounted for almost all domestic production of STPP, MKP, DKP, and TKPP

¹ Commissioners Lane, Williamson, and Pinkert find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of MKP from China that are allegedly sold at less than fair value, and Chairman Aranoff, Vice Chairman Pearson, and Commissioner Okun find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of MKP from China that are allegedly subsidized and sold at less than fair value.

² Commissioner Lane finds that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of TKPP that are allegedly subsidized and sold at less than fair value. See her separate views.

³ Material retardation is not an issue in these investigations. 19 U.S.C. §§ 1671b(a), 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech (cont. . .) Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996).

⁴ American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

during the period examined.⁵ The Commission also received importer questionnaire data from 44 firms, which accounted for *** percent of reported subject imports of STPP, *** percent of reported subject imports of DKP and MKP, and more than *** percent of reported subject imports of TKPP in 2008.⁶

III. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁷ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff 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.”⁸ In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁹

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.¹⁰ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹¹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹² Although the Commission must accept the determination of the U.S. Department of Commerce (“Commerce”) as to the scope of the imported merchandise that is subsidized or sold at less than fair value,¹³ the Commission determines what domestic product is like the imported articles Commerce has

⁵ CR/PR at III-1.

⁶ CR/PR at IV-1.

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10).

¹⁰ See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including the following: (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).

¹¹ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹² Nippon, 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.”).

¹³ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (“The ITC may not modify the
(continued...)”).

identified.¹⁴ The Commission must base its domestic like product determination on the record in these investigations. 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 domestic like product issues.¹⁵

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as follows:

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

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

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $\text{K}_4\text{P}_2\text{O}_7$. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4 . The CAS registry number for MKP is 7778-77-0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5 . MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus,

¹³ (...continued)

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).

¹⁴ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming the Commission’s determination defining six like products in investigations where Commerce found five classes or kinds).

¹⁵ See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon, 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); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

44.8% potassium and 40% P₂O₅ content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The product covered by this investigation includes anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of STPP and TKPP, whether crushed, granule, powder, fines or solution. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.¹⁶

STPP, TKPP, MKP, and DKP each may be sold in technical or food grades.¹⁷ Food-grade STPP, TKPP, MKP, and DKP must meet stricter guidelines in terms of the allowable amounts of certain impurities (arsenic, fluoride, lead, and heavy metals) and pH level.¹⁸ STPP, TKPP, MKP, and DKP vary in terms of whether they are sold in solid (anhydrous) form or in solution.¹⁹ STPP also may vary in terms of light, medium, or heavy density, and the density desired by purchasers depends on the particular use.²⁰

C. Analysis

Petitioners argue that the Commission should define the domestic like product to encompass four separate domestic like products: (1) STPP, (2) DKP, (3) MKP, and (4) TKPP.²¹ The Chinese Respondents do not disagree with Petitioners' proposed like product definitions for purposes of the preliminary phase of these investigations.²²

Physical characteristics and uses

STPP, DKP, MKP, and TKPP are different chemical compounds with different chemical formulas, as specified in the scope definition. Nevertheless, they are all phosphate salts, they have somewhat similar chemical structures, and they are all derived primarily from the same chemical (i.e.,

¹⁶ 74 Fed. Reg. 54024 (Oct. 14, 2009). In its notice, Commerce indicated that Petitioners sought a single class or kind of subject merchandise, but also sought four domestic like products. In finding sufficient standing to initiate these investigations, Commerce relied on the Petitioners' like product definitions. 74 Fed. Reg. at 54025.

¹⁷ Confidential Report ("CR") INV-GG-105 (Nov. 2, 2009) at I-11, Public Report ("PR") at I-8; CR/PR at II-1.

¹⁸ CR at I-11, PR at I-8; CR/PR at II-1.

¹⁹ CR/PR at II-1.

²⁰ CR/PR at II-1.

²¹ Petitioners' Postconf. Br. at 2.

²² Chinese Respondents' Postconf. Br. at 1; Conf. Tr. at 154.

phosphoric acid).²³ All four phosphate salts exist either in crystal or powder form.²⁴ Three of the four phosphate salts (*i.e.*, DKP, MKP, and TKPP) contain potassium while STPP contains sodium.²⁵

In terms of use, STPP, DKP, MKP, and TKPP have similarities and differences. STPP and TKPP (but not DKP or MKP) are both chelating and dispersing agents, which enables each to be used in removing unwanted minerals that interfere with food processing or cleaning.²⁶ MKP and DKP (but not STPP or TKPP) have buffering properties, that enable each to be used in formulating pharmaceuticals, beverages, or food products.²⁷ However, MKP is acidic, while DKP is an alkaline.²⁸ DKP is an excellent emulsifying agent, which allows it to be used in many dairy applications where it is necessary to mix otherwise incompatible substances.²⁹ MKP is a superior fermentation agent, which allows it to be used in fermentation and yeast processes where it serves as a source of potassium and phosphorous.³⁰ DKP also is useful in fermentation.³¹ DKP and TKPP are more soluble than both MKP and STPP, which allows TKPP, for example, to be used in certain water treatment and paint applications where STPP cannot be used.³²

Moreover, STPP, DKP, MKP, and TKPP are used individually in a wide variety of different applications, including detergents and other cleaning applications; fertilizers; food and feed additives; and water treatment.³³ STPP is used in industrial and institutional cleaning products where it functions as a detergent builder that enhances the cleansing ability of the product.³⁴ In food applications such as seafood, meat, poultry and pet foods, STPP is used to retain moisture.³⁵ STPP is also used in toothpastes.³⁶ DKP is used as a fertilizer (where it serves as a source of phosphorus and potassium) and

²³ CR at I-10, PR at I-7.

²⁴ CR at I-10, PR at I-7.

²⁵ CR at I-10, PR at I-7.

²⁶ Chelation or sequestration refers to the ability of certain phosphate salts to bind and inactivate unwanted minerals or metals. Dispersing refers to the ability of the agent to keep particles from clumping together. CR at I-16, PR at I-11.

²⁷ Buffering refers to the ability of the phosphate salts to stabilize the pH or acidity/alkalinity level of the solution. CR at I-16, PR at I-11.

²⁸ Conf. Tr. at 13-14.

²⁹ CR at I-17, PR at I-11.

³⁰ CR at I-17, PR at I-11.

³¹ CR at I-17, PR at I-11.

³² Solubility refers to the ability of the chemical to dissolve in solution. This property is important, because a phosphate salt that is relatively insoluble cannot be used in processes where it is to be used in solution. CR at I-17, PR at I-11.

³³ CR/PR at I-3.

³⁴ CR at I-13, PR at I-9.

³⁵ CR at I-13, PR at I-9.

³⁶ CR at I-13, PR at I-9.

as a food additive.³⁷ DKP is also used in non-dairy creamers as a buffer to prevent coagulation.³⁸ MKP is used as a fertilizer where it serves as a source of phosphorus and potassium and acts as a stabilizer.³⁹ It is also used as a food additive and fungicide.⁴⁰ TKPP is used in liquid cleaning products and in potable and industrial water treatment where it acts to prevent scaling.⁴¹ TKPP is also used in metal cleaners and metal surface treatment and in the manufacture of latex paints where the TKPP acts to allow the paint formulation to remain as a stable suspension.⁴²

Interchangeability

U.S. importers did not report any instances in which any one of the four phosphate salts within the scope could be substituted for another.⁴³ Industry witnesses acknowledged that STPP, DKP, MKP, and TKPP may sometimes be used in the same application although, in such instances, each individual phosphate salt serves a unique function.⁴⁴

Common manufacturing facilities, production processes, and production employees

Petitioners acknowledge that “[a]ll phosphate salts can be manufactured on the same equipment in the same facility.”⁴⁵ ICL produces all four types of phosphate salts.⁴⁶ ICL produces DKP, MKP, and TKPP at its facility in Carteret, New Jersey on the same assembly lines, using the same equipment and the same employees.⁴⁷ ICL produces STPP (but not DKP, MKP, or TKPP) at separate facilities in Lawrence, Kansas, and St. Louis, Missouri, reportedly to minimize the risk of cross-contamination between the sodium (STPP) and potassium (DKP, MKP, and TKPP) phosphate salts.⁴⁸ Petitioners explain that ICL could produce STPP at the same plant where it produces the other three phosphate salts, but chooses to “run STPP in a dedicated plant in order to run continuously.”⁴⁹ Prayon produces two of the four types of phosphate salts (STPP and TKPP) at its facility in Augusta, Georgia, using the same assembly lines, equipment, and employees, and washes equipment between production cycles to avoid cross

³⁷ CR at I-13, PR at I-9.

³⁸ CR at I-13, PR at I-9.

³⁹ CR at I-13, PR at I-9.

⁴⁰ CR at I-13, PR at I-9.

⁴¹ CR at I-13, PR at I-9.

⁴² CR at I-13, PR at I-9.

⁴³ CR at I-19, PR at I-12.

⁴⁴ Conf. Tr. at 67.

⁴⁵ Petitioners’ Postconf. Br. at 4.

⁴⁶ CR at I-18, PR at I-12.

⁴⁷ CR at I-18, PR at I-12.

⁴⁸ CR at I-18, PR at I-12.

⁴⁹ Petitioners’ Postconf. Br. at 4; Conf. Tr. at 111-112.

contamination between the products.⁵⁰ PCS Purified Phosphates (“PCS”) produces TKPP at its plant in Cincinnati, Ohio.⁵¹

STPP, DKP, MKP, and TKPP have very similar (but not identical) manufacturing processes. The initial step in the production of all four phosphate salts is the reaction of phosphoric acid with a base that is either soda ash or sodium hydroxide (caustic soda) for STPP or potassium hydroxide for DKP, MKP, and TKPP.⁵²

This initial step in the production of STPP, DKP, MKP, and TKPP occurs in a tank in which the reaction between the alkali base and phosphoric acid takes place.⁵³ For DKP and MKP, the phosphate salts are then dried in a relatively low-temperature dryer.⁵⁴ For STPP and TKPP, the salts are dried in a dryer at temperatures high enough to induce calcining.⁵⁵ After drying, the products pass through a coarse screen. Particles that are too large to pass through the screen are ground in a mill into smaller particles.⁵⁶ The products are then passed through a fine screen. The “fines” are either sold as is or returned to solution and recycled.⁵⁷

For STPP, appropriate quantities of caustic soda or soda ash and phosphoric acid are mixed in solution so that the product formed is between monosodium phosphate (MSP) and disodium phosphate (DSP).⁵⁸ The water is then removed using drum dryers or, in some instances, by an evaporation process through crystallization.⁵⁹ To manufacture STPP, the monosodium/disodium phosphate mixture is then calcined at a temperature between 350 degrees Celsius and 550 degrees Celsius.⁶⁰ STPP forms when molecules of MSP and DSP react and chemically condense.⁶¹ After cooling, the STPP particles are passed through a series of sieves so that only particles with the specified size range are packaged to be shipped to customers.⁶² STPP particles that are outside the acceptable range, particularly if they are too large, may be resized, and the resulting material may be fed back into the product stream.⁶³

The production processes for DKP, MKP, and TKPP are all similar to the production process described in the previous paragraph for STPP except that potassium hydroxide is substituted for caustic soda or soda ash.⁶⁴ To produce DKP and MKP, potassium hydroxide is reacted with phosphoric acid in a

⁵⁰ CR at I-18, PR at I-12.

⁵¹ CR/PR at Table III-1.

⁵² CR at I-14, PR at I-9.

⁵³ CR at I-17, PR at I-12.

⁵⁴ CR at I-17, PR at I-12.

⁵⁵ CR at I-17, PR at I-12.

⁵⁶ CR at I-17 to I-18, PR at I-12.

⁵⁷ CR at I-18, PR at I-12.

⁵⁸ CR at I-14, PR at I-9 to I-10.

⁵⁹ CR at I-14, PR at I-10.

⁶⁰ CR at I-14, PR at I-10.

⁶¹ CR at I-14, PR at I-10.

⁶² CR at I-14, PR at I-10.

⁶³ CR at I-14, PR at I-10.

⁶⁴ CR at I-14, PR at I-10.

mole ratio of 1:1 and 2:1, respectively.⁶⁵ To produce TKPP, DKP is calcined at a temperature between 400 degrees Celsius and 500 degrees Celsius.^{66 67} The TKPP product is then sized and packaged for shipping.⁶⁸

Channels of distribution

Petitioners state that all four “phosphate salts are sold directly to end users as well as through distributors to wholesalers.”⁶⁹ During the period under examination, STPP and TKPP were predominantly sold to end users, although substantial amounts of STPP and TKPP were also sold to distributors.⁷⁰ Conversely, DKP and MKP were predominantly sold to distributors, although substantial amounts of DKP and MKP were also sold to end users.⁷¹

Customer and producer perceptions

Based on the limited data available, U.S. producers generally perceive STPP, DKP, MKP, and TKPP as distinct and separate products.⁷² Similarly, U.S. importers reported that STPP, DKP, MKP, and TKPP are not substitutes for each other.⁷³

Price

During the period under examination, domestically produced DKP and MKP generally were priced comparably, although they were substantially higher priced than both STPP and TKPP.⁷⁴

⁶⁵ CR at I-14, PR at I-10.

⁶⁶ The production of TKPP is similar to the production of DKP except that ***. CR at I-15 n.28, PR at I-10 n.28.

⁶⁷ In order to produce MKP or DKP in solution, customers, especially if they are chemical manufacturers, can simply combine purchased potassium hydroxide with purchased phosphoric acid. This method cannot, however, be used to produce STPP and TKPP in solution. In order to produce these products, the sodium or potassium orthophosphate starting materials must be calcined. Thus, customers purchasing STPP or TKPP in solution, will typically rely on the phosphate salt manufacturer to manufacture anhydrous STPP or TKPP, which is then dissolved by the manufacturer in water. According to industry sources, dissolving TKPP in water is a difficult and time-consuming step; consequently, most customers prefer to purchase TKPP as a solution rather than dissolving the TKPP in their facilities. CR at I-15 n.29, PR at I-10 n.29.

⁶⁸ At ICL’s facility in Carteret, NJ, the solution of MKP or DKP is dried by ***. CR at I-15 n.30, PR at I-10 n.30.

⁶⁹ Petitioners’ Postconf. Br. at 4.

⁷⁰ CR/PR at Table I-2.

⁷¹ CR/PR at Table I-2.

⁷² Conf. Tr. at 70-71 & 92-93.

⁷³ CR at I-19, PR at I-12.

⁷⁴ The average unit values (“AUVs”) for U.S. producers’ U.S. shipments of DKP increased from \$*** per pound in 2006 and 2007 to \$*** per pound in 2008, and were \$*** per pound in interim 2009 compared with \$*** per pound in interim 2008. The AUVs for U.S. producers’ U.S. shipments of MKP decreased from \$*** per pound in 2006 to \$*** per pound in 2007, increased to \$*** per pound in 2008, and were \$*** per pound in interim 2009 compared with \$*** per pound in interim 2008. The AUVs for U.S. producers’ U.S. shipments of STPP increased
(continued...)

Conclusion

Based on the above analysis, we define four like products in these investigations: STPP, DKP, MKP, and TKPP.

In particular, we find it significant that STPP, DKP, MKP, and TKPP are different chemical compounds with distinct chemical formulas and physical characteristics. As discussed above, STPP, DKP, MKP, and TKPP typically have different end uses with minimal overlap.⁷⁵ Even in those instances when STPP, DKP, MKP, and TKPP are used in the same application such as in water treatment or fertilizer, they serve different functions.⁷⁶ As discussed above, STPP, DKP, MKP, and TKPP are not interchangeable and typically cannot be substituted for each other in particular applications.⁷⁷ Moreover, although the record is rather limited in this preliminary phase, available data suggest that U.S. producers view STPP, DKP, MKP, and TKPP as four separate and distinct products.⁷⁸ We acknowledge, as Petitioners concede, that there is some overlap among STPP, DKP, MKP, and TKPP in terms of common manufacturing facilities, processes, and employees, as well as in the channels of distribution in which the products are sold.⁷⁹

Accordingly, for purposes of the preliminary phase of these investigations, we find four separate domestic like products consisting of: (1) STPP, (2) DKP, (3) MKP, and (4) TKPP, coextensive with the scope of these investigations.

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.”⁸⁰ 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. Consistent with our finding of four separate domestic like products, we find four separate domestic industries as follows: (1) all domestic producers of STPP, (2) all domestic producers of DKP, (3) all domestic producers of MKP, and (4) all domestic producers of TKPP.⁸¹

⁷⁴ (...continued)

from \$*** per pound in 2006 to \$*** per pound in 2007 and again to \$*** per pound in 2008, and were \$*** per pound in interim 2009 compared with \$*** per pound in interim 2008. The AUVs for U.S. producers’ U.S. shipments of TKPP increased from \$*** per pound in 2006 to \$*** per pound in 2007 and again to \$*** per pound in 2008, and were \$*** per pound in interim 2009 compared with \$*** per pound in interim 2008. CR/PR at Table I-3.

⁷⁵ CR at I-10, PR at I-7.

⁷⁶ CR at I-16 to I-17, PR at I-11.

⁷⁷ CR at I-16 to I-17, PR at I-11; Conf. Tr. at 67.

⁷⁸ Conf. Tr. at 70-71 & 92-93; Petitioners’ Postconf. Br. at 5.

⁷⁹ Conf. Tr. at 74-75; Petitioners’ Postconf. Br. at 4.

⁸⁰ 19 U.S.C. § 1677(4)(A).

⁸¹ There are no known related party issues in the preliminary phase of these investigations. There is no record evidence indicating that any domestic producer is affiliated with subject foreign producers or imported or purchased any subject merchandise from China. CR/PR at Table III-1.

IV. REASONABLE INDICATION OF MATERIAL INJURY OR THREAT OF MATERIAL INJURY BY REASON OF IMPORTS OF SUBJECT MERCHANDISE⁸²

A. Legal Standard

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 or threatened with material injury by reason of the imports under investigation.⁸³ 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.⁸⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸⁵ 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.⁸⁶ 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.”⁸⁷

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is “materially injured by reason of” unfairly traded imports,⁸⁸ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁸⁹ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.⁹⁰

⁸² Negligibility is not an issue in the preliminary phase of these investigations. Subject imports from China far exceeded the three percent statutory negligibility threshold during the most recent 12-month period preceding the filing of the petition for which data are available, accounting, by quantity, for *** percent of total DKP imports, *** percent of total MKP imports, 23.4 percent of total STPP imports, and *** percent of total TKPP imports. CR at IV-9, PR at IV-7. Accordingly, we find that subject imports are not negligible under 19 U.S.C. § 1677(24).

⁸³ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁸⁴ 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).

⁸⁵ 19 U.S.C. § 1677(7)(A).

⁸⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁸ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁸⁹ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), aff’d 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

⁹⁰ The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting
(continued...)

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.⁹¹ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.⁹² Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.⁹³ It is clear that the existence of injury caused by other factors does not compel a negative determination.⁹⁴

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission

⁹⁰ (...continued)

Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

⁹¹ Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

⁹² SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

⁹³ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

⁹⁴ See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

“ensure{s} that it is not attributing injury from other sources to the subject imports.”⁹⁵ ⁹⁶ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁹⁷

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.⁹⁸ The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.⁹⁹ Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S.

⁹⁵ Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination {and has} broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁹⁶ Commissioner Pinkert does not join this paragraph or the following four paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of nonsubject imports. Mittal explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

⁹⁷ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

⁹⁸ Mittal Steel, 542 F.3d at 875-79.

⁹⁹ Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.^{100 101}

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.¹⁰²

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."¹⁰³ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.¹⁰⁴ In making our determinations, we consider all statutory threat factors that are relevant to these investigations.¹⁰⁵

¹⁰⁰ Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

¹⁰¹ To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

¹⁰² Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

¹⁰³ 19 U.S.C. § 1677(7)(F)(ii).

¹⁰⁴ 19 U.S.C. § 1677(7)(F)(ii).

¹⁰⁵ These factors are as follows:

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(continued...)

Section 771(7)(C)(i) 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.”¹⁰⁶

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁰⁷

Section 771(7)(C)(iii) 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.”¹⁰⁸ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, 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.”¹⁰⁹

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analyses of whether there is a reasonable indication of material injury or threat of material injury by reason of subject imports of STPP, DKP, MKP, and TKPP.

¹⁰⁵ (...continued)

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

* * *

(VIII) the 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.

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(i). Statutory threat factor VII is inapplicable as no imports of agricultural products are included in these investigations.

¹⁰⁶ 19 U.S.C. § 1677(7)(C)(i).

¹⁰⁷ 19 U.S.C. § 1677(7)(C)(ii).

¹⁰⁸ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 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.

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

1. Demand Conditions

Demand conditions for STPP, DKP, MKP, and TKPP are largely affected by their different end uses. STPP, DKP, MKP, and TKPP are used in a wide range of applications.¹¹⁰ STPP is used in household and industrial products, tile manufacturing, detergents, water treatment, meat curing, car washes, and as an anticoagulant.¹¹¹ DKP is used as a buffering agent in compounding formulas, and in antifreeze, baked goods, and dairy applications (e.g., coffee creamers or processed cheese).¹¹² MKP is used mainly in fertilizer, but also in refractories, food and beverages, and dog food.¹¹³ TKPP is used in water treatment, household and industrial-type products, detergents, metal finishing, pulp and paper, and as a buffering agent in compounding formulas.¹¹⁴

For STPP, apparent U.S. consumption declined by *** percent overall between 2006 and 2008, falling from *** pounds in 2006 to *** pounds in 2007, and increasing slightly to *** pounds in 2008.¹¹⁵ Apparent U.S. consumption for STPP was *** pounds in interim 2009 compared with *** pounds in interim 2008.¹¹⁶ For DKP, apparent U.S. consumption increased during the period examined from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008.¹¹⁷ Apparent U.S. consumption for DKP was *** pounds in interim 2009 compared with *** pounds in interim 2008.¹¹⁸ For MKP, apparent U.S. consumption increased during the period examined from *** pounds in 2006 to *** pounds in 2007, and again to *** pounds in 2008.¹¹⁹ Apparent U.S. consumption for MKP was *** pounds in interim 2009 compared with *** pounds in interim 2008.¹²⁰ For TKPP, apparent U.S. consumption declined irregularly during the period examined, increasing from *** pounds in 2006 to *** pounds in 2007, and dropping to *** pounds in 2008.¹²¹ For TKPP, apparent U.S. consumption was *** pounds in interim 2009 compared with *** pounds in interim 2008.¹²²

The decline in apparent U.S. consumption for STPP during the period examined is largely attributable to legislative bans on the use of phosphates in automatic dishwashing detergents (“ADW detergents”).¹²³ Until 2007, technical-grade STPP was used extensively in the manufacturing of ADW

¹¹⁰ CR at II-19, PR at II-10.

¹¹¹ CR /PR at Table II-3.

¹¹² CR/PR at Table II-3.

¹¹³ CR/PR at Table II-3.

¹¹⁴ CR/PR at Table II-3.

¹¹⁵ CR/PR at Table C-3.

¹¹⁶ CR/PR at Table C-3.

¹¹⁷ CR/PR at Table C-1.

¹¹⁸ CR/PR at Table C-1.

¹¹⁹ CR/PR at Table C-2.

¹²⁰ CR/PR at Table C-2.

¹²¹ CR/PR at Table C-4.

¹²² CR/PR at Table C-4.

¹²³ The most common reason reported for reduced demand for STPP was changes in state laws that will eliminate its use in ADW detergents by July 1, 2010. CR at II-21, PR at II-12.

detergents.¹²⁴ As of October 2009, however, approximately 15 states had banned ADW detergents containing STPP. As of July 1, 2010, ADW detergents containing phosphates will be banned nationwide.¹²⁵ Petitioners estimate that the pending ban on the use of phosphates in ADW detergents will have the effect of decreasing domestic demand for STPP more than 50 percent by 2010 or 2011.¹²⁶ Demand for DKP, MKP, TKPP, and food-grade STPP is projected to increase slowly in the near future, remaining at or near three percent annual growth based on major end uses incorporating these salts.¹²⁷

2. Supply Conditions

There are three sources of supply for the U.S. market: domestic shipments, imports of subject merchandise from China, and non-subject imports. The share of the market accounted for by each source depends on the like product under consideration.

For STPP, nonsubject imports are the largest source of supply in the U.S. market, accounting for more than half of apparent U.S. consumption by quantity for most of the period examined, followed by domestic product and subject imports. The market share of nonsubject STPP imports increased from *** percent in 2006 to *** percent in 2007, and again to *** percent in 2008, and was *** percent in interim 2009 compared with *** percent in interim 2008.¹²⁸ U.S. producers' market share dropped from *** percent in 2006 to *** percent in 2007, and again to *** percent in 2008, and was *** percent in interim 2009 compared with *** percent in interim 2008.¹²⁹ The market share of subject STPP imports remained flat at *** percent in 2006 and 2007, increased to *** percent in 2008, and was *** percent in interim 2009 compared with *** percent in interim 2008.¹³⁰

In response to the anticipated decline in demand for STPP, U.S. producers have shifted the focus of their production efforts from technical-grade STPP to food-grade STPP and other phosphate salts during the period examined.¹³¹ Food-grade STPP accounted for *** percent of domestically-produced STPP in 2006, *** percent in 2007, *** percent in 2008, and *** percent in interim 2009.¹³² Subject imports of technical-grade STPP accounted for more than *** percent of total subject imports during the period examined, while subject imports of food-grade STPP accounted for less than *** percent of total subject imports during the period.¹³³

¹²⁴ Chinese Respondents' Postconf. Br. at 9.

¹²⁵ CR at II-21, PR at II-12.

¹²⁶ CR at II-21, PR at II-12. From August 2008 to August 2009, Prayon estimates that it has experienced a 10-million pound decrease in its sales of STPP, mostly due to lower demand in ADW detergents. CR at II-22, PR at II-12.

¹²⁷ At the conference, a witness for the domestic industry forecasted demand growth for STPP, TKPP, MKP and DKP as follows: 2.5 percent for food-grade STPP, TKPP at the rate of population growth, MKP for paints and coatings at 3 percent, MKP in food and beverage applications (Powerade/Gatorade) at greater than 3 percent, tech-grade MKP for fertilizers at 3.5 percent, DKP for construction at 3 percent, and DKP for "convenience foods" at greater than 3 percent. CR at II-22, PR at II-13; Conf. Tr. at 115-116 (Schewe).

¹²⁸ CR/PR at Table C-3.

¹²⁹ CR/PR at Table C-3.

¹³⁰ CR/PR at Table C-3.

¹³¹ Chinese Respondents' Postconf. Br. at 9-10.

¹³² CR at II-3, PR at II-2.

¹³³ Derived from CR/PR at Tables V-3 & V-4.

For DKP, U.S. producers were the largest suppliers of DKP in 2006 and 2007, but were eclipsed by nonsubject imports in 2008 and interim 2009. U.S. producers' market share fell irregularly during the period examined. U.S. producers' market share increased from *** percent in 2006 to *** percent in 2007, and fell to *** percent in 2008; it was *** percent in interim 2009 as compared with *** percent in interim 2008.¹³⁴ The market share of nonsubject DKP imports increased irregularly during the period examined, falling from *** percent in 2006 to *** percent in 2007, increasing to *** percent in 2008, and was *** percent in interim 2009 as compared with *** percent in interim 2008.¹³⁵ Subject imports' market share increased irregularly, dropping from *** percent in 2006 to *** percent in 2007, increasing to *** percent in 2008, and was *** percent in interim 2009 as compared with *** percent in interim 2008.¹³⁶

For MKP, nonsubject imports were the largest source of supply of the U.S. market, accounting for more than half U.S. consumption by quantity throughout the period examined.¹³⁷ The market share of nonsubject imports of MKP decreased from *** percent in 2006 to *** percent in 2007 and again to *** percent in 2008, and was *** percent in interim 2009 as compared with *** percent in interim 2008.¹³⁸ Subject imports are the next largest source of supply. Their market share increased from *** percent in 2006 to *** percent in 2007, and again to *** percent in 2008; it was *** percent in interim 2009 as compared with *** percent in interim 2008.¹³⁹ U.S. producers' market share was relatively flat, increasing from *** percent in 2006 to *** percent in 2007, and falling to *** percent in 2008; it was *** percent in interim 2009 as compared with *** percent in interim 2008.¹⁴⁰

For TKPP, U.S. producers were by far the largest source of supply of the U.S. market, accounting for the vast majority of apparent U.S. consumption during the period examined. For TKPP, U.S. producers' market share dropped from *** percent in 2006 to *** percent in 2007, and again to *** percent in 2008; it was *** percent in interim 2009 compared with *** percent in interim 2008.¹⁴¹ The market share of subject TKPP imports increased from *** percent in 2006 to *** percent in 2007 and again to *** percent in 2008, and was *** percent in interim 2009 compared with *** percent in interim 2008.¹⁴² The market share of nonsubject imports of TKPP was small and increased irregularly during the period examined, falling from *** percent in 2006 to *** percent in 2007, before increasing to *** percent in 2008; it was *** percent in interim 2009 compared with *** percent in interim 2008.¹⁴³

*** U.S. producers of each of the like products reported that they had refused, declined, or been unable to supply customers during the period examined due to shortages of phosphoric acid and/or potassium hydroxide.¹⁴⁴ Due to shortages of phosphoric acid, ICL put all of its STPP customers on allocation in 2008, limiting them to the volumes purchased in 2007, and turned away new STPP

¹³⁴ CR/PR at Table C-1.

¹³⁵ CR/PR at Table C-1.

¹³⁶ CR/PR at Table C-2.

¹³⁷ CR/PR at Table C-2.

¹³⁸ CR/PR at Table C-2.

¹³⁹ CR/PR at Table C-2.

¹⁴⁰ CR/PR at Table C-2.

¹⁴¹ CR/PR at Table C-4.

¹⁴² CR/PR at Table C-4.

¹⁴³ CR/PR at Table C-4.

¹⁴⁴ CR at II-17, PR at II-9.

customers during this period.¹⁴⁵ ICL's supply shortages in DKP, MKP, and TKPP ***. Due to ***.¹⁴⁶ During this time, Prayon supplied some purchasers that could not get enough STPP or TKPP from ICL.¹⁴⁷ Notwithstanding conference testimony that Prayon generally did not experience difficulties supplying its existing customers in 2008, there is evidence in the record suggesting that some of Prayon's customers experienced supply disruptions in 2008 due to shortages.¹⁴⁸ Moreover, Prayon reported that, in 2008, it declined to accept several new customers because they wanted to buy on a spot basis rather than commit to a long-term relationship.¹⁴⁹ Innophos reported that restrictions on the supply of potassium hydroxide *** in 2008.¹⁵⁰ Innophos reported that limited availability of potassium hydroxide ***.¹⁵¹ Twenty-one responding importers reported shortages of STPP, DKP, MKP, and TKPP in 2008.¹⁵²

3. Substitutability

Although factors such as differences in lead times and product quality may limit substitutability somewhat, the record indicates a high degree of substitutability among domestically produced STPP, DKP, MKP, and TKPP, and subject and nonsubject imports.¹⁵³ ICL, the only producer responding for all four phosphate salts, reported that the domestic like products, subject imports, and nonsubject imports were *** interchangeable for ***.¹⁵⁴ With regard to STPP and TKPP; Prayon responded that these products from all sources were *** interchangeable.¹⁵⁵ With regard to TKPP, Innophos reported that TKPP from all sources was *** interchangeable.¹⁵⁶ Most importers reported that STPP, TKPP, MKP, and DKP from all sources were either "frequently" or "sometimes" interchangeable.¹⁵⁷

In addition, producers and importers were asked to assess how often differences other than price were significant in sales of subject merchandise from the United States, China, and nonsubject countries. In each instance, a majority of market participants reported factors other than price were "never" or "sometimes" (as opposed to "frequently" or "always") important to purchasers of the U.S. or Chinese product.¹⁵⁸

¹⁴⁵ CR at II-17, PR at II-9; Conf. Tr. at 27, 79-81 (Schewe); Chinese Respondents' Postconf. Br. at 21.

¹⁴⁶ CR at II-17, PR at II-9; Chinese Respondents' Postconf. Br. at 21.

¹⁴⁷ CR at II-17, PR at II-9.

¹⁴⁸ Chinese Respondents' Postconf. Br. at 21 & Exh. 19; Conf. Tr. at 80-81.

¹⁴⁹ CR at II-17, PR at II-9; Chinese Respondents' Postconf. Br. at 21.

¹⁵⁰ CR at II-18, PR at II-10.

¹⁵¹ CR at II-17, PR at II-9.

¹⁵² CR at II-17, PR at II-9.

¹⁵³ CR/PR at Table II-7; CR at II-25 to II-27, PR at II-15 to II-16.

¹⁵⁴ CR at II-26, PR at II-16; CR/PR at Table II-7.

¹⁵⁵ CR/PR at Table II-7; CR at II-26, PR at II-16.

¹⁵⁶ CR/PR at Table II-7; CR at II-26 to II-27, PR at II-16.

¹⁵⁷ CR/PR at Table II-7; CR at II-27, PR at II-16.

¹⁵⁸ For STPP, 15 of 21 responding producers and importers reported factors other than price were "never" or "sometimes" important in sales decisions. For DKP, 5 of 9 responding producers and importers reported the same. For MKP, 10 of 16 responding producers and importers reported the same. For TKPP, 14 of 16 responding

(continued...)

U.S. producers of STPP, DKP, MKP, and TKPP experienced rising raw material costs during the period examined. The primary raw materials used in the production of phosphate salts are phosphoric acid, potassium hydroxide (for DKP, MKP, and TKPP), and soda ash or caustic soda (for STPP).¹⁵⁹ The price of phosphoric acid began rising in 2008, partly due to increased demand for phosphates used in corn and soybean fertilizer applications as federal biofuel mandates became effective.¹⁶⁰ The price of phosphoric acid tripled between 2007 and 2008, while the price for potassium hydroxide (KOH) doubled during this period.¹⁶¹

C. Sodium Tripolyphosphate (“STPP”)

1. No Reasonable Indication of Material Injury By Reason of Subject Imports from China

a. Volume of Subject Imports

Subject import volume declined 8.9 percent between 2006 and 2007, from 18.8 million pounds to 17.2 million pounds, but increased 51.4 percent between 2007 and 2008, to 26.0 million pounds, representing a 37.9 percent increase from 2006 to 2008.¹⁶² Subject import volume was 35.6 million pounds in interim 2009, a level 367.4 percent higher than that in interim 2008, when subject import volume was 7.6 million pounds.¹⁶³ The value of these imports declined from \$7.1 million in 2006 to \$6.4 million in 2007, but increased to \$17.3 million in 2008, and was \$18.2 million in interim 2009 compared with \$4.1 million in interim 2008.¹⁶⁴

Subject import shipments as a share of apparent U.S. consumption quantity remained flat at *** percent in both 2006 and 2007, but increased to *** percent in 2008, and were *** percent in interim 2009, compared with *** percent in interim 2008.¹⁶⁵ The ratio of subject imports to domestic production increased from *** percent in 2006, to *** percent in 2007, to *** percent in 2008, and was *** percent in January-June 2009, compared with *** percent in January-June 2008.¹⁶⁶

The increase in volume of the subject imports both absolutely and relative to domestic consumption over the period examined was significant. However, the increase in subject import volume

¹⁵⁸ (...continued)
producers and importers reported the same. CR/PR at Table II-8.

¹⁵⁹ Yellow phosphorus, the key ingredient in making phosphoric acid, accounts for approximately 60 percent of the cost of producing STPP, and soda ash accounts for approximately 25 percent. From 2006 until 2008, these chemicals and other raw materials accounted for *** percent of the total cost of goods sold for DKP, *** percent for MKP, *** percent for STPP, and *** percent for TKPP. In the first half of 2009, however, these shares rose to *** percent for DKP, *** percent for MKP, *** percent for STPP, and *** percent for TKPP. CR/PR at V-1.

¹⁶⁰ CR/PR at V-1.

¹⁶¹ Conf. Tr. at 43. A three-month strike and work stoppage at PCS’s production facility in Canada in late 2008 crippled ICL’s potassium phosphate production for TKPP, MKP, and DKP during that period, and in response, ICL imported finished product from sister companies in Brazil and Europe, and from China. CR at V-2, PR at V-1.

¹⁶² CR/PR at Table IV-4.

¹⁶³ CR/PR at Table IV-4.

¹⁶⁴ CR/PR at Table IV-13; CR/PR at Table C-3.

¹⁶⁵ CR/PR at Table IV-13.

¹⁶⁶ CR/PR at Table IV-17.

must be viewed in the context of prevailing market conditions. As discussed above, subject imports' market share started out small and stayed small during most of the period under examination. Through 2008, subject imports' market share never exceeded *** percent, and never rose more than *** percentage points per year.¹⁶⁷ That increase occurred during 2008, when the domestic industry was faced with raw material supply shortages and domestic producers of STPP were unable to supply some existing customers in a timely manner, had to place their customers on allocation, and even turned away new customers. By contrast, when the domestic industry was not experiencing any supply shortages in 2006 and 2007, subject imports' market share remained constant at *** percent.¹⁶⁸

Moreover, with regard to STPP, increased subject import market share in interim 2009 came almost exclusively at the expense of nonsubject imports rather than the domestic industry. Although the market share of subject STPP imports was *** percentage points higher in interim 2009 as compared with interim 2008, U.S. producers' market share was less than *** lower in interim 2009 as compared with interim 2008.¹⁶⁹ Most of the subject imports' gain in market share between the interim periods can be attributed to ***.¹⁷⁰ ***¹⁷¹ Before it ***, *** considered *** as a supplier for STPP, but *** failed to ***.¹⁷² *** has indicated that it will cease ***.¹⁷³

Finally, as described in the following sections, even when subject import volumes increased during the period examined, U.S. prices for STPP increased *** and the industry's profitability increased. In fact, the STPP industry experienced *** prices and profitability when subject import volumes peaked during the period examined.

b. Price Effects of the Subject Imports

The record indicates that there is a high degree of interchangeability between subject imports of STPP and the domestic like product.

The Commission collected quarterly pricing data on two STPP products, product 3 (food-grade STPP) and product 4 (technical-grade STPP).¹⁷⁴ Pricing data for these two products accounted for *** percent of domestic producers' U.S. shipments of STPP and *** percent of U.S. imports of STPP from January 2006 to June 2009.¹⁷⁵ Pricing data were reported by two domestic producers and 19 importers.¹⁷⁶

These data show a mixed pattern of underselling and overselling. For the two products collectively, subject STPP imports undersold the domestic like product in 14 of 28 quarterly price comparisons. Most of the underselling, however, involved comparisons of relatively lower volumes of food-grade STPP, whereas subject imports were mostly priced higher than the U.S. product in

¹⁶⁷ CR/PR at Table IV-13.

¹⁶⁸ CR/PR at Tables IV-13 & C-3.

¹⁶⁹ CR/PR at Table C-3.

¹⁷⁰ CR at V-7 n.12, PR at V-4 n.12.

¹⁷¹ CR at V-7 n.12, PR at V-4 n.12.

¹⁷² CR at V-7 n.12, PR at V-4 n.12.

¹⁷³ Chinese Respondents' Postconf. Br. at 11.

¹⁷⁴ CR at V-6, PR at V-3.

¹⁷⁵ CR at V-7, PR at V-4.

¹⁷⁶ CR at V-6, PR at V-4.

comparisons of higher-volume technical-grade STPP.¹⁷⁷ With respect to food-grade STPP, subject imports undersold the domestic like product in 11 of 14 quarterly comparisons, at margins ranging from 3.7 percent to 52.2 percent and averaging *** percent.¹⁷⁸ With respect to technical-grade STPP, subject imports undersold the domestic like product in just 3 of 14 quarterly price comparisons, at margins ranging from 0.0 percent to 40.9 percent, and averaging *** percent.¹⁷⁹ Thus, at best, the evidence in the record shows mixed underselling, with predominant overselling on the higher-volume technical-grade product, which accounted for more than *** percent of the domestic industry's STPP sales during the period examined.¹⁸⁰ Moreover, two of the three instances of underselling in the higher-volume technical-grade STPP occurred in interim 2009, and entirely reflect sales from China destined for *** in transactions for which there was ***. In light of these considerations, we do not find underselling to be significant.

We find no evidence of price depression. The price of domestic producers' shipments of the food-grade STPP increased from \$*** per pound in the first quarter of 2006 to \$*** per pound in the second quarter of 2009, and the price of domestic shipments of the technical grade increased from \$*** per pound in the first quarter of 2006 to \$*** per pound in the second quarter of 2009.¹⁸¹ Indeed, prices for domestically produced food-grade STPP and domestically produced technical-grade STPP reached their highest levels in 2008 and interim 2009 when subject import volumes reached their peak market share.¹⁸²

In addition, we do not find that subject imports suppressed prices for domestically produced STPP to a significant degree. In interim 2009, which was the period of the largest increase in volume and market penetration by subject imports, the domestic industry was able to raise its unit values to more than offset increases in costs, resulting in the industry's highest level of cost recovery on both a percentage and per unit value basis during the period.¹⁸³ Because domestic producers were able to increase their prices sufficiently to cover the increased cost of raw materials, the domestic industry's ratio of cost of goods sold to net sales declined by *** percentage points overall between 2006 and 2008, falling from *** percent in 2006 to *** percent in 2008.¹⁸⁴ This ratio was *** percent in interim 2009, down from *** percent in interim 2008, a decline of *** percentage points.¹⁸⁵ Accordingly, we do not find that the subject imports prevented price increases that otherwise would have occurred to any significant degree.¹⁸⁶

For all of these reasons, we do not find that the subject imports of STPP had significant effects on prices for the domestic like product.

¹⁷⁷ CR/PR at Tables V-3 & V-4.

¹⁷⁸ CR/PR at Tables V-3 & V-7.

¹⁷⁹ CR/PR at Tables V-4 & V-7.

¹⁸⁰ CR/PR at Table V-7; Derived from CR/PR at Tables V-3 & V-4.

¹⁸¹ CR/PR at Tables V-3 & V-4.

¹⁸² CR/PR at Tables IV-4, V-3, & V-4

¹⁸³ CR/PR at Table C-3.

¹⁸⁴ CR/PR at Table C-3.

¹⁸⁵ CR/PR at Table C-3.

¹⁸⁶ The Petitioners alleged a number of lost sales and lost revenues due to STPP subject imports over the period examined. Despite a number of confirmed allegations, in light of the other pricing data as well as cost recovery information in the record, we find the evidence concerning confirmed lost sales and revenues to be insufficient when weighed with the other evidence in the record to establish significant price effects.

c. Impact of the Subject Imports¹⁸⁷

The domestic industry's production, sales, shipments, and employment decreased during the period examined and the domestic industry lost market share, particularly from 2006 to 2008.^{188 189} We do not attribute this lost volume in any significant part to the subject imports, however. Instead, the declines in output were due largely to declines in demand, as the use of STPP in ADW detergent formulations was increasingly proscribed during the period examined. Moreover, the declines in the domestic industry's market share in 2008 occurred amidst raw material shortages for phosphoric acid and certain customer allocations, as discussed above.

Additionally, the supply shortages and customer allocations experienced by ICL and Prayon in 2008 occurred before the largest increase in subject import volumes in interim 2009, as subject import volume had remained small and stable between 2006 and 2008. Producers as well as customers testified as to the "tight" supply conditions in 2008, which resulted in some purchasers not being able to source all their needs domestically.¹⁹⁰ The record thus does not indicate that the presence in the market of subject imports adversely affected the capacity utilization of the domestic industry. Rather, the domestic industry's reported capacity utilization during the period, which ranged from a low of *** percent in interim 2009 to a high of *** percent in interim 2008, must be viewed in the context of raw material supply shortages and customer allocations by certain producers over the period, and declining demand due to customers' changes in ADW detergent formulations.¹⁹¹

Indeed, there is a general lack of correlation between subject imports and the domestic industry's market share trends. Even as the market share of subject imports was *** percentage points higher in interim 2009 than in interim 2008, the domestic industry's market share was lower by less than ***. As discussed above, the market share gains by subject imports when the interim periods are compared came almost exclusively at the expense of nonsubject imports rather than the domestic industry, as they were largely attributable to *** from nonsubject imports to subject imports.

Similarly, we find no significant correlation between subject imports and the industry's financial performance. In 2006 and 2007, when subject imports' market share remained flat at *** percent in both years, the industry's operating income ratio was *** percent and *** percent, respectively.¹⁹² As subject imports increased in 2008 to a *** percent market share, the domestic industry attained more favorable operating performance as measured by either operating income or operating income as a ratio to net

¹⁸⁷ Commerce initiated an antidumping duty investigation on certain phosphate salts based on estimated dumping margins ranging from 33.7 percent to 177.4 percent. 74 Fed. Reg. at 54026.

¹⁸⁸ CR/PR at Table C-3. From 2006 to 2008, the domestic industry's market share declined by *** percentage points; its production, by *** percent; its U.S. shipment quantity, by *** percent; and its sales quantity, by *** percent. The domestic industry's market share was *** percentage lower in interim 2009 compared with interim 2008. Its production was *** percent lower in interim 2009 compared with interim 2008. Its U.S. shipment quantity was *** percent lower in interim 2009 compared with interim 2008. Its U.S. sales quantity was *** lower in interim 2009 compared with interim 2008. CR/PR at Table C-3.

¹⁸⁹ The domestic industry's number of production related workers ("PRWs") and hours worked declined between 2006 and 2008, and were lower in interim 2009 as compared to interim 2008. The domestic industry's capital expenditures and research and development expenses declined irregularly between 2006 and 2008, but were higher in interim 2009 as compared with interim 2008. CR/PR at Tables III-20 & C-3.

¹⁹⁰ Chinese Respondents Postconf. Br. at 8-9.

¹⁹¹ CR/PR at Table C-3. The domestic industry's end-of-period inventories increased irregularly between 2006 and 2008, falling from *** pounds in 2006 to *** pounds in 2007, and increasing to *** pounds in 2008. Also, the industry's end-of-period inventories were *** pounds in interim 2009 compared with *** pounds in interim 2008. CR/PR at Table III-12.

¹⁹² CR/PR at Tables C-3 and VI-4.

sales.¹⁹³ As the volume of subject imports in interim 2009 reached a period-high market share of *** percent, the domestic industry ***.¹⁹⁴

For the above reasons, we do not find that there is a reasonable indication that subject imports are having an adverse impact on the domestic industry. We find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of material injury by reason of subject imports of STPP and no likelihood exists that contrary evidence will arise in a final investigation.

2. No Reasonable Indication of Threat of Material Injury by Reason of Subject Imports from China

Section 771(F) of the Act directs the Commission to determine whether there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁹⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹⁹⁶ In making our determination, we have considered all factors that are relevant to these investigations.¹⁹⁷ Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of STPP from China that are allegedly sold in the United States at less than fair value and allegedly subsidized by the Government of China.

The Commission received questionnaire responses from 8 foreign producers, accounting for *** percent of known Chinese exports of STPP to the United States.¹⁹⁸ Hubei Xingfa was the *** Chinese producer of STPP that submitted a questionnaire response.¹⁹⁹

As an initial matter, we do not find that the domestic industry producing STPP is vulnerable. While the operating performance of the domestic industry during the period examined was lackluster, the industry improved its financial performance. Despite the growing presence of subject imports in the U.S. market and the continued demand-depressing effects of the pending ban on phosphates in ADW detergents, the industry realized its peak operating margin of *** percent in interim 2009.²⁰⁰

¹⁹³ CR/PR at Table C-3.

¹⁹⁴ CR/PR at Table C-3.

¹⁹⁵ 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

¹⁹⁶ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990) (citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992) citing H.R. Rep. No. 98-1156 at 174 (1984).

¹⁹⁷ 19 U.S.C. § 1677(7)(F). The pertinent factors are quoted in language from Section IV.A. above.

¹⁹⁸ CR at VII-4, PR at VII-3.

¹⁹⁹ CR at VII-4, PR at VII-3. Hubei Xingfa accounts for approximately *** of reported Chinese phosphate salt production and exports to the United States. CR at VII-4, PR at VII-3.

²⁰⁰ ICL, the largest domestic producer of STPP, which accounted for almost *** percent of domestic production of STPP in 2008, realized an operating margin of *** percent in interim 2009. CR/PR at Tables III-1, VII-5 & C-3.

a. Likely Volume

The record in these investigations does not indicate a likelihood of a substantial increase in the volume and market share of subject STPP imports into the United States in the imminent future. The record reflects that U.S. demand for STPP declined between 2006 and 2008, was sharply lower in interim 2009 as compared with interim 2008, and is projected to decrease in the imminent future due to various restrictions on the use of STPP in ADW detergents, including a nationwide ban effective July 1, 2010.²⁰¹ Because of these factors, subject producers will have substantially less incentive to ship STPP into the U.S. market and to increase their market share.

Although subject import volume and market share peaked in interim 2009 at levels considerably above those reported in interim 2008, the circumstances of these increases indicate that the interim 2009 gains by subject imports are likely to be temporary. As discussed above, the market share gains by subject imports in interim 2009 came almost exclusively at the expense of nonsubject imports rather than the domestic industry, in that they were primarily attributable to ***. The increases in subject import volume and market share observed in interim 2009 do not presage further increases in the imminent future because ***. Taking all factors related to demand into account, the record does not indicate a likelihood of a substantial increase in the volume and market share of subject STPP imports into the United States in the imminent future.

We are mindful that the restrictions discussed above regarding the use of STPP in ADW detergents largely affect technical-grade STPP rather than food-grade STPP. Currently, however, few Chinese producers have extensive capacity to produce food-grade STPP and their export potential for food-grade STPP to the U.S. market in the imminent future is limited due to reported qualification and safety issues with food-grade STPP.²⁰² Also, Petitioners conceded that restrictions on the use of STPP in ADW detergents in other third-country markets such as the EU and Canada are not likely to take effect in the imminent future.²⁰³ Accordingly, in light of the pending restrictions in the U.S. market, subject producers from China would have substantial incentives to ship STPP to third-country markets outside the United States.

Chinese production capacity, capacity utilization, and export trends also do not indicate a likelihood of substantially increased imports of the subject merchandise to the United States in the imminent future. Chinese production capacity was 404.4 million pounds in interim 2009 compared with 419.4 million pounds in interim 2008.²⁰⁴ Chinese producers forecast declines in production capacity in 2009 and 2010.²⁰⁵ Although the Chinese industry reported relatively high unused capacity in interim 2009, the record indicates, with the exception of the sales destined for *** in 2009, that the Chinese industry has exported only a small proportion of its shipments to the United States. Instead, it has primarily focused on exports to third-country markets and supplying its domestic market: In particular, between *** and *** percent of Chinese shipments of STPP went to the home market during the period examined, and exports to the United States were below *** percent of total Chinese STPP shipments for

²⁰¹ CR/PR at Tables VII-5 & C-3.

²⁰² Chinese Respondents' Postconf. Br. at 9-10.

²⁰³ Conf. Tr. at 83-85.

²⁰⁴ Chinese production capacity increased from 752.9 million pounds in 2006 to 771.8 million pounds in 2008. CR/PR at Table VII-5.

²⁰⁵ CR/PR at Table VII-5.

most of the period examined, and are projected to fall below *** percent in 2010.²⁰⁶ Finally, the level of inventories is low.²⁰⁷

The record does not reflect, nor do Petitioners argue, that significant product-shifting from other products to STPP from China will occur in the imminent future. Finally, there are no antidumping duty orders or other trade measures in third-country markets that would encourage increased shipments of STPP from China into the U.S. market in the imminent future.²⁰⁸

b. Likely Price Effects of Subject Imports

We do not find that subject imports will enter the U.S. market at prices that are likely to have a significant depressing or suppressing effect on domestic prices or that are likely to increase demand for further imports. As discussed above, there is mixed evidence on underselling, with subject imports predominantly overselling the domestic like product on the higher-volume technical grade of STPP. As subject producers from China have experienced considerable barriers to entry in terms of supplying the U.S. market with food-grade STPP due to qualification and safety issues, and in light of the pervasive overselling by subject producers in technical-grade STPP, we do not find that subject imports are likely to enter the U.S. market at prices that are likely to have significant adverse effects on U.S. prices. Moreover, U.S. prices for STPP increased during the period examined and were significantly higher at the end of the period than at the beginning. Notably, U.S. prices for STPP reached near period-high and period-high levels, respectively, in 2008 and interim 2009, when subject imports achieved their highest market share.²⁰⁹ As discussed previously, even with declining demand, the domestic industry was more than able to raise its prices during the period examined in order to offset a dramatic increase in raw material costs, as the industry attained its *** profitability in interim 2009, a period when domestic prices and subject imports peaked.²¹⁰

c. Likely Impact of Subject Imports

We found above that during the period examined there was no significant correlation between subject imports and the industry's performance. Prices rose and operating performance improved as the subject imports peaked. Because we have found that there is no likelihood of either substantially increased imports or significant price effects, the subject imports will likely continue not to have a significant impact on the domestic industry in the imminent future.

²⁰⁶ CR/PR at Table VII-5.

²⁰⁷ We have considered several other factors in our analysis of likely subject import volume. As a ratio to total shipments, inventories held by Chinese producers of STPP increased from *** percent in 2006 to *** percent in 2007, dropped to *** percent in 2008, and were *** percent and *** percent in interim 2008 and interim 2009, respectively. CR/PR at Table VII-5. Inventories of subject merchandise in the United States rose during the latter portion of the period examined. CR/PR at Table VII-10. However, we do not believe the increased inventories make further subject imports likely in light of the demand considerations discussed above.

We have also considered the nature of the alleged countervailable subsidies. In its notice of initiation of the countervailing duty investigation, Commerce stated its intention to investigate four income tax programs, three grant programs, one indirect and tax exemption program, and one preferential loan program. See Certain Sodium and Potassium Phosphate Salts from China, 74 Fed. Reg. 54024 (October 21, 2009).

²⁰⁸ CR/PR at Table VII-5.

²⁰⁹ CR/PR at Tables IV-4, V-3, & V-4

²¹⁰ CR/PR at Table C-3.

We also do not find that subject imports are likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. There is no indication that subject imports have negatively affected development efforts by the domestic industry; on the contrary, the domestic industry substantially increased its capital expenditures in interim 2009 as compared to their interim 2008 level. Domestic capital expenditures increased by *** percent in interim 2009 compared to interim 2008.²¹¹

Accordingly, we find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of a threat of material injury by reason of subject imports of STPP from China, and no likelihood exists that contrary evidence will arise in a final investigation.

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of STPP from China that are allegedly sold in the United States at less than fair value and allegedly subsidized.

D. Anhydrous Dipotassium Phosphate (“DKP”)

1. Reasonable Indication of Threat of Material Injury By Reason of Subject Imports

a. Likely Volume of Subject Imports

Subject import volume increased significantly during the period under examination in absolute terms and as a share of both apparent U.S. consumption and domestic production. Subject import volume declined by *** percent between 2006 and 2007, from *** pounds to *** pounds, but increased by *** percent between 2007 and 2008, to *** pounds, a level *** percent higher than that in 2006.²¹² Subject import volume was *** pounds in interim 2009, a level *** percent higher than that in interim 2008, when subject import volume was *** pounds.²¹³

Subject import shipments in the U.S. market declined by *** percent between 2006 and 2007, from *** pounds to *** pounds, but increased by *** percent between 2007 and 2008, to *** pounds, a level *** percent higher than that in 2006.²¹⁴ Subject import shipments were *** percent higher in interim 2009, at *** pounds, than in interim 2008, when they were *** pounds.²¹⁵

Subject import shipments as a share of apparent U.S. consumption quantity declined from *** percent in 2006 to *** percent in 2007, but increased to *** percent in 2008, and were *** percent in interim 2009, up from *** percent in interim 2008.²¹⁶ These gains in subject import market share came entirely at the expense of the domestic industry, which also lost market share to nonsubject imports.²¹⁷ The ratio of subject imports to domestic production declined from *** percent in 2006 to *** percent in

²¹¹ CR/PR at Table C-3.

²¹² CR/PR at Table IV-2.

²¹³ CR/PR at Table IV-2.

²¹⁴ CR/PR at Table IV-7.

²¹⁵ CR/PR at Table IV-7.

²¹⁶ CR/PR at Table IV-11.

²¹⁷ See CR/PR at Table IV-11.

2007, but increased to *** percent in 2008, and was *** percent in interim 2009, up from *** percent in interim 2008.²¹⁸

Based on the preceding analysis, we find that subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market penetration also was significant. Furthermore, for the following reasons, we find that this significant rate of increase in the volume and market penetration of subject imports during the period under examination indicates the likelihood of substantially increased imports in the imminent future.

Subject foreign producers²¹⁹ in China operated at a low rate of capacity utilization during the period under examination, resulting in significant excess capacity, and possessed ample excess capacity at the end of the period with which to continue increasing their exports of DKP to the U.S. market. Responding subject Chinese producers reported a low, albeit increasing, rate of capacity utilization between 2006 and 2008, at *** percent in 2006, *** percent in 2007, and *** percent in 2008, and a lower capacity utilization rate in interim 2009, at *** percent, than in interim 2008, at *** percent.²²⁰

Due to their persistently low rate of capacity utilization, responding subject Chinese producers reported excess capacity of *** pounds in 2006, equivalent to *** percent of apparent U.S. consumption that year; *** pounds in 2007, equivalent to *** percent of apparent U.S. consumption that year; and *** pounds in 2008, equivalent to *** percent of apparent U.S. consumption that year.²²¹ They reported excess capacity of *** pounds in interim 2009, equivalent to *** percent of apparent U.S. consumption during the period, up from excess capacity of *** pounds in interim 2008, which was equivalent to *** percent of apparent U.S. consumption.²²² Responding Chinese producers project that the magnitude of their excess capacity will increase further in the imminent future to *** pounds in full year 2009 and *** pounds in 2010, as their rate of capacity utilization is expected to remain a low *** percent in full year 2009 and *** percent in 2010.²²³ Chinese producers demonstrated the ability to use their excess capacity to increase exports to the United States rapidly between the first and second halves of 2008, when subject imports increased from *** pounds to *** pounds or by *** percent.²²⁴

Subject foreign producers in China also have the capability to increase their exports to the United States in the imminent future by drawing from substantial end-of-period inventories held in China. For example, the end-of-period inventories held by responding Chinese producers in interim 2009 were *** pounds, which was the equivalent of *** percent of their shipments to the United States during that period.²²⁵

Subject Chinese DKP producers not only possess the ability to increase exports to the United States significantly in the imminent future, but also the incentive to do so given their dependence on exports during the period under examination, and their tendency to direct *** increasing percentages of

²¹⁸ CR/PR at Table IV-15.

²¹⁹ We note at the outset that the export data reported by Chinese producers likely represented the vast majority of exports and accounted for *** percent of the comparable import data based on official U.S. statistics. CR at VII-4; PR at VII-3.

²²⁰ CR/PR at Table VII-3.

²²¹ CR/PR at Tables IV-7, VII-3.

²²² CR/PR at Tables IV-7, VII-3.

²²³ CR/PR at Table VII-3.

²²⁴ CR/PR at Table IV-2.

²²⁵ CR/PR at Table VII-3.

their exports to the United States.²²⁶ Responding Chinese producers reported that their exports to all markets as a share of total shipments were *** percent in 2006, *** percent in 2007, and *** percent in 2008, and were at *** percent in interim 2008 and *** percent in interim 2009.²²⁷ Their exports to all markets as a share of total shipments are projected to be *** percent in full year 2009 and *** percent in 2010.²²⁸

Responding Chinese producers increased their export orientation towards the United States during the period under examination, with the share of their total shipments exported to the United States increasing from *** percent in 2006 to *** percent in 2008.²²⁹ The share of their total shipments exported to the United States in interim 2009 was *** percent, up from *** percent in interim 2008.²³⁰ It is projected to be *** percent in full year 2009 and *** percent in 2010, well above the levels in 2006 and 2007.²³¹

Consequently, we conclude that the volume of subject imports, which was significant during the period under examination, is likely to increase substantially in the imminent future.

b. Likely Price Effects of the Subject Imports

As noted above, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product.

The Commission collected quarterly pricing data on one DKP product, product 1, which accounted for *** percent of domestic producers' U.S. shipments of DKP and essentially all reported U.S. imports of DKP from China during January 2006 to June 2009.²³² Pricing data were reported by one domestic producer and eight importers.²³³ These data indicate that subject imports generally undersold the domestic like product throughout the period under examination.

Overall, subject imports undersold the domestic like product in 11 of 14 quarterly comparisons, or 78.6 percent of the time, at margins ranging from 2.4 percent to 21.0 percent and averaging ***

²²⁶ We note that there is little evidence on the record of the preliminary phase of these investigations that responding Chinese producers could shift from the production of other products to the production of DKP, given that only one responding Chinese producer reported producing other products on the same equipment used to produce subject phosphate salts. CR at VII-4; PR at VII-3. There also is little evidence on the record concerning the likely effects of subject imports on domestic industry development and production efforts. We intend to investigate these issues further in any final phase of these investigations. We also note that there are no dumping findings or antidumping remedies on subject DKP in third-country markets. CR at VII-13-14; PR at VII-7. While we have considered the nature of the subsidies, we do not find this factor conclusive for our analysis. See CR at I-6-7; PR at I-4-5.

²²⁷ CR/PR at Table VII-3.

²²⁸ CR/PR at Table VII-3.

²²⁹ CR/PR at Table VII-3.

²³⁰ CR/PR at Table VII-3.

²³¹ CR/PR at Table VII-3.

²³² CR at V-6-7; PR at V-3-4.

²³³ CR at V-6; PR at V-4.

percent.²³⁴ Given the frequency of underselling and the margins at which underselling occurred, we find subject import underselling to be significant.²³⁵

Although we find no evidence of price depression, as the price of domestic producer shipments of product 1 increased from \$*** per pound in the first quarter of 2006 to \$*** per pound in the second quarter of 2009, we do find some evidence of price suppression.²³⁶ The cost of potassium hydroxide, however, a major raw material input in the production of DKP, increased significantly in 2008 and 2009.²³⁷ Because domestic producers were unable to increase their prices sufficiently to cover the increased cost of raw materials, the domestic industry's ratio of cost of goods sold to net sales increased throughout the period under examination, from *** percent in 2006 to *** percent in 2007 and again to *** percent in 2008.²³⁸ This ratio was *** percent in interim 2009, up from *** percent in interim 2008.^{239 240}

We further find that subject imports are entering at prices that are likely to have a significant suppressing effect on domestic prices, and are likely to increase demand for further imports, in the imminent future. As detailed above, DKP produced in China and the United States is highly substitutable. Accordingly, the frequency and magnitude of subject import underselling during the period under examination, coupled with the likelihood of significantly increased subject import volume, makes it likely that subject imports will suppress domestic prices in the imminent future. We find further support for this finding in evidence that the price of potassium hydroxide and the domestic industry's ratio of cost of goods sold to net sales both reached their highest level of the period under examination in the first half of 2009.²⁴¹

Thus, we conclude that subject import underselling will likely continue, creating further demand for subject imports in the U.S. market and likely depressing or suppressing domestic prices to a significant degree.

c. Likely Impact of Subject Imports²⁴²

The domestic industry performed well according to most measures between 2006 and 2008, but its performance deteriorated markedly in interim 2009 as compared to interim 2008. The domestic industry's capacity increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008, and was *** percent higher in interim 2009, at ***

²³⁴ CR/PR at Table V-7.

²³⁵ Although there were *** confirmed lost sales or revenue allegations, one purchaser, *** reported that ***. CR at V-20-21; PR at V-11.

²³⁶ CR/PR at Table V-1.

²³⁷ CR at V-1; PR at V-1; CR/PR at Figure V-1. Due in part to the increasing cost of potassium hydroxide, raw material costs as a share of the domestic industry's cost of goods sold increased from *** percent over the 2006-2008 period to *** percent in the first half of 2009. CR at V-1; PR at V-1.

²³⁸ CR/PR at Table VI-1.

²³⁹ CR/PR at Table VI-1.

²⁴⁰ Commissioner Pinkert finds that this evidence indicates significant price suppression over the course of the period under examination.

²⁴¹ See CR/PR at Figure V-1, Table VI-1.

²⁴² Commerce initiated an antidumping duty investigation on certain phosphate salts based on estimated dumping margins ranging from 33.7 percent to 177.4 percent. 74 Fed. Reg. at 54026.

pounds, than in interim 2008, at *** pounds.²⁴³ By contrast, despite increasing apparent U.S. consumption, the domestic industry's production declined by *** percent between 2006 and 2008, increasing from *** pounds in 2006 to *** pounds in 2007 before declining to *** pounds in 2008.²⁴⁴ The downward trend in domestic industry production *** between the interim periods, with domestic industry production *** percent lower in interim 2009, at *** pounds, as compared with interim 2008, at *** pounds.²⁴⁵

The domestic industry's declining rate of capacity utilization reflects these trends. Between 2006 and 2008, the domestic industry's rate of capacity utilization declined from *** percent in 2006 to *** percent in 2007 and then to *** percent in 2008, due to both the *** percent increase in domestic industry capacity and to the *** percent decline in domestic industry production.²⁴⁶ The domestic industry's rate of capacity utilization was only *** percent in interim 2009, down from *** percent in interim 2008, due largely to the fact that domestic industry production was *** percent lower in interim 2009 than in interim 2008, but also because domestic industry capacity was *** percent higher.²⁴⁷

The domestic industry's U.S. shipments followed a similar trend to production, increasing from *** pounds in 2006 to *** pounds in 2007 before declining to *** pounds in 2008, a level still *** percent higher than in 2006.²⁴⁸ The domestic industry's U.S. shipments were *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.²⁴⁹ The domestic industry's share of apparent U.S. consumption increased from *** percent in 2006 to *** percent in 2007, but declined to *** percent in 2008.²⁵⁰ It was *** percent in interim 2009, down from *** percent in interim 2008.²⁵¹

Contrary to the domestic industry's production trends, domestic industry employment and hours worked increased throughout the period under examination, at the expense of productivity. Domestic industry employment increased from *** production and related workers ("PRWs") in 2006 to *** PRWs in 2007 and *** PRWs in 2008, and was *** PRWs in interim 2009, compared to *** PRWs in interim 2008.²⁵² Hours worked increased from *** hours in 2006 to *** hours in 2007 and *** hours in 2008, and were *** hours in interim 2009, up from *** hours in interim 2008.²⁵³ Because the increase in employment and hours worked coincided with a decline in production, the domestic industry's

²⁴³ CR/PR at Table III-2.

²⁴⁴ CR/PR at Table III-2.

²⁴⁵ CR/PR at Table III-2.

²⁴⁶ CR/PR at Table III-2.

²⁴⁷ CR/PR at Table III-2. The domestic industry's end-of-period inventories declined from *** pounds in 2006, equivalent to *** percent of U.S. shipments, to *** pounds in 2008, equivalent to *** percent of U.S. shipments. Id. at Table III-10. Its end-of-period inventories were *** pounds in interim 2009, down from *** pounds in interim 2008. However, the ratio of end-of-period inventories to U.S. shipments was higher in interim 2009, at *** percent, than in interim 2008, at *** percent. Id.

²⁴⁸ CR/PR at Table IV-7.

²⁴⁹ CR/PR at Table IV-7.

²⁵⁰ CR/PR at Table IV-11.

²⁵¹ CR/PR at Table IV-11.

²⁵² CR/PR at Table III-18.

²⁵³ CR/PR at Table III-18.

productivity in pounds produced per hour declined *** from *** in 2006 to *** in 2007 and *** in 2008, and was *** in interim 2009, compared to *** in interim 2008.²⁵⁴

The domestic industry's net sales volume increased from *** pounds in 2006 to *** pounds in 2007, but declined to *** pounds in 2008, a level *** percent lower than that in 2006.²⁵⁵ This downward trend accelerated between the interim periods, as the domestic industry's net sales volume was *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.²⁵⁶

The average unit value of domestic industry shipments increased, as domestic producers were able to pass at least a portion of their higher costs on to purchasers. The domestic industry's net sales revenues increased between 2006 and 2008, notwithstanding that sales quantities declined during this period; net sales revenues declined by less than net sales volume between the interim periods. The domestic industry's net sales value increased by *** percent between 2006 and 2008, from \$*** in 2006 to \$*** in 2007 and then to \$*** in 2008.²⁵⁷ The domestic industry's net sales value was *** percent lower in interim 2009, at \$***, than in interim 2008, at \$***.²⁵⁸ The domestic industry's operating income declined from \$*** in 2006, or *** percent of net sales, to \$*** in 2007, or *** percent of net sales, but increased to \$*** in 2008, or *** percent of net sales.²⁵⁹ Its operating income was \$*** in interim 2009, or *** percent of net sales, down from \$*** in interim 2008, or *** percent of net sales.²⁶⁰

The domestic industry's capital expenditures increased from \$*** in 2006 to \$*** in 2007, but declined to \$*** in 2008, a level *** percent lower than that in 2006.²⁶¹ They were *** percent higher in interim 2009, at \$***, than in interim 2008, at \$***. The domestic industry's research and development expenditures increased *** percent between 2006 and 2008, from \$*** to \$***, but were *** percent lower in interim 2009, at \$***, than in interim 2008, at \$***.²⁶²

Based on the available domestic industry performance data, we are unable to find a reasonable indication that the domestic industry is suffering present material injury by reason of subject imports and we do not find this industry to be vulnerable. The domestic industry experienced *** operating income margins throughout the period under examination, including an operating income margin of *** percent in interim 2009.²⁶³ Both employment and hours worked increased through the period. We note, however, that the significant deterioration in several key indices of domestic industry performance between the interim periods, including production, capacity utilization, net shipment quantity, and U.S. shipment volume, coincided with a significant increase in subject import market share, which came at the domestic industry's expense.

We do find a reasonable indication that the domestic industry is threatened with imminent material injury by reason of subject imports. The record in the preliminary phase of these investigations indicates that current adverse trends observed during the latter portion of the period under examination will continue. During the period under examination, subject import volume increased significantly in

²⁵⁴ CR/PR at Table III-18.

²⁵⁵ CR/PR at Table VI-1.

²⁵⁶ CR/PR at Table VI-1.

²⁵⁷ CR/PR at Table VI-1.

²⁵⁸ CR/PR at Table VI-1.

²⁵⁹ CR/PR at Table VI-1.

²⁶⁰ CR/PR at Table VI-1.

²⁶¹ CR/PR at Table VI-9.

²⁶² CR/PR at Table VI-9.

²⁶³ CR/PR at Table VI-1.

absolute terms and relative to apparent U.S. consumption and domestic production, and this increase continued even after resolution of the phosphoric acid and potassium hydroxide supply shortages that had limited domestic DKP production in 2008.²⁶⁴ Subject import underselling was pervasive, and there was some evidence of price suppression. In the imminent future, the subject foreign producers' substantial excess capacity and export orientation make it likely that subject import volume and market share will continue to increase at a significant rate. The frequency and magnitude of subject import underselling, coupled with the high degree of substitutability of subject imports and the domestic like product and the importance of price to purchasers, make it likely that significant subject import underselling will continue, increasing demand for subject imports and depressing and suppressing domestic prices. Although we do not find the domestic industry vulnerable to material injury for the reasons addressed above, we do find that the likely increase in subject import volume, coupled with its likely adverse price effects, is likely to worsen the domestic industry's condition, inflicting material injury on the domestic industry in the imminent future.

We have considered the extent to which any threat of imminent material injury to the domestic industry is attributable to nonsubject imports. As an initial matter, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product, on the one hand, and nonsubject imports, on the other.²⁶⁵ We are mindful that nonsubject imports maintained a significant presence in the U.S. market throughout the period under examination, accounting for between *** percent and *** percent of apparent U.S. consumption during the period.²⁶⁶ Nonetheless, subject imports captured significantly more market share from the domestic industry than did nonsubject imports. Between 2006 and 2008, subject imports captured *** percentage points of market share from the domestic industry, whereas nonsubject imports captured only *** percentage points.²⁶⁷ Of the *** percentage point decline in domestic industry market share in interim 2009 as compared to interim 2008, subject imports captured *** percentage points and nonsubject imports only *** percentage points.²⁶⁸

Moreover, nonsubject imports were generally priced higher than subject imports and did not undersell the domestic like product to the same extent. Nonsubject imports were priced higher than subject imports in 59 of 73 possible comparisons, or 80.8 percent of the time.²⁶⁹ Nonsubject imports were priced lower than the domestic like product in 44 of 65 comparisons, or 67.7 percent of the time, whereas subject imports undersold the domestic like product in 11 of 14 comparisons, or 78.6 percent of the

²⁶⁴ See section IV.B.2., supra.

²⁶⁵ See CR at II-25; PR at II-15; CR/PR at Tables II-7, 8.

²⁶⁶ See CR/PR at Table IV-11. U.S. shipments of nonsubject imports increased from *** pounds in 2006, or *** percent of apparent U.S. consumption, to *** pounds in 2007, or *** percent of apparent U.S. consumption, and *** pounds in 2008, or *** percent of apparent U.S. consumption. CR/PR at Tables IV-7, 11. U.S. shipments of nonsubject imports were *** pounds in interim 2009, or *** percent of apparent U.S. consumption, up from *** pounds in interim 2008, or *** percent of apparent U.S. consumption. Id.

²⁶⁷ CR/PR at Table IV-11.

²⁶⁸ CR/PR at Table IV-11.

²⁶⁹ See CR at D-3; PR at D-3; CR/PR at Figure D-1. The average unit value of U.S. shipments of nonsubject imports was higher than the average unit value of U.S. shipments of subject imports throughout the period under examination. CR/PR at Table C-1. We recognize that average unit value comparisons may be influenced by product mix issues.

time.²⁷⁰ Thus, any threat of material injury we have found from subject imports cannot be attributed to nonsubject imports.²⁷¹

In sum, the record indicates that there is a causal nexus between subject imports and the threat of material injury to the domestic industry. We find that the likely significant increase in subject import volume and market share, and the likely significant adverse price effects resulting therefrom, is likely to cause material injury to the domestic industry imminently. Accordingly, based on the record in the preliminary phase of these investigations, we conclude that there is a reasonable indication that the domestic industry producing DKP is threatened with material injury by reason of subject imports from China.

E. Anhydrous Monopotassium Phosphate (“MKP”)

1. Reasonable Indication of Material Injury By Reason of Subject Imports²⁷²

a. Volume of Subject Imports

Subject import volume increased significantly during the period under examination in absolute terms and as a share of both apparent U.S. consumption and domestic production. Subject import volume increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008.²⁷³ Subject import volume was *** pounds in interim 2009, a level *** percent higher than that in interim 2008, when subject import volume was *** pounds.²⁷⁴

Subject import shipments in the U.S. market increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008.²⁷⁵ Subject import shipments were *** percent higher in interim 2009, at *** pounds, than in interim 2008, when they were at *** pounds.²⁷⁶

Subject import shipments as a share of apparent U.S. consumption quantity increased from *** percent in 2006 to *** percent in 2007 and to *** percent in 2008, and were *** percent in interim 2009, up from *** percent in interim 2008.²⁷⁷ The ratio of subject imports to domestic production moved from

²⁷⁰ Compare CR at D-3; PR at D-3 with CR/PR at Table V-7.

²⁷¹ No information on the capacity and export orientation of DKP producers in nonsubject countries is available on the record of the preliminary phase of these investigations. See CR at VII-14-16; VII-7-8. We plan to investigate further the role of nonsubject imports in the U.S. market in any final phase of these investigations. We also note that the threat of material injury to the domestic industry cannot be attributed to demand trends because apparent U.S. consumption of DKP increased during the period under examination and is expected to continue to increase modestly in the imminent future, as addressed in section IV.B.1. above. CR/PR at Table IV-7; CR at II-22; PR at II-12-13.

²⁷² Chairman Aranoff, Vice Chairman Pearson, and Commissioner Okun do not join this section of the opinion, inasmuch as they find a reasonable indication of threat of material injury by reason of subject imports of MKP.

²⁷³ CR/PR at Table IV-3.

²⁷⁴ CR/PR at Table IV-3.

²⁷⁵ CR/PR at Table IV-8.

²⁷⁶ CR/PR at Table IV-8.

²⁷⁷ CR/PR at Table IV-12.

*** percent in 2006 to *** percent in 2007 and *** percent in 2008, and was at *** percent in interim 2009, up from *** percent in interim 2008.²⁷⁸

Based on the preceding analysis, we find that subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market penetration also was significant.

b. Price Effects of the Subject Imports

The record indicates that there is a high degree of substitutability between subject imports and the domestic like product, as detailed in section IV.B.3. above.²⁷⁹

The Commission collected quarterly pricing data on one MKP product, product 2, which accounted for *** percent of domestic producers' U.S. shipments of MKP and *** percent of U.S. imports of MKP from January 2006 to June 2009.²⁸⁰ Pricing data were reported by one domestic producer and 12 importers.²⁸¹ These data indicate that subject imports undersold the domestic like product throughout the period under examination. Overall, subject imports undersold the domestic like product in all 14 quarterly comparisons at margins ranging from 36.2 percent to 72.6 percent and averaging *** percent.²⁸² Given the frequency of underselling and the margins at which underselling occurred, we find subject import underselling to be significant.²⁸³

Although we find no evidence of price depression, as the price of domestic producer shipments of product 2 increased from \$*** per pound in the first quarter of 2006 to \$*** per pound in the fourth quarter of 2008, we find evidence of significant price suppression.²⁸⁴ The cost of potassium hydroxide, a major raw material input in the production of MKP, increased significantly in 2008 and 2009.²⁸⁵ Because domestic producers were unable to increase their prices sufficiently to cover the increased cost of raw materials, the domestic industry's ratio of cost of goods sold to net sales increased between 2006 and 2008, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008.²⁸⁶ This ratio was *** percent in interim 2009, which was down from *** percent in interim 2008, and was *** percentage points higher in interim 2009 than in 2006.²⁸⁷

We also note that lower-priced subject imports have made the market more price competitive and put downward pricing pressure on domestic prices. Chinese MKP was priced lower than domestic MKP in 14 of 14 possible comparisons and priced lower than MKP imported from nonsubject countries in 59 of

²⁷⁸ CR/PR at Table VI-16.

²⁷⁹ In any final phase of the investigations, we intend to further explore the extent to which subject imports and the domestic like product serve the same applications in the U.S. market.

²⁸⁰ CR at V-6-7; PR at V-4.

²⁸¹ CR at V-6; PR at V-4.

²⁸² CR/PR at Table V-7.

²⁸³ Although there were no confirmed lost sales or revenue allegations, one purchaser reported that it had ***.
CR at V-21; PR at V-12.

²⁸⁴ CR/PR at Table V-2.

²⁸⁵ CR at V-1; PR at V-1; CR/PR at Figure V-1. Due in part to the increasing cost of potassium hydroxide, raw material costs as a share of the domestic industry's cost of goods sold increased from *** percent over the 2006-2008 period to *** percent in the first half of 2009. CR at V-1; PR at V-1.

²⁸⁶ CR/PR at Table VI-2.

²⁸⁷ CR/PR at Table VI-2.

65 possible comparisons.²⁸⁸ As a consequence, nonsubject imports steadily lost market share to the subject imports. In 2006, nonsubject imports maintained *** percent of the market for MKP. By 2008, that figure had dropped to *** percent.²⁸⁹ In interim 2008, nonsubject imports maintained *** percent of the market.²⁹⁰ By interim 2009, that figure had dropped to *** percent, representing a loss *** percentage points of market share that was gained entirely by subject imports.²⁹¹

c. Impact of the Subject Imports on the Domestic Industry²⁹²

The domestic industry suffered a significant decline in operating income between 2006 and 2008, and its performance continued to deteriorate in interim 2009 according to most measures. The domestic industry's capacity increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008, but was *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.²⁹³ Its production increased by *** percent between 2006 and 2007, from *** pounds to *** pounds, but declined to *** pounds in 2008.²⁹⁴ This downward trend in domestic industry production *** between the interim periods, with domestic industry production *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.²⁹⁵

The domestic industry's rate of capacity utilization reflects these trends, increasing from *** percent in 2006 to *** percent in 2007, but declining to *** percent in 2008, due to the *** percent increase in domestic industry capacity but also to the *** percent decline in domestic industry production over the period.²⁹⁶ The domestic industry's rate of capacity utilization was only *** percent in interim 2009, down from *** percent in interim 2008, due to the fact that domestic industry production was *** percent lower in interim 2009 than in interim 2008.²⁹⁷

The domestic industry's net sales volume increased from *** pounds in 2006 to *** pounds in 2007 and *** pounds in 2008.²⁹⁸ Its net sales volume declined significantly between the interim periods, however, and was *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.²⁹⁹

²⁸⁸ CR at D-3; PR at D-3; CR/PR at Table V-7.

²⁸⁹ CR/PR at Table IV-12.

²⁹⁰ CR/PR at Table IV-12.

²⁹¹ CR/PR at Table IV-12.

²⁹² Commerce initiated an antidumping duty investigation on certain phosphate salts based on estimated dumping margins ranging from 33.7 percent to 177.4 percent. 74 Fed. Reg. at 54026.

²⁹³ CR/PR at Table III-3.

²⁹⁴ CR/PR at Table III-3.

²⁹⁵ CR/PR at Table III-3.

²⁹⁶ CR/PR at Table III-3.

²⁹⁷ CR/PR at Table III-3.

²⁹⁸ CR/PR at Table VI-2.

²⁹⁹ CR/PR at Table VI-2.

The domestic industry's U.S. shipments followed a similar trend, increasing from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008.³⁰⁰ Its U.S. shipments were *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.³⁰¹ The domestic industry's share of apparent U.S. consumption increased from *** percent in 2006 to *** percent in 2007, but declined to *** percent in 2008.³⁰² It was only *** percent in interim 2009, however, *** than in interim 2008 when it was *** percent.³⁰³

Domestic industry employment and hours worked increased between 2006 and 2008, but were significantly lower in interim 2009 than in interim 2008. Domestic industry employment increased from *** PRWs in 2006 to *** PRWs in 2007 and then to *** PRWs in 2008, but was *** PRWs in interim 2009, down from *** PRWs in interim 2008.³⁰⁴ Hours worked increased from *** hours in 2006 to *** hours in 2007 and then to *** hours in 2008, but were *** hours in interim 2009, down from *** hours in interim 2008.³⁰⁵ The domestic industry's productivity in pounds produced per hour increased from *** in 2006 to *** in 2007 but declined to *** in 2008, and was *** in interim 2009, down from *** in interim 2008.³⁰⁶

The average unit value of domestic industry shipments increased, as domestic producers were able to pass at least a portion of their higher costs on to purchasers. The domestic industry's net sales revenues increased at a greater rate than its net sales volume between 2006 and 2008, and were higher in interim 2009 than in interim 2008 notwithstanding that sales volumes were lower. The domestic industry's net sales value increased by *** percent between 2006 and 2008, from \$*** in 2006 to \$*** in 2007 and then to \$*** in 2008.³⁰⁷ The domestic industry's net sales value was *** percent lower in interim 2009, at \$***, than in interim 2008, at \$***.³⁰⁸ The domestic industry's operating income margins declined from *** percent of net sales in 2006 to *** percent of net sales in 2007, and then to *** percent of net sales in 2008.³⁰⁹ Its operating income was \$*** in interim 2009, or *** percent of net sales, up from \$*** in interim 2008, or *** percent of net sales.³¹⁰ The trend in the domestic industry's return on investment was the same as the trend in its operating income margin.³¹¹

³⁰⁰ CR/PR at Table IV-7.

³⁰¹ CR/PR at Table IV-7.

³⁰² CR/PR at Table IV-12.

³⁰³ CR/PR at Table IV-12. The domestic industry's end-of-period inventories increased from *** pounds in 2006 to *** pounds in 2007, but declined to *** pounds in 2008. Id. at Table III-11. The ratio of the domestic industry's end-of-period inventories to its U.S. shipments increased during the period, however, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. Id. The domestic industry's end-of-period inventories were *** pounds in interim 2009, equivalent to *** percent of U.S. shipments, down from *** pounds in interim 2008, equivalent to *** percent of U.S. shipments. Id.

³⁰⁴ CR/PR at Table III-19.

³⁰⁵ CR/PR at Table III-19.

³⁰⁶ CR/PR at Table III-19.

³⁰⁷ CR/PR at Table VI-2.

³⁰⁸ CR/PR at Table VI-2.

³⁰⁹ CR/PR at Table VI-2.

³¹⁰ CR/PR at Table VI-2.

³¹¹ CR at VI-17; PR at VI-4.

The domestic industry's capital expenditures increased from \$*** in 2006 to \$*** in 2007, but declined to \$*** in 2008, a level *** percent lower than that in 2006.³¹² Capital expenditures were *** percent lower in interim 2009, at \$***, than in interim 2008, when they were \$***. The domestic industry's research and development expenditures increased *** percent between 2006 and 2008, from \$*** to \$***, but were *** percent lower in interim 2009, at \$***, than in interim 2008, at \$***.³¹³

We find a reasonable indication that the domestic industry is materially injured by reason of subject imports. The industry experienced declining operating income margins and return on investment between 2006 and 2008, while the U.S. market was experiencing strong and steady growth. Many of the domestic industry performance measures deteriorated significantly between 2007 and 2008, and between the interim periods, especially production, capacity utilization, productivity, and capital expenditures. This deterioration corresponds to the domestic industry's loss of market share to subject imports from 2007 to 2008 and, more sharply, between the interim periods.³¹⁴ It is noteworthy that subject imports captured a *** of market share from the domestic industry after resolution of the phosphoric acid and potassium hydroxide supply shortages that had constrained domestic MKP production in 2008.³¹⁵ Pervasive subject import underselling at significant margins contributed to this market share shift, given the high degree of substitutability between subject imports and the domestic like product and the importance of price to purchasing decisions, and also suppressed domestic prices significantly.

We have considered the extent to which any material injury suffered by the domestic industry is attributable to nonsubject imports. As an initial matter, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product, on the one hand, and nonsubject imports, on the other.³¹⁶ Nonsubject imports also maintained a significant presence in the U.S. market throughout the period under examination, satisfying between *** percent and *** percent of apparent U.S. consumption during the period.^{317 318}

³¹² CR/PR at Table VI-9.

³¹³ CR/PR at Table VI-9.

³¹⁴ See CR/PR at Table IV-12.

³¹⁵ See section IV.B.2., supra.

³¹⁶ See CR at II-25; PR at II-15; CR/PR at Tables II-7, 8.

³¹⁷ See CR/PR at Table IV-12. U.S. shipments of nonsubject imports increased from *** pounds in 2006, or *** percent of apparent U.S. consumption, to *** pounds in 2007, or *** percent of apparent U.S. consumption, but declined to *** pounds in 2008, or *** percent of apparent U.S. consumption, a level still *** percent above that in 2006. CR/PR at Tables IV-8, 12. U.S. shipments of nonsubject imports were *** pounds in interim 2009, or *** percent of apparent U.S. consumption, down from *** pounds in interim 2008, or *** percent of apparent U.S. consumption. Id.

³¹⁸ Based on the record evidence in the preliminary phase of this investigation, Commissioner Pinkert finds that subject MKP is a commodity product and that price competitive, non-subject imports were a significant factor in the U.S. market during the period of investigation. He further finds, however, that non-subject imports would not have replaced subject imports during the period of investigation without benefit to the domestic industry. The principal sources of non-subject imports during the period were Israel and Mexico. CR/PR at Figure D-2; CR at VII-15-16; PR at VII-7-8. It appears that non-subject countries could have replaced the subject imports during the period under examination, although it is unclear whether they would have done so. In 2006 and 2007, imports from both Israel and Mexico consistently undersold domestically produced MKP at prices that were comparable to those for Chinese MKP. Beginning in 2008, however, the average prices for imports from Israel and Mexico began to increase above those for imports of MKP from China and remained higher than prices for Chinese material in interim 2009. CR/PR at Figure D-2. Thus, even if nonsubject imports had replaced subject imports, the record indicates that antidumping relief would nevertheless have benefitted the domestic industry through higher prices.

Nonsubject imports lost market share to subject imports throughout the period under examination, and did not adversely affect domestic industry market share.³¹⁹ When the domestic industry lost *** percentage points of market share to subject imports between the interim periods, nonsubject imports lost *** percentage points of market share to subject imports.³²⁰ Nonsubject imports also were generally priced higher than subject imports and did not undersell the domestic like product to the same extent. Nonsubject imports were priced higher than subject imports in 59 of 65 possible comparisons, or 90.8 percent of the time.³²¹ Nonsubject imports were priced lower than the domestic like product in only 21 of 65 comparisons, or 32.3 percent of the time, whereas subject imports undersold the domestic like product in all 14 of 14 comparisons.³²²

Thus, any material injury we have found from subject imports cannot be attributed to nonsubject imports.³²³ We also note that demand trends cannot account for any material injury to the domestic industry because apparent U.S. consumption of MKP increased by *** percent between 2006 and 2008.³²⁴ Although apparent U.S. consumption was *** percent lower in interim 2009 than in interim 2008, the reduction in domestic industry production, shipments, and employment between the interim periods was far greater than the reduction in apparent U.S. consumption.³²⁵

In sum, the record indicates that there is a causal nexus between subject imports and the material injury experienced by the domestic industry. Accordingly, based on the record in the preliminary phase of these investigations, we conclude that there is a reasonable indication that the domestic industry producing MKP is materially injured by reason of subject imports from China.

2. Reasonable Indication of Threat of Material Injury By Reason of Subject Imports³²⁷

a. Likely Volume of Subject Imports

Subject import volume increased significantly during the period under examination in absolute terms and as a share of both apparent U.S. consumption and domestic production. Subject import volume increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and

³¹⁹ See CR/PR at Table IV-12.

³²⁰ CR/PR at Table IV-12.

³²¹ See CR at D-3; PR at D-3; CR/PR at Figure D-1. The average unit value of U.S. shipments of nonsubject imports was higher than the average unit value of U.S. shipments of subject imports during most of the period under examination, with the exception of interim 2008. CR/PR at Table C-2. We recognize that average unit value comparisons may be influenced by product mix issues.

³²² Compare CR at D-3; PR at D-3 with CR/PR at Table V-7.

³²³ No information on the capacity and export orientation of MKP producers in nonsubject countries is available on the record of the preliminary phase of these investigations. See CR at VII-14-16; PR at VII-7-8. We plan to investigate further the role of nonsubject imports in the U.S. market in any final phase of these investigations.

³²⁴ CR/PR at Table IV-8.

³²⁵ Commissioner Pinkert does not join in the remainder of this paragraph.

³²⁶ CR/PR at Table IV-8.

³²⁷ Commissioners Lane, Williamson, and Pinkert do not join this section of the opinion.

*** pounds in 2008.³²⁸ Subject import volume was *** pounds in interim 2009, a level *** percent higher than that in interim 2008, when subject import volume was *** pounds.³²⁹

Subject import shipments in the U.S. market increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and *** pounds in 2008.³³⁰ Subject import shipments were *** percent higher in interim 2009, at *** pounds, than in interim 2008, when they were *** pounds.³³¹

Subject import shipments as a share of apparent U.S. consumption quantity increased from *** percent in 2006 to *** percent in 2007 and to *** percent in 2008, and were *** percent in interim 2009, up from *** percent in interim 2008.³³² The ratio of subject imports to domestic production increased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008, and was *** percent in interim 2009, up from *** percent in interim 2008.³³³

Thus, we find that subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market penetration also was significant. For the following reasons, we also find that this significant rate of increase in the volume and market penetration of subject imports during the period under examination indicates the likelihood of substantially increased imports in the imminent future.

Responding subject producers³³⁴ in China reported a significant increase in their capacity during the period under examination, notwithstanding their generally low rates of capacity utilization, and possessed ample excess capacity at the end of the period with which to continue increasing their exports of MKP to the U.S. market at a significant rate. Responding subject Chinese producers reported that they increased their capacity by *** percent between 2006 and 2008, from *** pounds in 2006 and 2007 to *** pounds in 2008.³³⁵ They reported a capacity of *** pounds in interim 2009, down from *** pounds in interim 2008, and project capacity of *** pounds in full year 2009 and 2010, a level *** percent above that in 2008.³³⁶ They reported a capacity utilization rate of *** percent in 2006, *** percent in 2007 and *** percent in 2008, but a lower capacity utilization rate in interim 2009, at *** percent, than in interim 2008, at *** percent.³³⁷

Due to their generally low rate of capacity utilization and increased capacity in 2008, responding subject Chinese producers reported excess capacity of *** pounds in 2006, equivalent to *** percent of apparent U.S. consumption that year, *** pounds in 2007, equivalent to *** percent of apparent U.S. consumption that year, and *** pounds in 2008, equivalent to *** percent of apparent U.S. consumption that year.³³⁸ They reported excess capacity of *** pounds in interim 2009, equivalent to *** percent of

³²⁸ CR/PR at Table IV-3.

³²⁹ CR/PR at Table IV-3.

³³⁰ CR/PR at Table IV-8.

³³¹ CR/PR at Table IV-8.

³³² CR/PR at Table IV-12.

³³³ CR/PR at Table IV-16.

³³⁴ We note at the outset that coverage of export data reported by Chinese producers compared to official U.S. statistics was *** percent. CR at VII-4; PR at VII-3.

³³⁵ CR/PR at Table VII-4.

³³⁶ CR/PR at Table VII-4.

³³⁷ CR/PR at Table VII-4.

³³⁸ CR/PR at Tables IV-8, VII-4.

apparent U.S. consumption during the period, up from excess capacity of *** pounds in interim 2008, equivalent to *** percent of apparent U.S. consumption.³³⁹ Responding Chinese producers project that the magnitude of their excess capacity will increase further in the imminent future to *** pounds in full year 2009 and *** pounds in 2010, as their rate of capacity utilization declines to *** percent in full year 2009 and *** percent in 2010.³⁴⁰ Chinese producers demonstrated the ability to use their excess capacity to increase exports to the United States rapidly between the first and second halves of 2008, when subject imports increased from *** pounds to *** pounds, or by *** percent.³⁴¹

Subject Chinese MKP producers not only possess the ability to increase exports to the United States significantly in the imminent future, but also the incentive to do so given their low rate of capacity utilization, as well as their dependence on exports during the period under examination and their tendency to direct increasing percentages of these exports to the United States.³⁴² Responding Chinese producers reported that their exports to all markets as a share of production was *** percent in 2006, *** percent in 2007, and *** percent in 2008, and was *** percent in interim 2008 and *** percent in interim 2009.³⁴³ Their exports to all markets as a share of production is projected to remain at high levels -- *** percent in full year 2009 and *** percent in 2010.³⁴⁴

Responding Chinese producers also reportedly increased their export orientation towards the United States during the period under examination, with the share of their production exported to the United States increasing from *** percent in 2006 to *** percent in 2008.³⁴⁵ The share of their production exported to the United States in interim 2009 was *** percent, up from *** percent in interim 2008, and is projected to be *** percent in full year 2009 and *** percent in 2010, a level well above that in 2006 and 2007.³⁴⁶

Consequently, we conclude that the volume of subject imports, which was significant during the period under examination, is likely to increase substantially in the imminent future.

³³⁹ CR/PR at Tables IV-8, VII-4.

³⁴⁰ CR/PR at Table VII-4.

³⁴¹ CR/PR at Table IV-3.

³⁴² We note that there is little evidence on the record of the preliminary phase of these investigations that responding Chinese producers could shift from the production of other products to the production of MKP, given that only one responding Chinese producer reported producing other products on the same equipment used to produce subject phosphate salts. CR at VII-4; PR at VII-3. There also is little evidence on the record concerning the likely effects of subject imports on domestic industry development and production efforts. We intend to investigate these issues further in any final phase of these investigations. We also note that there are no dumping findings or antidumping remedies on subject MKP in third-country markets. CR at VII-13-14; PR at VII-7. While we have considered the nature of the subsidies, we do not find this factor conclusive for our analysis. See CR at I-6-7; PR at I-4-5.

³⁴³ CR/PR at Table VII-4.

³⁴⁴ CR/PR at Table VII-4.

³⁴⁵ CR/PR at Table VII-4.

³⁴⁶ CR/PR at Table VII-4.

b. Likely Price Effects of the Subject Imports

As noted above, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product.³⁴⁷

The Commission collected quarterly pricing data on one MKP product, product 2, which accounted for *** percent of domestic producers' U.S. shipments of MKP and *** percent of U.S. imports of MKP from January 2006 to June 2009.³⁴⁸ Pricing data were reported by one domestic producer and 12 importers.³⁴⁹ These data indicate that subject imports undersold the domestic like product throughout the period under examination, at extremely high margins.

Overall, subject imports undersold the domestic like product in all 14 quarterly comparisons at margins ranging from 36.2 percent to 72.6 percent and averaging *** percent.³⁵⁰ Given the frequency of underselling and the wide margins at which underselling occurred, we find subject import underselling to be significant.³⁵¹

Although we find no evidence of price depression, as the price of domestic producer shipments of product 2 increased from \$*** per pound in the first quarter of 2006 to \$*** per pound in the second quarter of 2009, we do find some evidence of price suppression.³⁵² The cost of potassium hydroxide, however, a major raw material input in the production of MKP, increased significantly in 2008 and 2009.³⁵³ Because domestic producers were unable to increase their prices sufficiently to cover the increased cost of raw materials, the domestic industry's ratio of cost of goods sold to net sales increased between 2006 and 2008, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008.³⁵⁴ This ratio was *** percent in interim 2009, which was down from *** percent in interim 2008 but still *** percentage points higher than that in 2006.³⁵⁵

We further find that subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports, in the imminent future. As detailed above, MKP produced in China and the United States is highly substitutable. Accordingly, the frequency and large magnitude of subject import underselling during the period under examination, coupled with the likelihood of significantly increased subject import volume, makes it likely that subject imports will depress or suppress domestic prices in the imminent future. We find further support for this finding from the fact that the increase in the price of potassium hydroxide that

³⁴⁷ In any final phase of the investigations, we intend to further explore the extent to which subject imports and the domestic like product serve the same applications in the U.S. market.

³⁴⁸ CR at V-6-7; PR at V-3-4.

³⁴⁹ CR at V-6; PR at V-4.

³⁵⁰ CR/PR at Table V-7.

³⁵¹ Although there were no confirmed lost sales or revenue allegations, one purchaser reported that it had *** CR at V-21; PR at V-12.

³⁵² CR/PR at Table V-2.

³⁵³ CR at V-1; PR at V-1; CR/PR at Figure V-1. Due in part to the increasing cost of potassium hydroxide, raw material costs as a share of the domestic industry's cost of goods sold increased from *** percent over the 2006-2008 period to *** percent in the first half of 2009. CR at V-1; PR at V-1.

³⁵⁴ CR/PR at Table VI-2.

³⁵⁵ CR/PR at Table VI-2.

began in 2007 continued through the end of the period examined, indicating a likelihood that the price of potassium hydroxide will remain high in the imminent future.³⁵⁶

Thus, we conclude that subject import underselling will likely continue, creating further demand for subject imports in the U.S. market and likely depressing and suppressing domestic prices to a significant degree.

c. Likely Impact of the Subject Imports on the Domestic Industry³⁵⁷

The domestic industry suffered a significant decline in operating income between 2006 and 2008, and, according to most measures, its performance deteriorated markedly in interim 2009 as compared to interim 2008. The domestic industry's capacity increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and *** pounds in 2008, but was *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.³⁵⁸ Its production increased by *** percent between 2006 and 2007, from *** pounds to *** pounds, but declined to *** pounds in 2008, a level still *** percent higher than that in 2006.³⁵⁹ This downward trend in domestic industry production *** between the interim periods, with domestic industry production *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.³⁶⁰

The domestic industry's rate of capacity utilization reflects these trends, increasing from *** percent in 2006 to *** percent in 2007, but declining to *** percent in 2008, due to the *** percent increase in domestic industry capacity but also to the *** percent decline in domestic industry production during the period.³⁶¹ The domestic industry's rate of capacity utilization was only *** percent in interim 2009, down from *** percent in interim 2008, due to the fact that domestic industry production was *** percent lower in interim 2009 as compared to interim 2008.³⁶²

Domestic industry employment and hours worked increased between 2006 and 2008, but were significantly lower in interim 2009 than in interim 2008. Domestic industry employment increased from *** PRWs in 2006 to *** PRWs in 2007 and *** PRWs in 2008, but was *** PRWs in interim 2009, down from *** PRWs in interim 2008.³⁶³ Hours worked increased from *** hours in 2006 to *** hours in 2007 and *** hours in 2008, but were *** hours in interim 2009, down from *** hours in interim 2008.³⁶⁴ The domestic industry's productivity in pounds produced per hour increased from *** in 2006 to *** in 2007 but declined to *** in 2008, and was *** in interim 2009, down from *** in interim 2008.³⁶⁵

³⁵⁶ See CR/PR at Figure V-1; Table VI-1.

³⁵⁷ Commerce initiated an antidumping duty investigation on certain phosphate salts based on estimated dumping margins ranging from 33.7 percent to 177.4 percent. 74 Fed. Reg. at 54026.

³⁵⁸ CR/PR at Table III-3.

³⁵⁹ CR/PR at Table III-3.

³⁶⁰ CR/PR at Table III-3.

³⁶¹ CR/PR at Table III-3.

³⁶² CR/PR at Table III-3.

³⁶³ CR/PR at Table III-19.

³⁶⁴ CR/PR at Table III-19.

³⁶⁵ CR/PR at Table III-19.

The domestic industry's net sales volume increased from *** in 2006 to *** pounds in 2007 and *** pounds in 2008, a level *** percent higher than that in 2006.³⁶⁶ Its net sales volume declined significantly between the interim periods, however, and was *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.³⁶⁷

The domestic industry's U.S. shipments followed a similar trend, increasing from *** pounds in 2006 to *** pounds in 2007 and *** pounds in 2008, a level *** percent higher than that in 2006.³⁶⁸ Its U.S. shipments were *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.³⁶⁹ The domestic industry's share of apparent U.S. consumption increased from *** percent in 2006 to *** percent in 2007, but declined to *** percent in 2008, a level still *** higher than that in 2006.³⁷⁰ It was only *** percent in interim 2009, however, down *** from *** percent in interim 2008.³⁷¹

The average unit value of domestic industry shipments increased, as domestic producers were able to pass at least a portion of their higher costs on to purchasers. The domestic industry's net sales revenues increased at a greater rate than its net sales volume between 2006 and 2008, and were higher in interim 2009 than in interim 2008 notwithstanding that sales volumes were lower. The domestic industry's net sales value increased by *** percent between 2006 and 2008, from \$*** in 2006 to \$*** in 2007 and \$*** in 2008.³⁷² The domestic industry's net sales value was *** percent lower in interim 2009, at \$***, than in interim 2008, at \$***.³⁷³ The domestic industry's operating income declined from \$*** in 2006, or *** percent of net sales, to \$*** in 2007, or *** percent of net sales, but increased to \$*** in 2008, or *** percent of net sales.³⁷⁴ Its operating income was \$***, or *** percent of net sales, in interim 2009, up from \$***, or *** percent of net sales, in interim 2008.³⁷⁵

The domestic industry's capital expenditures increased from \$*** in 2006 to \$*** in 2007, but declined to \$*** in 2008, a level *** percent lower than that in 2006.³⁷⁶ Capital expenditures were *** percent lower in interim 2009, at \$***, than in interim 2008, when they were \$***. The domestic industry's research and development expenditures increased *** percent between 2006 and 2008, from \$*** to \$***, but were *** percent lower in interim 2009, at \$***, than in interim 2008, at \$***.³⁷⁷

We do not find the domestic industry to be vulnerable to material injury based on the domestic industry performance data available on the record of the preliminary phase of these investigations. The domestic industry experienced a significantly higher operating income margin in the first half of 2009 than in the first half of 2008, and employment was higher in interim 2009 than it had been in 2006. We note, however, that the significant deterioration in several key indices of domestic industry performance

³⁶⁶ CR/PR at Table VI-2.

³⁶⁷ CR/PR at Table VI-2.

³⁶⁸ CR/PR at Table IV-8.

³⁶⁹ CR/PR at Table IV-8.

³⁷⁰ CR/PR at Table IV-12.

³⁷¹ CR/PR at Table IV-12.

³⁷² CR/PR at Table VI-2.

³⁷³ CR/PR at Table VI-2.

³⁷⁴ CR/PR at Table VI-2.

³⁷⁵ CR/PR at Table VI-2.

³⁷⁶ CR/PR at Table VI-9.

³⁷⁷ CR/PR at Table VI-9.

between the interim periods, including capacity, production, capacity utilization, employment, hours worked, net sales quantity, and U.S. shipments, resulted directly from the significant increase in subject import market share at the domestic industry's expense.

We find a reasonable indication that the domestic industry is threatened with imminent material injury by reason of subject imports. The record of these preliminary phase investigations indicates that current adverse trends observed during the latter portion of the period under examination will likely continue. During the period under examination, subject import volume increased significantly in absolute terms and relative to apparent U.S. consumption and domestic production, capturing *** percentage points of market share from the domestic industry between the interim periods even after resolution of the phosphoric acid and potassium hydroxide supply shortages that had constrained domestic MKP production in 2008.³⁷⁸ Subject import underselling was pervasive, and there was some evidence of price suppression. In the imminent future, the subject foreign producers' substantial excess capacity and export orientation make it likely that subject import volume and market share will continue to increase at a significant rate. The frequency and magnitude of subject import underselling, coupled with the high degree of substitutability of subject imports and the domestic like product and the importance of price to purchasers, make it likely that significant subject import underselling will continue, increasing demand for subject imports and depressing or suppressing domestic prices. Although we do not find the domestic industry vulnerable to material injury, we do find that the likely increase in subject import volume, coupled with their likely adverse price effects, would likely worsen the domestic industry's already precarious condition, inflicting material injury on the domestic industry in the imminent future.

We have considered the extent to which any threat of imminent material injury to the domestic industry is attributable to nonsubject imports. We are mindful that nonsubject imports maintained a significant presence in the U.S. market throughout the period under examination, satisfying between *** percent and *** percent of apparent U.S. consumption during the period.³⁷⁹ Moreover, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product, on the one hand, and nonsubject imports, on the other.³⁸⁰ Nonetheless, nonsubject imports lost market share to subject imports throughout the period under examination, and therefore could not have adversely affected domestic industry market share.³⁸¹ When the domestic industry lost *** percentage points of market share to subject imports in interim 2009 as compared to interim 2008, nonsubject imports lost *** percentage points of market share to subject imports.³⁸²

In addition, nonsubject imports were generally priced higher than subject imports and did not undersell the domestic like product to the same extent. Nonsubject imports were priced higher than subject imports in 59 of 65 possible comparisons, or 90.8 percent of the time.³⁸³ Nonsubject imports were

³⁷⁸ See section IV.B.2., supra.

³⁷⁹ See CR/PR at Table IV-12. U.S. shipments of nonsubject imports increased from *** pounds in 2006, or *** percent of apparent U.S. consumption, to *** pounds in 2007, or *** percent of apparent U.S. consumption, but declined to *** pounds in 2008, or *** percent of apparent U.S. consumption, a level still *** percent above that in 2006. CR/PR at Tables IV-8, 12. U.S. shipments of nonsubject imports were *** pounds in interim 2009, or *** percent of apparent U.S. consumption, down from *** pounds in interim 2008, or *** percent of apparent U.S. consumption. Id.

³⁸⁰ See CR at II-25; PR at II-15; CR/PR at Tables II-7, 8.

³⁸¹ See CR/PR at Table IV-12.

³⁸² CR/PR at Table IV-12.

³⁸³ See CR at D-3; PR at D-3; CR/PR at Figure D-1. The average unit value of U.S. shipments of nonsubject imports was higher than the average unit value of U.S. shipments of subject imports throughout most of the period under examination, with the exception of interim 2008. CR/PR at Table C-1. We recognize that average unit value comparisons may be influenced by product mix issues.

priced lower than the domestic like product in only 21 of 65 comparisons, or 32.3 percent of the time, whereas subject imports undersold the domestic like product in all 14 of 14 comparisons.³⁸⁴ Thus, any threat of material injury we have found from subject imports cannot be attributed to nonsubject imports.³⁸⁵

In sum, the record indicates that there is a causal nexus between subject imports and the threat of material injury to the domestic industry. We find that the likely significant increase in subject import volume and market share, and their likely significant adverse price effects, will imminently cause material injury to the domestic industry. Accordingly, based on the record in the preliminary phase of these investigations, we conclude that there is a reasonable indication that the domestic industry producing MKP is threatened with material injury by reason of subject imports from China.

F. Tetrapotassium Pyrophosphate (“TKPP”)

1. Reasonable Indication of Threat of Material Injury By Reason of Subject Imports³⁸⁶

a. Likely Volume of Subject Imports

Subject import volume increased significantly during the period examined in absolute terms and as a share of apparent U.S. consumption. Subject import volume increased by *** between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008.³⁸⁷ Subject import volume was *** in interim 2009, a level *** percent lower than that in interim 2008, when subject import volume was *** pounds.^{388 389}

Subject import shipments as a share of the volume of apparent U.S. consumption increased from *** percent in 2006 to *** percent in 2007, to *** percent in 2008, and were *** percent in interim 2008 and *** percent in interim 2009.³⁹⁰ The gains in subject import market share from 2006 to 2008 and

³⁸⁴ Compare CR/PR at D-3 with CR/PR at Table V-7.

³⁸⁵ Little information on the capacity and export orientation of MKP producers in nonsubject countries is available on the record of the preliminary phase of these investigations. See CR at VII-14-16; PR at VII-7-8. We plan to investigate further the role of nonsubject imports in the U.S. market in any final phase of these investigations. Further, we note that demand trends could not account for any threat of material injury to the domestic industry because apparent U.S. consumption of MKP increased *** percent between 2006 and 2008. CR/PR at Table IV-8. While apparent U.S. consumption was *** percent lower in interim 2009 as compared to interim 2008, the reductions in domestic industry production, shipments, and employment between the interim periods were far greater. *Id.* MKP demand is expected to grow modestly in the imminent future with respect to applications such as paints and coatings, food and beverages, and fertilizers, as discussed in section IV.B.1. above. See also CR at II-22; PR at II-12-13.

³⁸⁶ Commissioner Lane does not join this section of the opinion. See her separate views.

³⁸⁷ CR/PR at Table IV-5.

³⁸⁸ CR/PR at Table IV-5.

³⁸⁹ Subject import shipments in the U.S. market increased *** percent between 2006 and 2007, from *** pounds to *** pounds, but *** at *** pounds between 2007 and 2008. Subject import shipments were *** percent lower in January-June 2009, at *** pounds, than in January-June 2008, when they were *** pounds. CR/PR at Table IV-10.

³⁹⁰ CR/PR at Table IV-14.

between the interim periods came entirely at the expense of the domestic industry, which also lost market share to nonsubject imports.³⁹¹

Based on the preceding analysis, we find that subject import volume is significant, both in absolute terms and relative to consumption in the United States, and that the increase in subject import volume and market penetration was also significant. As explained below, we also find that this significant rate of increase in the volume and market penetration of subject imports during the period examined indicates a likelihood of substantially increased imports in the imminent future.

Reporting subject foreign producers in China operated at a low, albeit increasing, rate of capacity utilization during the period examined, resulting in significant excess capacity, and possessed ample excess capacity at the end of the period with which to continue increasing their exports of TKPP to the U.S. market at a significant rate.³⁹² These producers' rate of capacity utilization rose from *** percent in 2006 to *** percent in 2008, and was higher in January-June 2009, at *** percent, than in January-June 2008, at *** percent.³⁹³

Due to their persistently low rates of capacity utilization, responding subject Chinese producers reported excess capacity of *** pounds in 2006, equivalent to *** percent of apparent U.S. consumption that year, *** pounds in 2007, equivalent to *** percent of apparent U.S. consumption that year, and *** pounds in 2008, equivalent to *** percent of apparent U.S. consumption that year.³⁹⁴ They reported excess capacity of *** pounds in January-June 2009, equivalent to *** percent of apparent U.S. consumption during the period, down from excess capacity of *** pounds in January-June 2008, which was equivalent to *** percent of apparent U.S. consumption.³⁹⁵ Responding Chinese producers project that the magnitude of their excess capacity will remain at similarly high levels in the imminent future, at *** pounds in full years 2009 and 2010, as their rate of capacity utilization remains a low *** percent in full year 2009 and *** percent in 2010.³⁹⁶

Subject foreign producers in China have the capability to increase their exports to the United States in the imminent future by drawing from substantial end-of-period inventories held in the United States and in China.³⁹⁷ Subject import inventories in the United States were substantial relative to preceding-period shipments of imports throughout the period examined, and were *** pounds by the end of June 2009, equivalent to *** percent of U.S. shipments of subject imports during the January-June

³⁹¹ CR/PR at Table IV-5.

³⁹² Coverage of export data reported by Chinese producers relative to import data was only *** percent. CR at VII-4, PR at VII-3. With such low coverage, we are mindful that the probative value of the data is limited. In any final phase investigations, we intend to seek more complete coverage of export data from subject Chinese producers.

³⁹³ CR/PR at Table VII-6.

³⁹⁴ CR/PR at Tables IV-10 & VII-6.

³⁹⁵ CR/PR at Tables IV-10 & VII-6.

³⁹⁶ CR/PR at Table VII-6.

³⁹⁷ We note that there is little evidence on the record of the preliminary phase of these investigations that responding Chinese producers could shift from the production of other products to the production of TKPP, given that only one responding Chinese producer reported producing other products on the same equipment used to produce subject phosphate salts. CR/PR at Table VII-6. There also is little evidence on the record concerning the likely effects of subject imports on domestic industry development and production efforts. We intend to investigate these issues further in any final phase of these investigations. We also note that there are no dumping findings or antidumping remedies on subject TKPP in third-country markets. CR at VII-13-14, PR at VII-7. While we have considered the nature of the subsidies, we do not find this factor conclusive for our analysis. CR at I-6 to I-7, PR at I-4 to I-5.

period.³⁹⁸ The end-of-period inventories held by responding Chinese producers rose appreciably during the latter part of the period, and were *** pounds in interim 2009, which was *** greater than the responding producers' U.S. exports for the period.³⁹⁹

Subject Chinese TKPP producers not only possess the ability to increase exports to the United States significantly in the imminent future, but also the incentive to do so given their low rate of capacity utilization as well as their dependence on exports. Responding Chinese producers reported that exports to all markets as a share of total shipments was *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in January-June 2008, and *** percent in January-June 2009.⁴⁰⁰ This ratio is projected to remain a relatively high *** percent in full year 2009 and *** percent in 2010.⁴⁰¹ The responding producers directed a much higher proportion of shipments to the United States in interim 2009 than interim 2008.⁴⁰²

Consequently, we conclude that the volume of subject imports, which was significant during the period examined, is likely to increase substantially in the imminent future.

b. Likely Price Effects of the Subject Imports

As noted above, the record indicates that there is a high degree of interchangeability between subject imports and the domestic like product.

The Commission collected quarterly pricing data on two TKPP products, product 5 (food-grade TKPP), and product 6 (technical-grade TKPP) which collectively accounted for *** percent of domestic producers' U.S. shipments of TKPP and *** percent of U.S. imports of TKPP from January 2006 to June 2009.⁴⁰³ Pricing data were reported by three domestic producers and 13 importers.⁴⁰⁴ These data indicate that subject imports generally undersold the domestic like product throughout the period examined.

Collectively, for pricing products 5 and 6, subject imports undersold the domestic like product in 10 of 16 quarterly comparisons, or 62.5 percent of the time.⁴⁰⁵ With respect to product 5 (food-grade TKPP), subject imports undersold the domestic like product in 1 of 2 quarterly price comparisons at an underselling margin of *** percent.⁴⁰⁶ With respect to product 6 (technical-grade TKPP), the product with the *** greater quantity of shipments, subject imports undersold the domestic like product in 9 of 14 comparisons, with margins ranging from 0.6 percent to 14.1 percent and averaging *** percent.⁴⁰⁷ Given the frequency of underselling, we find subject import underselling to be significant.⁴⁰⁸

³⁹⁸ CR/PR at Table VII-6.

³⁹⁹ CR/PR at Table VII-6.

⁴⁰⁰ CR/PR at Table VII-3.

⁴⁰¹ CR/PR at Table VII-6.

⁴⁰² CR/PR at Table VII-6.

⁴⁰³ CR at V-6 to V-7, PR at V-3 to V-4.

⁴⁰⁴ CR at V-6, PR at V-4.

⁴⁰⁵ CR/PR at Table V-7.

⁴⁰⁶ CR/PR at Table V-7.

⁴⁰⁷ CR/PR at Table V-7.

⁴⁰⁸ With respect to domestic TKPP producers, there were *** confirmed lost sales allegations and there was just *** confirmed lost revenue allegation, totaling \$***. CR at V-29, PR at V-12.

We find no evidence of price depression, as the price of domestic producer shipments of product 5 increased from \$*** per pound in the first quarter of 2006 to \$*** per pound in the second quarter of 2009, and as the price of domestic producer shipments of product 6 increased from \$*** per pound in the first quarter of 2006 to \$*** per pound in the second quarter of 2009.⁴⁰⁹ Nevertheless, we do find some evidence of price suppression.⁴¹⁰ The cost of potassium hydroxide, a major raw material input in the production of TKPP, increased significantly in 2008 and 2009.⁴¹¹ Because domestic producers were unable to increase their prices sufficiently to cover the increased cost of raw materials, the domestic industry's ratio of cost of goods sold to net sales was *** percent in January-June 2009, up from *** percent in January-June 2008.⁴¹²

We further find that subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports, in the imminent future. As detailed above, TKPP produced in China and the United States is highly substitutable. Accordingly, the frequency of subject import underselling during the period examined, coupled with the likelihood of significantly increased subject import volume, makes it likely that subject imports will depress or suppress domestic prices in the imminent future. We find further support for this finding in evidence that the price of potassium hydroxide and the domestic industry's ratio of cost of goods sold to net sales both reached their highest level of the period examined in the first half of 2009.⁴¹³

Thus, we conclude that subject import underselling will likely continue, creating further demand for subject imports in the U.S. market and likely depressing or suppressing domestic prices to a significant degree.

c. Likely Impact of the Subject Imports on the Domestic Industry⁴¹⁴

The domestic industry performed poorly according to several measures between 2006 and 2008, although it performed well by other measures. The industry's performance deteriorated markedly in interim 2009 as compared to interim 2008.

The domestic industry's capacity decreased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2008, and was *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.⁴¹⁵ The domestic industry's production declined *** percent between 2006 and 2008, falling from *** pounds in 2006 to *** pounds in 2008.⁴¹⁶ The downward trend in domestic

⁴⁰⁹ CR/PR at Tables V-5 & V-6.

⁴¹⁰ CR/PR at Tables V-5 & V-6.

⁴¹¹ CR at VI-11, PR at VI-3; CR/PR at Figure V-1. Due in part to the increasing cost of potassium hydroxide, raw material costs as a share of the domestic industry's cost of goods sold increased from *** percent over the 2006-2008 period to *** percent in the first half of 2009. CR/PR at V-1.

⁴¹² CR/PR at Table VI-4. The industry's ratio of COGS to net sales increased from *** percent in 2006 to *** percent in 2007, but then dropped to *** percent in 2008. CR/PR at Table VI-4.

⁴¹³ See CR/PR at Figure V-1, Table VI-1.

⁴¹⁴ Commerce initiated an antidumping duty investigation on certain phosphate salts based on estimated dumping margins ranging from 33.7 percent to 177.4 percent. 74 Fed. Reg. at 54026.

⁴¹⁵ CR/PR at Table III-5.

⁴¹⁶ CR/PR at Table III-5.

industry production *** between the interim periods, with domestic industry production *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.⁴¹⁷

The domestic industry's declining rate of capacity utilization reflects similar trends. Although the domestic industry's capacity utilization increased, ***, between 2006 and 2008,⁴¹⁸ the domestic industry's capacity utilization was *** percent lower in interim 2009 than in interim 2008.⁴¹⁹ The domestic industry's capacity utilization was only *** percent in interim 2009, down from *** percent in interim 2008, due largely to the fact that production was *** lower in interim 2009 as compared to interim 2008.⁴²⁰

The domestic industry's net sales volume increased from *** pounds in 2006 to *** pounds in 2007, but declined to *** pounds in 2008, a level *** percent lower than that in 2006.⁴²¹ Its net sales volume was *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.⁴²²

The domestic industry's U.S. shipments followed a similar trend, increasing from *** pounds in 2006 to *** pounds in 2007 before declining to *** pounds in 2008, a level *** percent lower than that in 2006.⁴²³ The domestic industry's U.S. shipments were *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.⁴²⁴ The domestic industry's share of apparent U.S. consumption declined throughout the period examined, falling from *** percent in 2006 to *** percent in 2007 to *** percent in 2008.⁴²⁵ It was *** percent in interim 2009, down from *** percent in interim 2008.⁴²⁶

Domestic industry employment and hours worked decreased irregularly during the period examined. Domestic industry employment increased from *** production and related workers ("PRWs") in 2006 to *** PRWs in 2007, and dropped to *** PRWs in 2008, and was *** PRWs in interim 2009, down from *** PRWs in interim 2008.⁴²⁷ Hours worked decreased irregularly during the period, increasing from *** hours in 2006 to *** hours in 2007, and dropping to *** hours in 2008, and were *** hours in interim 2009, down from *** hours in interim 2008.⁴²⁸ Although the domestic industry's productivity in pounds produced per hour increased *** from 2006 until 2008, it was *** pounds per hour in interim 2009, down from *** pounds per hour in interim 2008.⁴²⁹

The average unit value of domestic industry shipments increased, as domestic producers were able to pass at least a portion of their higher costs on to purchasers. The domestic industry's net sales

⁴¹⁷ CR/PR at Table III-5.

⁴¹⁸ The domestic industry's capacity utilization fell from *** percent in 2006 to *** percent in 2007, and increased to *** percent in 2008. CR/PR at Table III-5.

⁴¹⁹ CR/PR at Table III-5.

⁴²⁰ CR/PR at Table III-5.

⁴²¹ CR/PR at Table VI-4.

⁴²² CR/PR at Table VI-4.

⁴²³ CR/PR at Table IV-10.

⁴²⁴ CR/PR at Table IV-10.

⁴²⁵ CR/PR at Table IV-14.

⁴²⁶ CR/PR at Table IV-14.

⁴²⁷ CR/PR at Table III-21.

⁴²⁸ CR/PR at Table III-21.

⁴²⁹ CR/PR at Table III-21.

revenues increased even as its net sales volume declined between 2006 and 2008, and sales revenues declined at a smaller rate than sales volumes between the interim periods. The domestic industry's net sales value increased *** percent between 2006 and 2008, from \$*** in 2006 to \$*** in 2007 and \$*** in 2008.⁴³⁰ The domestic industry's net sales value was *** percent lower in interim 2009, at \$***, than in interim 2008, at \$***.⁴³¹ The domestic industry's operating income declined from \$*** in 2006, or *** percent of net sales, to \$*** in 2007, or *** percent of net sales, but increased to \$*** in 2008, or *** percent of net sales.⁴³² Its operating income was \$*** in interim 2009, or *** percent of net sales, down from \$*** in interim 2008, or *** percent of net sales.⁴³³

The domestic industry's capital expenditures increased from \$*** in 2006 to \$*** in 2007, but declined to \$*** in 2008, a level *** percent lower than that in 2006.⁴³⁴ They were *** percent higher in January-June 2009, at \$***, as compared to January-June 2008, at \$***.⁴³⁵ The domestic industry's research and development expenditures increased between 2006 and 2008, from \$*** to \$***, but were *** percent lower in January-June 2009, at \$*** than in January-June 2008, at \$***.⁴³⁶

We find a reasonable indication that the domestic industry is threatened with imminent material injury by reason of subject imports. The record in the preliminary phase of these investigations indicates that current adverse trends will likely continue. During the period examined, subject import volume increased significantly in absolute terms and relative to apparent U.S. consumption and domestic production. Subject import underselling was pervasive, and there was some evidence of price suppression. In light of the domestic industry's declines in performance, and poor operating performance in interim 2009, we find the domestic industry to be in a vulnerable condition.

The available data concerning subject foreign producers' substantial excess capacity and export orientation supports a conclusion that subject import volume and market share will likely continue to increase at a significant rate in the imminent future. The frequency of subject import underselling, coupled with the high degree of substitutability of subject imports and the domestic like product and the importance of price to purchasers, make it likely that significant subject import underselling will continue, increasing demand for subject imports and depressing or suppressing domestic prices. We find that the likely increase in subject import volume, coupled with their likely adverse price effects, would likely worsen the domestic industry's *** condition, inflicting material injury on the domestic industry in the imminent future.

We have considered the role of nonsubject imports in the U.S. market and considered the extent to which any threat of imminent material injury to the domestic industry is attributable to nonsubject imports. As an initial matter, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product, on the one hand, and nonsubject imports, on the other.⁴³⁷ Nonsubject imports maintained a presence in the U.S. market throughout the period examined, but

⁴³⁰ CR/PR at Table VI-4.

⁴³¹ CR/PR at Table VI-4.

⁴³² CR/PR at Table VI-4.

⁴³³ CR/PR at Table VI-4.

⁴³⁴ CR/PR at Table VI-9.

⁴³⁵ CR/PR at Table VI-9.

⁴³⁶ CR/PR at Table VI-9.

⁴³⁷ CR at II-25, PR at II-15; CR/PR at Tables II-7 & II-8.

satisfied a much smaller share of apparent U.S. consumption than the domestic like product or subject imports, ranging from *** percent to *** percent of apparent U.S. consumption during the period.⁴³⁸

Moreover, subject imports captured significantly more market share from the domestic industry than nonsubject imports. Between 2006 and 2008, subject imports captured *** percentage points of market share from the domestic industry, whereas nonsubject imports captured only *** percentage points.⁴³⁹ Of the *** percentage point reduction in domestic industry market share in interim 2009 as compared to interim 2008, subject imports captured *** percentage points and nonsubject imports only *** percentage points.⁴⁴⁰

Moreover, nonsubject imports were generally priced higher than subject imports and did not undersell the domestic like product to the same extent. Nonsubject imports were priced higher than subject imports in 28 of 34 possible comparisons, or 82.4 percent of the time.⁴⁴¹ Nonsubject imports were priced lower than the domestic like product in 30 of 54 comparisons, or 55.6 percent of the time, whereas subject imports undersold the domestic like product in 10 of 16 comparisons, or 62.5 percent of the time.⁴⁴² Thus, any threat of material injury we have found from subject imports cannot be attributed to nonsubject imports.⁴⁴³

We considered the effects of the raw material shortages in 2008 on domestic TKPP producers and conclude that we cannot attribute poor industry performance to this factor. Although the domestic industry's production, shipments, and sales quantities did decline in 2008, its profitability increased that year. We observe that the declines in output and shipments accelerated in interim 2009 after the raw material shortages were resolved.

Finally, we observe that the fact that apparent U.S. consumption for TKPP was substantially lower in interim 2009 than interim 2008 cannot fully explain the poor domestic industry performance during that period. The reductions in the domestic industry's production, shipments, and sales quantities from interim 2008 to interim 2009 were all greater than the reduction in apparent consumption.⁴⁴⁴

In sum, the record indicates that there is a causal nexus between subject imports and the threat of material injury to the domestic industry. We conclude that the likely significant increase in subject import volume and market share, and the likely significant adverse price effects resulting therefrom, will imminently cause material injury to the domestic industry. Accordingly, based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that the domestic industry producing TKPP is threatened with material injury by reason of subject imports from China.

⁴³⁸ CR/PR at Table IV-14.

⁴³⁹ CR/PR at Table IV-14.

⁴⁴⁰ CR/PR at Table IV-14.

⁴⁴¹ CR/PR at D-3.

⁴⁴² Compare CR/PR at D-3 with CR/PR at Table V-7.

⁴⁴³ No information on the capacity and export orientation of TKPP producers in nonsubject countries is available on the record of the preliminary phase of this investigation. CR at VII-14 to VII-16, PR at VII-7 to VII-8. We plan to investigate further the role of nonsubject imports in the U.S. market in any final phase of this investigation.

⁴⁴⁴ CR/PR at Table C-4. We will seek to obtain further information in any final phase investigations about the reasons for the apparent recent declines in U.S. demand for TKPP.

V. CONCLUSION

For the above reasons, based on the record in the preliminary phase of these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of STPP from China that are allegedly sold at less than fair value and subsidized by the Government of China. We also find that 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 MKP from China that are allegedly sold at less than fair value and subsidized by the Government of China.⁴⁴⁵ We also find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of DKP and TKPP from China that are allegedly sold at less than fair value and subsidized by the Government of China.⁴⁴⁶

⁴⁴⁵ Commissioners Lane, Williamson, and Pinkert find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of MKP from China that are allegedly sold at less than fair value, and Chairman Aranoff, Vice Chairman Pearson, and Commissioner Okun find that there is a reasonable indication that in industry in the United States is threatened with material injury by reason of subject imports of MKP from China that are allegedly subsidized and sold at less than fair value.

⁴⁴⁶ Commissioner Lane finds that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of TKPP that are allegedly subsidized and sold at less than fair value. See her separate views.

**SEPARATE VIEWS OF COMMISSIONER CHARLOTTE R. LANE
REGARDING TKPP**

I concur with my colleagues with respect to the applicable conditions of competition pertaining to the analysis as to whether there is a reasonable indication of material injury or threat of material injury by reason of subject imports of Tetrapotassium Pyrophosphate (“TKPP”). However, while my colleagues find a reasonable indication of threat of material injury, I find that the record supports a finding that there is a reasonable indication of material injury by reason of subject imports of TKPP from China.

1. Volume of Subject Imports

Subject import volume increased significantly during the full-year period of investigation in absolute terms and as a share of both apparent U.S. consumption and domestic production. Subject import volume increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and to *** pounds in 2008. Subject import volume was *** pounds in interim 2008 and *** pounds in interim 2009.¹

Subject import shipments in the U.S. market followed the same trend. These shipments increased by *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007 and remained steady at *** pounds in 2008. Subject import shipments were *** pounds in interim 2008 and *** pounds in interim 2009.²

While apparent U.S. consumption declined between 2006 and 2008, and into 2009,³ subject import shipments as a share of apparent U.S. consumption, measured by quantity, increased significantly. Specifically, the market shares of TKPP from China rose from *** percent in 2006 to *** percent in 2007, and then to *** percent in 2008. They were *** percent in interim 2008 and *** percent in interim 2009.⁴ The ratio of subject imports to domestic production also increased significantly over the entire period: from *** percent in 2006 to *** percent in 2007, then to *** percent in 2008, and was *** percent in interim 2008 and *** percent in interim 2009.⁵

Based on the preceding analysis, I find that subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market penetration also was significant.

2. Price Effects of the Subject Imports

The record indicates that there is a high degree of substitutability between subject imports and the domestic like product and also that price is a significant factor in purchasing decisions.⁶

The Commission collected quarterly pricing data on two TKPP products (pricing products 5 and 6), *** percent of domestic producers’ U.S. shipments of TKPP and *** percent of U.S. subject imports

¹ CR/PR at Table IV-5.

² CR/PR at Table IV-10.

³ Apparent U.S. consumption, measured by quantity, rose from *** pounds in 2006 to *** pounds in 2007, then fell to *** pounds in 2008. It was *** pounds in interim 2008 and *** pounds in interim 2009. CR/PR at Table IV-10.

⁴ CR/PR at Table IV-14.

⁵ CR/PR at Table IV-18.

⁶ See CR/PR at Table II-7; Tr. at 52-53.

of TKPP from January 2006 to June 2009.⁷ Pricing data were reported by three domestic producers and 13 importers.⁸ Although the data for pricing product 5 are sparse, the data for both products indicate that subject imports undersold the domestic like product throughout the period of investigation. Overall, subject imports undersold the domestic like product in 10 of 16 quarterly comparisons, with margins ranging from 0.6 percent to 14.1 percent.⁹ I find this underselling to be significant.

Given that the U.S. producers' prices for both TKPP products increased over the period of investigation, I find no evidence of price depression.¹⁰ However, I do find that the record contains some evidence of price suppression. The costs of phosphoric acid and potassium hydroxide, major raw material inputs in the production of TKPP, increased significantly in 2008 and 2009.¹¹ Domestic producers were unable to increase their prices sufficiently to cover the increased cost of raw materials in at least part of the period of investigation. The domestic industry's ratio of cost of goods sold to net sales increased from *** percent in 2006 to *** percent in 2007, then fell to *** percent in 2008. This ratio was *** percent in interim 2008 as compared with *** percent in interim 2009.¹²

3. Impact of the Subject Imports on the Domestic Industry¹³

The domestic industry's operating income *** between 2006 and 2007, although there was a *** gain in 2008. Operating income fell from \$*** in 2006 to \$*** in 2007, and was \$*** in 2008. This gain was not sustained in 2009, however. While the industry had operating income of \$*** in interim 2008, it sustained *** in interim 2009.¹⁴

Although apparent U.S. consumption decreased by *** percent between 2006 and 2008,¹⁵ the domestic industry's capacity fell even more: by *** percent during the same period. After capacity rose from *** pounds in 2006 to *** pounds in 2007, it declined to *** pounds in 2008. It was *** pounds in interim 2008 and *** pounds in interim 2009.¹⁶ The industry's production decreased *** percent between 2006 and 2008, from *** pounds in 2006 to *** pounds in 2007, then to *** pounds in 2008.

⁷ CR at V-6 - V-7, PR at V-4.

⁸ CR at V-6, PR at V-4.

⁹ CR/PR at Table V-7.

¹⁰ Domestic prices for product 5 rose from \$*** per pound in January-March 2006 to \$*** per pound in April-June 2009, and domestic prices for product 6 increased from \$*** per pound in January-March 2006 to \$*** per pound in April-June 2009. CR/PR at Tables V-5 - V-6.

¹¹ CR at VI-11, PR at V-3; CR/PR at Figure V-1. Due in part to the increasing cost of potassium hydroxide, raw material costs as a share of the domestic industry's cost of goods sold increased from *** percent over the 2006-08 period to *** percent in the first half of 2009. CR/PR at V-1.

¹² CR/PR at Table VI-4.

¹³ Commerce initiated the antidumping duty investigation based on estimated dumping margins for all scope merchandise ranging from 33.7 percent to 177.4 percent. 74 Fed. Reg. at 54026.

¹⁴ CR/PR at Table VI-4.

¹⁵ Apparent U.S. consumption rose from *** pounds in 2006 to *** pounds in 2007, then fell to *** pounds in 2008. It was *** pounds in interim 2008 and *** pounds in interim 2009. CR/PR at Table IV-14.

¹⁶ CR/PR at Table III-5.

The reduction continued into 2009, as production was *** pounds in interim 2009 compared with *** pounds in interim 2008.¹⁷

The domestic industry's rate of capacity utilization fell from *** percent in 2006 to *** percent in 2007, but rose to *** percent in 2008. It was *** lower in interim 2009 as compared with interim 2008, however: *** percent in interim 2008 and *** percent in interim 2009.¹⁸

The domestic industry's net sales volume declined between 2006 and 2008, and into 2009. It was *** pounds in 2006, rising *** to *** pounds in 2007, before falling to *** pounds in 2008. Its net sales volume was *** lower – by *** percent – when comparing interim periods: it was *** pounds in interim 2008 as compared with *** pounds in interim 2009.¹⁹

The domestic industry's U.S. shipments followed a similar trend, increasing *** from *** pounds in 2006 to *** pounds in 2007, and then decreasing to *** pounds in 2008. U.S. shipments were *** percent lower in interim 2009, at *** pounds, than in interim 2008, at *** pounds.²⁰ The domestic industry's share of apparent U.S. consumption declined steadily over the period. It was *** percent in 2006, decreasing to *** percent in 2007, then decreasing further to *** percent in 2008. It was *** percent in interim 2008 as compared with *** percent in interim 2009.²¹

Domestic industry employment and hours worked fell between 2006 and 2008, and into 2009. The number of production and related workers increased from *** in 2006 to *** in 2007, then declined to *** in 2008. It was *** in interim 2008 and *** in interim 2009. Hours worked followed a similar trend: rising from *** hours in 2006 to *** hours in 2007, then falling to *** hours in 2008. They totaled *** hours in interim 2008 and *** hours in interim 2009.²² The domestic industry's productivity in pounds produced per hour decreased from *** in 2006 to *** in 2007, then increased to *** in 2008, but was *** in interim 2009, down from *** in interim 2008.²³

The average unit value of domestic industry shipments increased over the period, reflecting the higher costs the domestic producers faced. The average unit value of net sales was \$*** in 2006 and 2007, then rose to \$*** in 2008. It was \$*** in interim 2008 and \$*** in interim 2009. In order to cover the increased costs, sales volumes were sacrificed throughout the period, however; as explained above. The domestic industry's operating income margin *** between 2006 and 2007, declining from *** percent of net sales to *** percent, then rising to *** percent in 2008. It was *** percent in interim 2008 as compared with *** percent in interim 2009.²⁴ The trend in the domestic industry's return on investment was the same as the trend in its operating income margin, falling from *** percent in 2006 to *** in 2007, then climbing to *** percent in 2008.²⁵

The domestic industry's capital expenditures increased from \$*** in 2006 to \$*** in 2007, but declined to \$*** in 2008, a level *** percent lower than that in 2006. Capital expenditures were higher in interim 2009 as compared with interim 2008, however: \$*** as compared with \$***. The domestic industry's research and development expenditures increased over the full-year period: from \$*** in 2006

¹⁷ CR/PR at Table III-5.

¹⁸ CR/PR at Table III-5.

¹⁹ CR/PR at Table VI-4.

²⁰ CR/PR at Table IV-10.

²¹ CR/PR at Table IV-10.

²² CR/PR at Table III-21.

²³ CR/PR at Table III-21.

²⁴ CR/PR at Table VI-4.

²⁵ CR/PR at Table VI-12.

to \$*** in 2007, then to \$*** in 2008. They were *** lower in interim 2009 as compared with interim 2008, however: \$*** in interim 2008 and \$*** in interim 2009.²⁶

I find a reasonable indication that the domestic industry is materially injured by reason of subject imports. The industry experienced operating losses during the period, and many domestic industry performance measures deteriorated significantly over the entire period, including capacity, production, employment, hours worked, net sales quantity, and the quantity of U.S. shipments. This deterioration resulted directly from the domestic industry's loss of *** percentage points of market share between 2006 and 2008, and its loss of *** percentage points when comparing its market share in interim 2008 to its market share in interim 2009. These losses were equivalent to *** percent and *** percent of the domestic industry's market share in 2006 and in interim 2008, respectively.²⁷ It is noteworthy that subject imports captured the largest portion of the domestic industry's market share after resolution of the phosphoric acid and potassium hydroxide supply shortages that had constrained domestic TKPP production in 2008.²⁸ Pervasive subject import underselling at significant margins have contributed to this market share shift, given the high degree of substitutability between subject imports and the domestic like product, as well as the importance of price to purchasing decisions.

I conclude that nonsubject imports do not sever the causal link between subject imports and the material injury suffered by the domestic industry. As an initial matter, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product, on the one hand, and nonsubject imports, on the other.²⁹ However, nonsubject imports commanded a small market share throughout the period of investigation, satisfying between *** percent and *** percent of apparent U.S. consumption during the period.³⁰

While nonsubject imports gained market share throughout the period, these gains were small relative to those of the subject imports. Moreover, while subject imports increased between 2006 and 2007, nonsubject imports declined. The domestic industry lost *** percentage points of market share to subject imports during that period and nonsubject imports lost *** percentage points of market share to subject imports.³¹ I find, therefore, that nonsubject imports could not have adversely affected domestic industry market share.

Nonsubject imports also were generally priced higher than subject imports and did not undersell the domestic like product to the same extent. Nonsubject food-grade imports were priced higher than subject food-grade imports in 2 of 4 possible comparisons, or 50.0 percent of the time.³² Nonsubject technical-grade imports were priced higher than the subject technical-grade imports in 26 of 30 comparisons, or 86.7 percent of the time.³³

²⁶ CR/PR at Table VI-9.

²⁷ See CR/PR at Table IV-14.

²⁸ See section IV.B.2., supra.

²⁹ See CR at II-25, PR at II-15; CR/PR at Tables II-7, 8.

³⁰ See CR/PR at Table IV-14. U.S. shipments of nonsubject imports decreased from *** pounds in 2006 to *** pounds in 2007, then increased to *** pounds in 2008. U.S. shipments of nonsubject imports were *** pounds in interim 2008 and *** pounds in interim 2009. CR/PR at Table IV-10.

³¹ CR/PR at Table IV-14.

³² See CR at D-3, PR at D-3, CR/PR at Figure D-5.

³³ See CR at D-3, PR at D-3, CR/PR at Figure D-6.

Thus, any material injury I have found from subject imports cannot be attributed to nonsubject imports.³⁴ I also note that demand trends could not account for any material injury to the domestic industry, as apparent U.S. consumption of TKPP declined *** percent between 2006 and 2008, while U.S. shipments of TKPP from China increased by *** percent, resulting in an increase in market share of *** percentage points, or *** percent, during that period.³⁵ In addition, the reduction in the domestic industry's production, shipments, employment, hours worked, and quantity of net sales was greater than the loss in demand between 2006 and 2008.³⁶

In sum, the record indicates that there is a causal nexus between subject imports and the material injury experienced by the domestic industry. Accordingly, based on the record in the preliminary phase of these investigations, I conclude that there is a reasonable indication that the domestic industry producing TKPP is materially injured by reason of subject imports from China.

³⁴ No information on the capacity and export orientation of TKPP producers in nonsubject countries is available on the record of the preliminary phase of these investigations. See CR at VII-14 - VII-16, PR at VII-7 - VII-8. I plan to seek more information regarding the role of nonsubject imports in the U.S. market in any final phase of these investigations.

³⁵ CR/PR at Table IV-10.

³⁶ CR/PR at Tables III-5, III-21, IV-10, VI-4.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by ICL Performance Products LP (“ICL”), St. Louis, MO, and Prayon, Inc. (“Prayon”), Augusta, GA, on September 24, 2009, alleging that an industry¹ in the United States is materially injured and threatened with material injury by reason of subsidized and less-than-fair-value (“LTFV”) imports of certain sodium and potassium phosphate salts from China. The specific products at issue in this proceeding are anhydrous Dipotassium Phosphate (“DKP”); anhydrous Monopotassium Phosphate (“MKP”), Sodium Tripolyphosphate (“STPP”), and Tetrapotassium Pyrophosphate (“TKPP”).² Information relating to the background of the investigations is provided below.³

Effective date	Action
September 24, 2009	Petition filed with Commerce and the Commission; institution of Commission’s investigations (74 FR 50817, October 1, 2009)
October 15, 2009	Commission’s conference ¹
October 21, 2009	Commerce’s notice of AD initiation (74 FR 54024)
October 23, 2009	Commerce’s notice of CVD initiation (74 FR 54778)
November 6, 2009	Commission’s vote
November 9, 2009	Commission’s determination transmitted to Commerce
November 17, 2009	Commission’s views transmitted to Commerce

¹ A list of witnesses appearing at the conference is presented in app. B.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

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

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

¹ Although the petition uses the term “industry” in the singular, its subsequent discussion of four domestic like products suggests that multiple industries are at issue.

² See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to these investigations.

³ *Federal Register* notices cited in the tabulation are presented in app. A.

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

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

...

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

...

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

...

(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

Part I of this report presents information on the subject merchandise, alleged subsidy and dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

U.S. MARKET SUMMARY

“Certain” phosphate salts consist of one sodium phosphate (STPP, one of seven major industrial sodium phosphates produced in the United States) and three potassium phosphates (DKP, MKP, and

TKPP, three of six major industrial potassium phosphates produced in the United States).⁴ These chemicals are used in a variety of applications, including detergents and other cleaning applications; fertilizers; food and feed additives; and water treatment. The leading firms manufacturing and selling domestically produced phosphate salts are ICL, Prayon, Innophos, Inc. (“Innophos”), and PCS Purified Phosphates (“PCS”), while leading producers of phosphate salts outside the United States include Hubei Xingfa Chemical Group Co., Ltd. (“Xingfa”), SD BNI (CN) Co., Ltd. (“SD BNI”), Ltd, and Mianyang Aostar Phosphorous Chemical of China (“Aostar”). The leading U.S. importers of phosphate salts from China are ***. Leading importers of phosphate salts from nonsubject countries (primarily Mexico, Canada, and Israel) include ***. The majority of U.S. purchasers of *** are distributors, while the majority of U.S. purchasers of *** are end users. Leading purchasers include national distributors Brenntag North America, Inc., and Univar as well as ***.

DKP

Apparent U.S. consumption of DKP totaled approximately *** pounds (\$***) in 2008. Currently, one firm, ICL, is known to produce DKP in the United States. The U.S. producer’s U.S. shipments of DKP totaled *** pounds (\$***) and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value in 2008. U.S. shipments of imports of DKP from China totaled *** pounds (\$***) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports from nonsubject sources totaled *** pounds (\$***) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

MKP

Apparent U.S. consumption of MKP totaled approximately *** pounds (\$***) in 2008. Currently, one firm, ICL, is known to produce MKP in the United States. The U.S. producer’s U.S. shipments of MKP totaled *** pounds (\$***) and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value in 2008. U.S. shipments of imports of MKP from China totaled *** pounds (\$***) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports of MKP from nonsubject sources totaled *** pounds (\$***) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

STPP

Apparent U.S. consumption of STPP totaled approximately *** pounds (\$***) in 2008. Currently, two firms are known to produce STPP in the United States. U.S. shipments of STPP by U.S. producers ICL and Prayon totaled *** pounds (\$***) and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value in 2008. U.S. imports of STPP from China totaled 26.0 million pounds (\$17.3 million) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports of STPP from nonsubject sources totaled 257.6 million pounds (\$153.3 million) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

⁴ ***.

TKPP

Apparent U.S. consumption of TKPP totaled approximately *** pounds (\$***) in 2008. Currently, four firms (ICL, Innophos, PCS, and Prayon) are known to manufacture and/or sell domestically produced TKPP in the United States. U.S. producers' U.S. shipments of TKPP totaled *** pounds (\$***) and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value in 2008. U.S. shipments of imports of TKPP from China totaled *** pounds (\$***) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports of TKPP from nonsubject sources totaled *** pounds (\$***) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C. Tables C-1 through C-4 are summary data for DKP, MKP, STPP, and TKPP, respectively. Table C-5 aggregates the data for these four chemicals. Except as noted, U.S. industry data are based on questionnaire responses of three firms that accounted for most or all U.S. shipments of domestic production of each of the four chemicals during 2008. U.S. imports of DKP, MKP, and TKPP are based on questionnaire responses. U.S. imports of STPP are based on official import statistics. Chinese industry data are based on questionnaire responses, while available information on other foreign industries is based on published sources.

PREVIOUS AND RELATED INVESTIGATIONS

There have been no previous import injury investigations on the merchandise subject to these investigations. However, the Commission instituted an antidumping duty investigation on imports of the sodium phosphate SHMP (sodium hexametaphosphate) effective February 8, 2007, following receipt of a petition by ICL and Innophos. Effective March 12, 2008, the Commission determined that an industry in the United States was materially injured by reason of imports from China of SHMP that had been found by Commerce to be sold in the United States at less than fair value.⁵

NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

Alleged Subsidies

On October 23, 2009, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on phosphate salts from China.⁶ Commerce identified the following government programs in China:

⁵ 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. The Commission concluded that SHMP, in all grades, chain lengths, and particle sizes, constituted a distinct domestic product "like" the merchandise subject to investigation. *Sodium Hexametaphosphate from China*, Investigation No. 731-TA-1110 (Final), USITC Publication 3984, March 2008, pp. 1-5.

⁶ *Certain Sodium and Potassium Phosphate Salts From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 54778, October 23, 2009.

I. Income Tax Programs

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

II. Grant Programs

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

III. Tariff and Indirect Tax Exemption Programs

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

IV. VAT and Tariff Exemptions on Imported Equipment

V. Preferential Lending Policies

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

VI. Government Restraints on Exports of Yellow Phosphorous

Alleged Sales at LTFV

On October 21, 2009, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigation on phosphate salts from China.⁷ Commerce initiated the antidumping duty investigation based on estimated dumping margins ranging from 33.7 to 177.4 percent for phosphate salts from China.

THE SUBJECT MERCHANDISE

Commerce’s Scope

Commerce has initiated its investigations with the following scope:

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

⁷ *Certain Sodium and Potassium Phosphate Salts From the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 54024, October 21, 2009.

Pyrophosphate (TKPP), whether anhydrous or in solution (collectively “phosphate salts”).

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

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $\text{K}_4\text{P}_2\text{O}_7$. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4 . The CAS registry number for MKP is 7778-77-0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5 . MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The product covered by this investigation includes anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of STPP and TKPP, whether crushed, granule, powder, fines or solution. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.⁸

Tariff Treatment

STPP is classifiable in the Harmonized Tariff Schedule of the United States (“HTS”) under subheading 2835.31.00, which covers only that product. TKPP is classifiable in the HTS under subheading 2835.39.10, which also includes other potassium polyphosphates, but according to industry sources, TKPP is the more commercially important product entering under that subheading and is the only known product imported under subheading 2835.39.10 from China. MKP and DKP are classifiable in the HTS under subheading 2835.24.00, which also includes other potassium phosphates, but, according to industry sources, MKP and DKP are the most important imports entering under that HTS subheading. Moreover, according to industry sources, all or nearly all imports under HTS subheading 2835.24.00 from

⁸ *Certain Sodium and Potassium Phosphate Salts From the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 54024, October 21, 2009.

China appear to be either MKP or DKP.⁹ Table I-1 presents the current duty rates for DKP, MKP, STPP, and TKPP.

**Table I-1
DKP, MKP, STPP, and TKPP: Tariff rates, 2009**

HTS provision	Article description	General ¹	Special ²	Column 2 ³
		Rates (percent ad valorem)		
2835	Phosphinates (hypophosphites), phosphonates (phosphites) and phosphates; polyphosphates, whether or not chemically defined:			
2835.24.00	Phosphates: Of potassium.....	3.1	(⁴)	25
2835.31.00	Polyphosphates: Sodium triphosphate (Sodium tripolyphosphate).....	1.4	(⁴)	6
2835.39 2835.39.10	Other: Of potassium.....	3.1	(⁴)	25
¹ Normal trade relations, formerly known as the most-favored-nation duty rate. ² Special rates not applicable when General rate is free. ³ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status. ⁴ General note 3(c)(i) defines the special duty program symbols enumerated for this provision none of these programs apply to imports from China.				
Source: Harmonized Tariff Schedule of the United States (2009).				

THE PRODUCT

Overview

The products covered by these investigations are salts of phosphoric acid, H₃PO₄, and as such are labeled phosphates. These include sodium tripolyphosphate (STPP), having the chemical formula Na₅O₁₀P₃; tetrapotassium pyrophosphate (TKPP), having the chemical formula K₄P₂O₇; monopotassium phosphate (MKP), having the chemical formula KH₂PO₄; and dipotassium phosphate (DKP), having the chemical formula K₂HPO₄. STPP is a white powder consisting of more than one crystalline form; MKP exists as colorless crystals; DKP exists as a hygroscopic white crystal or powder, and TKPP exists as colorless crystals or as a white powder.

Each of these products is manufactured by the reaction of phosphoric acid with an alkali base, as will be discussed in the description of the production process. STPP is by far the largest volume chemical of the four phosphate salts included within Commerce's scope. According to industry sources, there is no interchangeability between the products covered in these investigations. Additionally, different grades of the same phosphate salt are not generally interchanged with each other.¹⁰

The key raw material, phosphoric acid, consists of several grades, including primarily thermal grade (a high purity product made from elemental phosphorus) and solvent purified wet phosphoric acid (a purified form of agricultural phosphoric acid made from phosphate rock that is generally slightly less pure than the thermal grade, but with sufficient purity to permit its use for both technical and food

⁹ Petition, pp. 17-18.

¹⁰ Conference transcript, pp. 68-69 (Cannon, Stachiw, Sexton).

applications). Thermal-grade phosphoric acid is produced in the United States by ICL, which consumes it internally and sells the remainder in the merchant market, where it accounts for not more than 10 percent of domestic consumption (with the remainder being primarily solvent purified wet phosphoric acid).¹¹ According to an industry source, thermal-grade acid is used primarily for food applications but some is used for high-purity electronic applications.¹² In China, according to industry sources, thermal-grade phosphoric acid is the primary form of phosphoric acid used to make the phosphate salts covered in these investigations.¹³

Description and Applications

The phosphate salts at issue in this proceeding are sold primarily as either technical or food grade.¹⁴ Food-grade phosphate salts are subject to more careful analysis and require a more narrow range of specifications including pH and maximum allowable amounts of arsenic,¹⁵ fluoride, lead and insoluble materials as specified in the Food Chemicals Codex (FCC). In the United States, technical- and food-grade phosphate salts are generally the same product, made in the same facility, although the food-grade phosphate salts have been subject to more rigorous testing, handling, and maintenance requirements.^{16 17} While customers generally specify food grade or technical grade, the lines between the two grades can blur; for example, customers have purchased the technical grade MKP for use in fermentation to make insulin.¹⁸

The grades are further classified by particle size which are typically categorized as fines, powder, or granules, in order of increasing particle size. These are determined by the average size of the individual particles when they are sifted through a sieve of a given mesh size. Different grades of STPP are also assigned on the basis of density. In general, STPP that has a density of 30-39 pounds per cubic foot is considered to be light density granular; STPP that has a density of 43-57 pounds per cubic foot is considered to be medium density, and above 57 pounds per cubic foot, STPP is considered to be a highly dense material.¹⁹

For applications such as in an automatic dishwasher detergents, it is desirable to have the detergent dissolve slowly so that it will remain present throughout the whole cycle. In such cases, a heavy dense form of STPP is preferred. On the other hand, in many food processing applications, it is important that the phosphate salt dissolve quickly in solution; in such cases, STPP that has a relatively low density is likely more suitable.²⁰ According to industry sources, the assignment of grades in terms of

¹¹ Conference transcript, pp. 119, 121 (Schewe).

¹² Conference transcript, pp. 118-121 (Schewe).

¹³ Conference transcript, p. 98 (Sexton).

¹⁴ Additionally, small amounts of these phosphate salts are sold as ultrapure USP and electronic grades.

¹⁵ To remove arsenic, sulfide is added to the phosphoric acid raw material to precipitate the arsenic which is then filtered out. Conference transcript, p. 63 (Fyock).

¹⁶ Conference transcript, pp. 63-65 (Fyock, Allen); p. 107 (Sexton, Fyock); and p. 108 (Sexton).

¹⁷ Unlike the other phosphate salts covered in these investigations, there is often a difference between the type of STPP used in food and technical grades. In general, for foods, a more soluble form of STPP is used (based on different crystalline forms) than for technical applications. Conference transcript, pp. 70- 73 (Stachiw).

¹⁸ Conference transcript, pp. 66-67 (Stachiw); staff telephone interview with ***, October 28, 2009.

¹⁹ Petition, p. 10.

²⁰ Conference transcript, pp. 131-132 (Sexton).

densities does not generally apply to food-grade STPP or to the other phosphate salts covered in these investigations.²¹

The phosphate salts purchased by customers can be procured either as dry material (usually the anhydrous salt) or they may be purchased as a solution. Whether the customer who requires the phosphate salt in solution decides to purchase the solution from the manufacturer or decides to dissolve the salt in the customer's own facilities largely depends on the type of phosphate salt being considered. For example, because MKP and DKP can be readily produced in-house by customers by the reaction of potassium hydroxide and phosphoric acid, they typically are not purchased in solution form (and the solution form for these products is therefore not included within the scope of these investigations). On the other hand, making STPP and TKPP in solution form requires additional processing (such as calcining) that cannot be readily performed by customers in their facilities; consequently, solutions of these products typically are purchased from the phosphate salt producers. Therefore, in contrast to MKP and DKP, the petition includes solutions of STPP and TKPP.²²

In some cases, the solution is more expensive to make than the dry anhydrous salt and in other cases, the dry anhydrous salt is more expensive to make than the solution, depending on whether the solution is made from the anhydrous material or vice-versa. Because anhydrous MKP and DKP are made from the solution after the phosphate salt has been dried, milled and packaged, the anhydrous product is typically more expensive to make than the solution. On the other hand, because TKPP solution is made from the dry material which is then put in solution and filtered, the solution form is typically more expensive to make than the anhydrous salt.²³

In terms of applications, STPP's use is related to its ability to act as a sequestration, buffering, emulsification, hydrolysis, and dispersant agent. STPP is used in industrial and institutional cleaning products where it functions as a builder²⁴ enhancing the cleansing ability of the product. Its use in this area is declining because of increasingly stringent environmental regulations banning or restricting the use of phosphates. In food applications such as seafood, meat, poultry and pet foods, STPP is used to retain moisture. STPP is also used in toothpastes. TKPP is used in liquid cleaning products and in potable and industrial water treatment where it acts to prevent scaling. It is also used in metal cleaners and metal surface treatment and in the manufacture of latex paints where the TKPP acts to allow the paint formulation to remain as a stable suspension. MKP is used as a fertilizer where it serves as a source of phosphorus and potassium and as a stabilizer. It is also used as a food additive and fungicide. DKP is also used as a fertilizer (where it serves as a source of phosphorus and potassium) and as a food additive. It is also used in non-dairy creamers as a buffer to prevent coagulation. Typically, most DKP sold in solution form is used in liquid creamers. Some DKP is also used in its anhydrous form in dry creamers, but in the United States there is more demand for creamers in liquid form.²⁵

Production Processes

The initial step in the production of the phosphate salts covered by these investigations is the reaction of phosphoric acid with a base which is either soda ash or sodium hydroxide (caustic soda) for STPP or potassium hydroxide for MKP, DKP, and TKPP.

²¹ Petition, p. 10.

²² Petition, pp. 10-11.

²³ Conference transcript, p. 95 (Sexton).

²⁴ A builder is a substance that increases the effectiveness of a soap or detergent by acting as a softener and a sequestering and buffering agent. Hawley's Condensed Chemical Dictionary, Fourteenth Edition.

²⁵ Petition, pp. 14-16, and conference transcript, pp. 16-22 (Pound) and 60-62 (Sexton, Schewe).

In the production of the sodium salt STPP, appropriate quantities of caustic soda or soda ash and phosphoric acid are mixed in solution so that the product formed is between monosodium phosphate (MSP) and disodium phosphate (DSP).²⁶ The water is then removed using either using drum dryers, or in some cases, the product is crystallized. To manufacture STPP, the monosodium/disodium phosphate mixture is then calcined at a temperature between 350 degrees Celsius and 550 degrees Celsius. STPP forms when molecules of MSP and DSP react and chemically condense. After cooling, the STPP particles are passed through a series of sieves so that only particles with the specified size range are packaged to be shipped to customers. STPP particles that are outside the acceptable range, particularly if they are too large, may be resized, e.g. using a granulator, and the resulting material may be fed back into the product stream.²⁷

The production of the potassium salts, DKP, MKP, and TKPP, is similar to the production process described in the previous paragraph for STPP except that potassium hydroxide is substituted for caustic soda or soda ash. To produce DKP and MKP, potassium hydroxide is reacted with phosphoric acid in a mole ratio of 1:1 and 2:1, respectively. To produce TKPP, DKP is calcined at a temperature between 400 degrees Celsius and 500 degrees Celsius.^{28 29} The TKPP product is then sized and packaged for shipping.³⁰

According to an industry source, the customers of the domestic phosphate salts as well as the Chinese products receive a certification of analysis after the finished product is tested in a laboratory assessing the degree of impurities, the particle size, and the density. Once that certification of analysis is received and accepted, the phosphate salts provided by the various suppliers are interchangeable and according to domestic industry sources, the product can be considered to be a commodity. The certification process can be in a form of a guarantee based on statistical testing of selected samples or a lab result may be based on actual testing of the batch that is being shipped to the customer.³¹

DOMESTIC LIKE PRODUCT ISSUES

The Commission's decision regarding the appropriate domestic product(s) that are "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 (6) price. Information regarding these factors is discussed below.

²⁶ MSP and DSP as well as MKP and DKP are referred to as orthophosphates, meaning that no condensation has occurred when these chemicals are placed in a low-temperature dryer. There is only one phosphate unit per molecule for all these products (in contrast to polyphosphates).

²⁷ ***. E-mail from ***, to Commission staff, October 27, 2009.

²⁸ ***. E-mail from ***, to Commission staff, October 27, 2009.

²⁹ As noted in the previous section, to produce DKP or MKP in solution, customers, especially if they are chemical manufacturers, can simply react purchased potassium hydroxide with purchased phosphoric acid in house. This method cannot, however, be used to produce STPP and TKPP in solution; in order to produce these products, the sodium or potassium orthophosphate starting materials must be calcined. Thus, customers purchasing STPP or TKPP in solution will typically rely on the phosphate salt manufacturer to manufacture anhydrous STPP or TKPP which is then dissolved by the manufacturer in water. According to industry sources, dissolving TKPP in water is a difficult and time consuming step; consequently, most customers prefer to purchase TKPP as a solution rather than dissolving the TKPP in the customers' facilities. Conference transcript, p. 62 (Sexton).

³⁰ ***. E-mail from ***, to Commission staff, October 27, 2009.

³¹ Conference transcript, pp. 36-37 (Sexton); pp. 106-07 (Stachiw).

The petitioner contends that the Commission should find four like products.³² Respondents do not argue otherwise.³³

Physical Characteristics and Uses³⁴

According to industry sources, there are six properties that phosphate salts have that render them useful. Chelation or sequestration refers to the ability of certain phosphate salts to bind and inactivate unwanted minerals or metals. Certain metals can interfere with the processing of food or the cleaning ability of the product. For example, unwanted minerals can build up to cause scale in water or boiler systems or cause unwanted reactions in meat adversely affecting its taste. Buffering refers to the ability of the phosphate salts to stabilize the pH or acidity/alkalinity level of the solution. Emulsification refers to the ability of the agent to mix two or more substances that will otherwise separate out such as oil and water. Dispersing refers to the ability of the agent to keep particles from clumping together, e.g. dirt, in an institutional laundry. Fermentation refers to the ability of the agent in conjunction with yeast or bacteria to ferment sugar and other carbohydrates into alcohol, carbon dioxide, or organic acids for use in the production of a variety of foods including wine, beer, or in the leavening of bread. Finally, solubility refers to the ability of the chemical to dissolve in solution. This property is important since a phosphate salt that is relatively insoluble cannot be used in processes where it is to be used in solution.

Summarizing the properties of the four phosphates included in this proceeding:

- STPP and TKPP are chelating agents whereas MKP and DKP are not; this enables TKPP and STPP to be used in removing unwanted minerals that interfere with food processing or cleaning. STPP and TKPP salts are further advantaged for cleaning, because STPP and TKPP are also excellent dispersants, preventing dirt particles from coming together as clumps.
- MKP and DKP are excellent buffers whereas STPP and TKPP are not; this enables MKP and DKP to be used in formulating pharmaceuticals, beverages or food products where a sharp change in acidity/alkalinity can be devastating.
- DKP is an excellent emulsifying agent; this enables the chemical product to be used in many dairy applications where it is necessary to mix otherwise incompatible substances.
- MKP is a superior fermentation agent (although DKP is also a useful fermentation agent); This enables MKP to be used in fermentation and yeast processes where it serves as source of potassium and phosphorus.
- DKP and TKPP are more soluble than MKP which is, in turn, more soluble than STPP.³⁵ The higher solubility of TKPP relative to STPP allows it to be used in some water treatment or paint applications where the STPP cannot be used, because it will precipitate out of solution.

³² Petitioner's postconference brief, p. 3.

³³ "For purposes of the preliminary investigation, the Chinese Producers are prepared to accept the like product definition proposed by Petitioners ICL and Prayon." Respondents' postconference brief, p. 1.

³⁴ The material in this section is primarily sourced from testimony provided by Nancy Stachiw of ICL (conference transcript, pp. 12-22).

³⁵ In general, potassium compounds are more soluble than sodium compounds.

The different properties of the phosphate salts discussed above are essential in explaining the uses of these chemicals. However, there are other properties which are also important in determining the applicability of the phosphate salts covered in this proceeding such as whether the salt acts as an acid, base, or neutral material.³⁶

Manufacturing Facilities and Employees

The production of all phosphate salts subject to this proceeding begins with a tank in which the reaction between the alkali base and phosphoric acid takes place. For MKP and DKP, the phosphate salts are then dried in a relatively low-temperature dryer. For STPP and TKPP, the salts are dried in a dryer at a high enough temperature to induce calcining. According to industry sources, in some cases, this high temperature dryer may be a separate piece of apparatus, a “calciner,” either a drum dryer or a calcining furnace. In other cases, the high temperature dryer may be simply the same piece of apparatus as the low temperature dryer except that the dryer is set to a high temperature.³⁷ After drying, the products pass through a course screen and those larger particles that are retained are milled to grind up the larger particles. The products are then passed through a fine screen. The “fines” are either sold as is or returned to solution and recycled.

For materials that are to be sold in solution, e.g., STPP and TKPP, the anhydrous STPP and TKPP is dissolved in water and the solution is packaged in watertight containers such as drums. In short, the only difference in the equipment used is the presence of a calciner which may or may not be the same piece of equipment as an ordinary dryer (except set at a higher temperature), and additional equipment for dissolving material either at the beginning of the production process (soda ash, unlike sodium hydroxide or potassium hydroxide, will need to be dissolved) or at the end of the production process when some of the product, e.g., STPP or TKPP, is put back in solution form for sale to customers.

ICL produces the sodium phosphate salt, STPP, and the potassium phosphate salts MKP, DKP, and TKPP in ***.³⁸ Prayon produces STPP and TKPP and other products ***.³⁹ Prayon does not produce anhydrous DKP or MKP. PCS produces only TKPP *** Innophos ***.

The petitioners appear to agree with the assessment that the same equipment is used to produce the phosphate salts covered in this proceeding if they are produced within the same facility. The petition states that “all phosphate salts can be manufactured on the same equipment in the same facility.” Prayon ***. ICL ***.⁴⁰

Interchangeability and Customer and Producer Perceptions

Petitioners contend that “together with the physical characteristics, the end-uses of different phosphate salts are the most important distinguishing factors between like products.” The majority of importer questionnaires indicate that the four products are not interchangeable. In particular, no U.S. importer identified another of the phosphates salts subject to this proceeding as a substitute for DKP, MKP, STPP, or TKPP.

³⁶ Chemists use MKP in applications where an acidic environment is required and DKP in applications where an alkaline environment is required. Conference transcript, pp. 16-18 (Stachiw).

³⁷ Examples are provided in the Production Processes section illustrating variations in production processes that occur ***.

³⁸ E-mail from ***, to Commission staff, October 27, 2009 and ICL’s response to the U.S. Producers’ Questionnaire (question II-3).

³⁹ ***.

⁴⁰ Petition, p. 96.

Channels of Distribution

Table I-2 presents the respective channels of distribution for U.S. producers' U.S. shipments of DKP, MKP, STPP, and TKPP. Additional details regarding the channel structure of domestically produced and imported phosphate salts are presented in Part II of this report, *Conditions of Competition in the U.S. Market*.

Table I-2
DKP, MKP, STPP, and TKPP: Channels of distribution for U.S. producers' U.S. shipments, 2006-08, January-June 2008, and January-June 2009

* * * * *

Price

Table I-3 presents average unit values for U.S. producers' U.S. shipments of DKP, MKP, STPP, and TKPP in the United States. Unit values ranged from \$*** (STPP) to \$*** (DKP) for the four products in 2008, and were similarly dispersed in 2009. Pricing practices and prices reported for domestically produced and imported phosphate salts in response to the Commission's questionnaires are presented in Part V of this report, *Pricing and Related Information*.

Table I-3
DKP, MKP, STPP, and TKPP: Average unit values of U.S. producers' U.S. shipments, 2006-08, January-June 2008, and January-June 2009

* * * * *

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

U.S. MARKET CHARACTERISTICS

The phosphate salts at issue in this proceeding have many varied uses and characteristics which depend on the chemical properties of each salt. These properties are covered in *Part I: Introduction*, and include differing abilities of sequestration, buffering, emulsification, dispersion, fermentation, and solubility. A witness for ICL summarized these differences as follows:

“MKP’s most important functions are as a buffer and in fermentation. DKP’s most important functions would be as a buffer and in emulsification. Also its solubility is good. TKPP’s most important functions are solubility, dispersion and sequestration. STPP’s are dispersion and sequestration.”¹

The differing properties of the four subject phosphate salts are useful in a number of downstream industries including, but not limited to, cleaning, water treatment, dairy, meat, baking, and fertilizers.

Each phosphate salt may be sold in technical or food grade. Food-grade phosphate salts must meet stricter guidelines in terms of the allowable amounts of certain impurities (arsenic, fluoride, lead, and heavy metals) and pH level.² These salts may be sold in solid (anhydrous) form or in solution.³ Technical grade STPP may also be sold in light, medium, or heavy density (the desired density depends on the use for the STPP). A light density STPP would dissolve quicker, so in food applications where this characteristic is desired, light density STPP would be the preferred, whereas a heavy density STPP would be preferred for use in automatic dishwashing (“ADW”) formulations, so the STPP would be available through the whole cycle.⁴ Additionally, phosphate salts can be blended with other subject and nonsubject chemicals to produce chemical blends that may have certain chemical properties preferred by certain customers.⁵

The domestic industry has been shifting more toward the food-grade segment of the MKP market. A witness for ICL stated that, regarding MKP, “much of the product that’s actually consumed in the U.S. market is used for fertilizers, and we are not a large participant in that market space.”⁶ Though producing all their MKP to food-grade standards, ICL sold *** percent of its MKP for food-grade applications in 2006, *** percent in 2007, *** percent in 2008, and *** percent since January 1, 2009. *** food-grade MKP was sold directly for specialty fertilizer applications since 2006, while in 2006 and 2007, ***, of technical-grade MKP was sold directly for specialty fertilizer applications.

*** noted that it only imported technical-grade MKP.⁷ *** importer of MKP reported that it did not import food-grade MKP from China, as “they are normally not Kosher certified and most food accounts need Kosher.”⁸ *** added, “I do not know anyone (including ***) who purchased MKP made in the U.S. in the past 15 years, as the U.S. producers were not interested in supplying MKP to the

¹ Conference transcript, p. 16 (Stachiw).

² Petition, p. 9.

³ DKP and MKP in solution form are excluded from the scope of these investigations.

⁴ Conference transcript, p. 132 (Sexton).

⁵ Hearing transcript, p. 20 (Stachiw) and p. 194 (Wei).

⁶ Conference transcript, p. 60 (Schewe).

⁷ *** importer questionnaire response.

⁸ E-mail from ***, October 26, 2009.

fertilizer industry, who are the largest consumers.”⁹ Of the ten largest importers of Chinese MKP, which represent the vast majority of Chinese imports of MKP during the period of study, only *** reported importing and selling Chinese MKP into food grade applications, though likely ***.¹⁰ One other of the ten-largest importers, *** stated that it sold its largest customer food-grade MKP for fertilizer applications due to a customer’s preference for ***. One other smaller importer, *** reported that all of its imports were of food-grade MKP, and the majority of its 2008 sales of imported Chinese MKP was to the food industry.

Quarterly pricing data elicited responses from producers and importers regarding their sales of food-grade and technical-grade anhydrous STPP and TKPP. The proportion of the STPP market that is accounted for by food-grade STPP has increased since 2006. Food-grade STPP accounted for *** percent of domestically produced anhydrous STPP in 2006, *** percent in 2007, *** percent in 2008, and *** percent in the first half of 2009, according to quarterly quantity data submitted by U.S. producers. By contrast, China’s exports of STPP in January to August 2009 accounted for *** percent of exports of STPP.¹¹ Food-grade TKPP accounted for a lower proportion of the entire TKPP market: *** percent in 2006, *** percent in 2007, *** percent in 2008, and *** percent in 2009.

CHANNELS OF DISTRIBUTION

DKP, MKP, STPP, and TKPP may either be sold directly to large end-use customers, or through regional or national distributors (Univar and Brenntag are national distributors, though Brenntag’s geographically dispersed operations function as regional distributors).¹² Distributors typically buy larger orders – at least full truckloads – so that they can sell less-than-truckload amounts to their customers. Also, sales made to some distributors ***.¹³ Some distributors may be importers of record, whereas others may distribute salts that were produced in the United States or imported by another firm. Distributors may keep a 30-day supply of inventories for their customers.¹⁴ The percentage of shipments from producers and importers for each of the certain phosphate salts that was reported to be sold to distributors and end users is presented in table II-1.

Table II-1
DKP, MKP, STPP, and TKPP: U.S. producers’ and importers’ U.S. shipments, by products, sources, and channels of distribution, 2006-08, January-June 2008, and January-June 2009

* * * * *

Additionally, U.S. producers may purchase or import certain phosphate salts that they do not produce in order to offer a broader range of customers’ needs. ***. ***. Innophos reportedly produces STPP in Canada and Mexico.¹⁵

⁹ Ibid.

¹⁰ Staff telephone interview with ***, October 28, 2009. *** further noted that this was due to differing quality, safety, and consistency of Chinese food-grade MKP.

¹¹ Respondents’ postconference brief, exh. 10.

¹² Conference transcript, p. 24 (Schewe) and staff telephone interview with ***, October 28, 2009.

¹³ ***.

¹⁴ Conference transcript, p. 193 (Crull).

¹⁵ Conference transcript, p. 170 (Mendoza).

GEOGRAPHIC MARKETS

*** and five importers of subject product from China including *** reported selling phosphate salts nationwide. Importers reported selling each of the four phosphate salts to every region as shown in table II-2.

Table II-2
DKP, MKP, STPP, and TKPP: Number of importers reporting U.S. shipments, by region and product

Region	DKP	MKP	STPP	TKPP
Northeast	11	16	17	13
Midwest	12	19	22	14
Southeast	8	13	17	12
Central Southwest	7	13	16	10
Mountain	4	10	10	7
Pacific	8	15	13	11
Other	2	5	4	2

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

SUPPLY AND DEMAND CONSIDERATIONS

Supply

Three producers of phosphate salts responded to the Commission's questionnaire. ICL produces ***, Innophos ***, and Prayon produces ***.

Domestic Production

Based on available information, U.S. producers have the ability to respond to changes in demand with moderate-to-large changes in the quantity of shipments of U.S.-produced DKP, MKP, STPP, and TKPP to the U.S. market. The main contributing factors to the moderate-to-high degree of responsiveness of supply are the availability of unused capacity, ample inventories, small levels of export shipments, and the existence of production alternatives.

Industry capacity

DKP--ICL's DKP capacity rose by *** percent from 2006 to 2008, and was *** percent higher in the first half of 2009, compared with the first half of 2008. As the U.S. producer's reported capacity increased, capacity utilization declined steadily, from *** percent in 2006 to *** percent in 2008, and was *** percent in the first half of 2009, compared with *** percent in the first half of 2008 (*see* table III-2). Accordingly, ICL has ample excess capacity with which it could increase production of DKP.

MKP--ICL's MKP capacity rose by *** percent between 2006 and 2008, but was *** percent lower in the first half of 2009 than the first half of 2008. The U.S. producer's reported capacity utilization declined irregularly, first increasing from *** percent in 2006 to *** percent in 2007 before falling to *** percent in 2008. Capacity utilization was *** percent in the first half of 2009, compared

with *** percent in the first half of 2008 (*see* table III-3). Accordingly, ICL has ample excess capacity with which it could increase production of MKP.

STPP--U.S. producers' STPP capacity decreased by *** percent from 2006 to 2008, and was *** percent lower in the first half of 2009 than the same time period in 2008. U.S. producers' reported capacity utilization declined irregularly, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008; it was *** percent in the first half of 2009, compared with *** percent in the first half of 2008 (*see* table III-4). Accordingly, U.S. producers have ample excess capacity with which they could increase production of STPP.

TKPP--U.S. producers' TKPP capacity rose by *** percent between 2006 and 2007 before falling *** percent in 2008. It was also *** percent lower in the first half of 2009 compared with the first half of 2008. U.S. producers' reported capacity utilization increased irregularly, falling from *** percent in 2006 to *** percent in 2007 and then rising to *** percent in 2008; it was *** percent in the first half of 2009, compared with *** percent in the first half of 2008 (*see* table III-5). Accordingly, U.S. producers have ample excess capacity with which they could increase production of TKPP.

Alternative markets

Phosphate salts are used throughout the world. *** reported exporting ***. ICL and Prayon identified *** as the principal export markets for STPP. TKPP's principal export markets include ***, as reported by ICL and Prayon. Additionally, ***, as it is very concerned with quality and has not found any supplier in China with acceptable quality, though it has not conducted an extensive search.¹⁶ A witness for Wenda Co. Ltd. similarly reported importing food-grade STPP into China.¹⁷ Innophos announced that "As far as our Latin American markets are concerned, demand is strong enough for phosphates in general that in the short term, we can ship production and sales to alternative markets in the event of a drop in demand for detergency or other markets."¹⁸

DKP--ICL's export shipments as a share of total shipments of DKP decreased irregularly from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. Exports, as a share of total shipments, were higher in January to June 2009 (*** percent) than in January to June 2008 (*** percent). This level of exports during the period indicates that ICL is somewhat constrained in its ability to shift shipments between the United States and other markets in response to price changes of DKP.

MKP--ICL's export shipments as a share of total shipments of MKP increased from *** percent in 2006 to *** percent in 2007 and 2008. Exports as a share of total shipments were higher in January to June 2009 (*** percent) than in January to June 2008 (*** percent). This level of exports during the period indicates that ICL is somewhat constrained in its ability to shift shipments between the United States and other markets in response to price changes of MKP.

STPP--U.S. producers' export shipments as a share of total shipments of STPP increased irregularly from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. Exports as a share of total shipments were lower in January to June 2009 (*** percent) than in January to June 2008 (*** percent). This level of exports during the period indicates that domestic producers of STPP are somewhat constrained in their ability to shift shipments between the United States and other markets in response to price changes.

TKPP--U.S. producers' export shipments as a share of total shipments of TKPP decreased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. Exports as a share of total shipments were lower in January to June 2009 (*** percent) than in January to June 2008 (*** percent).

¹⁶ Staff telephone interview with ***, October 19, 2009.

¹⁷ Conference transcript, p. 153 (Wei).

¹⁸ Randy Gress, Chairman and CEO of Innophos, Innophos's Q1 2008 Results Conference Call, submitted as ex. 2 to respondents' postconference brief.

This level of exports during the period indicates that domestic producers of TKPP are somewhat constrained in their ability to shift shipments between the United States and other markets in response to price changes.

Inventory levels

DKP—ICL’s inventories of DKP, as a share of total shipments, declined from *** percent in 2006 to *** percent in 2008. The ratio of inventories to annualized total shipments was higher in the first half of 2009 (*** percent) than in the first half of 2008 (*** percent).

MKP—ICL’s inventories of MKP, as a share of total shipments, increased from *** percent in 2006 to *** percent in 2007 before decreasing to *** percent in 2008. The ratio of inventories to annualized total shipments was lower in the first half of 2009 (*** percent) than in the first half of 2008 (*** percent).

STPP—U.S. producers’ inventories of STPP, as a share of total shipments, decreased from *** percent in 2006 to *** percent in 2007 before increasing to *** percent in 2008. The ratio of inventories to annualized total shipments was higher in the first half of 2009 (*** percent) than in the first half of 2008 (*** percent).

TKPP—U.S. producers’ inventories of TKPP, as a share of total shipments, increased irregularly, falling from *** percent in 2006 to *** percent in 2007, then increasing to *** percent in 2008. The ratio of inventories to annualized total shipments was higher in the first half of 2009 (*** percent) than in the first half of 2008 (*** percent).

These data indicate that U.S. producers have a moderate-to-large amount of inventories to increase shipments to the U.S. markets for DKP, MKP, STPP, and TKPP.

Production alternatives

ICL produces the *** using the same equipment and machinery or with the same production workers at its St. Louis, MO plant (***). ICL’s Lawrence, KS plant produces ***, but its Carondelet, NJ plant ***. Prayon reported an ability to switch production as well, since it produces *** at its production facility.

Foreign Supply

China was not the largest foreign source of supply for DKP, MKP, or STPP over the entire period for which data were collected, however it was the largest country of origin for TKPP since 2006, and for DKP, MKP, and STPP during the first half of 2009.¹⁹ In the first half of 2008, China accounted for *** percent, by quantity, of DKP, *** percent of the imports of MKP, *** percent of imports of STPP, and *** percent of imports of TKPP; these shares were not markedly different than the import shares for 2006 and 2007. In the second half of 2008, however, these shares increased to *** percent for DKP, *** percent for MKP, and *** for STPP, but decreased to *** percent for TKPP. In the first half of 2009, these trends continued: increases to a *** percent share of imports of DKP, a *** percent share of imports of MKP, and a *** percent share of imports of STPP; the import share of TKPP from China declined slightly to *** percent, respectively. Data from the USITC Dataweb indicate that, Israel,

¹⁹ In its 2007 Periodic Report, ICL stated generally, “Despite the presence of many Chinese manufacturers in the area of phosphate products, their ability to compete during 2007 as well as in the near future on a large scale is limited due to a lack of electricity in certain areas of China, the imposition of export levies on the export of phosphate-based products from China, the lower quality of their products and logistical difficulties.” ICL’s periodic report for 2007, submitted as respondents’ postconference brief exh. 8.

Mexico, and China were the largest sources for DKP and MKP during the period for which data were examined.²⁰ Canada and Mexico were the largest sources for STPP. China was the largest sources of imported TKPP.^{21 22}

China

Industry Capacity--According to two foreign producer questionnaire responses received by the Commission, reported capacity of DKP in China *** between 2006 and 2008 and *** between interim 2009 and interim 2008. Production of DKP increased from *** in 2006 to *** in 2008, but DKP production in the first half of 2009 was *** percent compared with *** in the first half of 2008. DKP capacity utilization in China therefore decreased from *** percent in 2006 to *** percent in 2008; Chinese capacity utilization was at *** percent in the first half of 2009, compared with *** percent in the first half of 2008. For full-year 2009, Chinese capacity utilization is estimated to be *** percent, and increase to *** percent in 2010.

According to five foreign producer questionnaire responses received by the Commission, reported capacity of MKP in China increased from *** in 2006 to *** in 2008, but was *** in interim 2009 compared with *** in interim 2008. Production of MKP increased from *** in 2006 to 2007, *** in 2008. MKP production in the first half of 2009 was *** compared with *** in the first half of 2008. MKP capacity utilization in China therefore increased from *** percent in 2006 to *** percent in 2008; Chinese capacity utilization was at *** percent in the first half of 2009, compared with *** percent in the first half of 2008.

According to eight foreign producer questionnaire responses received by the Commission, reported capacity of STPP in China increased irregularly from 752.9 million pounds in 2006 to 771.8 million pounds in 2008. In addition, reported capacity in China was 404.4 million pounds in interim 2009 compared with 419.4 million pounds in interim 2008. Production of STPP increased from 585.1 million pounds in 2006 to 698.6 million pounds in 2008. STPP production in the first half of 2009, however, was 277.6 million pounds compared with 420.7 million pounds in the first half of 2008. STPP capacity utilization in China increased irregularly from 77.7 percent in 2006 to 75.6 percent in 2007 and 90.5 percent in 2008; however, STPP capacity utilization in China was reportedly lower in the first half of 2009 (68.6 percent) than in the first half of 2008 (100.3 percent). For full-year 2009, Chinese capacity utilization for STPP is estimated to be 69.6 percent, and decrease slightly to 71.2 percent in 2010.

According to four foreign producer questionnaire responses received by the Commission, reported capacity of TKPP in China *** between 2006 and 2008, though reported capacity in China was *** in interim 2009 compared with *** in interim 2008. Production of TKPP increased irregularly from

²⁰ According to the Commission's quarterly import shipment data, almost *** times as much MKP was imported than DKP during January 2006 - June 2009, which would account for the strong influence of Israel and Mexico in the combined DKP/MKP HTS subheading.

²¹ Official import statistics from Census indicate that during the period for which data were collected, imports from France and Germany were larger, but these reportedly consist mostly of chemicals other than TKPP. ***.

²² Innophos reported in its 2008 Annual Report that:

“Over the past several years, we estimate that imports, including {those by} domestic producers, have accounted for approximately 10-15% of the North American specialty phosphate market. This market share has been fairly stable for at least the last five years, with periods from time to time of lower penetration due to upsets in foreign production or international logistics. This import share increased to approximately 15-20% in 2008, due to shortage of supply, reduced demand in global markets and the price increases in the North American market which made it relatively more attractive to imports, especially for technical STPP and technical grade horticultural specialty salts.”

*** in 2006 to *** in 2008. TKPP production in the first half of 2009 was *** compared with *** in the first half of 2008. Whereas capacity utilization was *** percent in 2006 and *** percent in 2007, it increased to *** percent in 2008, and was *** percent higher in the first half of 2009 compared with the *** percent in the first half of 2008.

Alternative Markets--The share of China's shipments of DKP exported to the United States, as a share of its total shipments, increased irregularly from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. In the first half of 2009, this share was *** percent compared with *** percent in the first half of 2008. Principal alternative export markets identified by Chinese producers and exporters include Australia, Europe, Korea, Japan, Malaysia, Singapore, and South Africa. Shipments to the Chinese home market comprised between *** and *** percent of total shipments for Chinese producers in 2006 to 2008; home market shipments were lower (*** percent) in interim 2009 than in interim 2008 (*** percent).

The share of China's shipments of MKP exported to the United States, as a share of its total shipments, increased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. In the first half of 2009, this share was *** percent compared with *** percent in the first half of 2008. Principal alternative export markets identified by Chinese producers and exporters include Asia, Europe, India, Japan, Korea, the Middle East, Thailand, and Vietnam. Shipments to the Chinese home market comprised *** percent of total shipments for Chinese producers in 2006, decreasing to *** percent in 2008; home market shipments were higher (*** percent) in interim 2009 than in interim 2008 (*** percent).

The share of China's shipments of STPP exported to the United States, as a share of its total shipments, increased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. In the first half of 2009, this share was *** percent, compared with *** percent in the first half of 2008. Principal alternative export markets identified by Chinese producers and exporters include Africa, Australia, Bangladesh, Europe, India, Japan, Korea, Latin America, the Middle East, Saudi Arabia, South America, South Asia, Southeast Asia, Switzerland, and Syria. Shipments to the Chinese home market comprised *** percent of total shipments for Chinese producers in 2006, decreasing irregularly to *** percent in 2008; home market shipments were higher (*** percent) in interim 2009 than in interim 2008 (*** percent). According to ***, Chinese domestic consumption of STPP is ***.²³ China's exports of STPP are mainly shipped to the Middle East (approximately 28 percent of the total exports).²⁴ As of July 1, 2007, the Chinese Government eliminated the 13 percent export rebate on STPP, apparently to protect its phosphate reserves.²⁵

The share of China's shipments of TKPP exported to the United States, as a share of its total shipments, increased from *** percent in 2006 to *** percent in 2007, then decreased to *** percent in 2008. In the first half of 2009, this share was *** percent compared with *** percent in the first half of 2008. Principal alternative export markets identified by Chinese producers and exporters of TKPP include Australia, Korea, and Thailand. Shipments to the Chinese home market comprised *** percent of total shipments for Chinese producers in 2006, decreasing irregularly to *** percent in 2008; home market shipments were higher (*** percent) in interim 2009 than in interim 2008 (*** percent).

Inventory Levels--The ratio of U.S. importers' U.S. inventories of DKP from China, as a percentage of their total shipments of DKP from China, decreased from *** percent in 2006 to *** percent in 2007 before increasing to *** percent in 2008; the ratio was *** percent in the first half of 2009, compared with *** percent in the first half of 2008.

²³ "How should the STPP sector shake off development crisis?," *China Chemical Reporter*, December 6, 2007, submitted as petitioners' postconference brief, exh. 10 and ***.

²⁴ "How should the STPP sector shake off development crisis?," *China Chemical Reporter*, December 6, 2007, submitted as petitioners' postconference brief, exh. 10.

²⁵ *Ibid.*

The ratio of U.S. importers' U.S. inventories of MKP from China, as a percentage of their total shipments of MKP from China, also decreased irregularly, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008; the ratio was *** percent in the first half of 2009, compared with *** percent in the first half of 2008.

The ratio of U.S. importers' U.S. inventories of STPP from China, as a percentage of their total shipments of STPP from China, decreased from *** percent in 2006 to *** percent in 2007 before increasing to *** percent in 2008. The ratio of inventories to total shipments was *** percent in the first half of 2009, compared with *** percent in the first half of 2008.

The ratio of U.S. importers' U.S. inventories of TKPP from China, as a percentage of their total shipments of TKPP from China, increased irregularly from *** percent in 2006 to *** percent in 2008, and were *** percent in the first half of 2009, compared with *** percent in the first half of 2008.

Nonsubject Imports

As stated earlier, since the start of 2006, Israel and Mexico have been the largest nonsubject sources for DKP and MKP; Canada and Mexico for STPP; and France and Germany for TKPP, according to the relevant USITC Dataweb HTS subheadings.

According to Commission questionnaire data, shipments of nonsubject imports accounted for *** percent of all imports in 2006 and 2007 and *** percent of all shipments of imported DKP in 2008. In the first half of 2008, however, nonsubject imports accounted for *** percent of all shipments of nonsubject imports of DKP, but this decreased to *** percent in the second half of 2008 and *** percent in the first half of 2009. Until the fourth quarter of 2008, shipments of imports from Belgium, Germany, Israel, and Taiwan were all higher than shipments of imported Chinese DKP.²⁶

With respect to MKP, shipments of nonsubject imports accounted for approximately *** percent of all imports in 2006 and 2007, but *** percent of all shipments of imported MKP in 2008. In the first half of 2008, however, nonsubject imports accounted for *** percent of all shipments of imports of MKP, but *** percent in the second half of 2008 and *** percent in the first half of 2009. The largest sources for MKP according to Commission questionnaire data were Israel and Mexico.²⁷ Importer *** reported that for part of 2008, Israeli producer Haifa was sold out of MKP.

For STPP, nonsubject imports accounted for approximately 96 percent of all imports in 2006 and 2007 and 92.0 percent of all shipments of imported STPP in 2008. In the first half of 2008, however, nonsubject imports accounted for 94.7 percent of all imports of STPP, but 89.4 percent in the second half of 2008 and 63.5 percent in the first half of 2009. The largest sources for STPP according to Commission questionnaire data were Canada and Mexico.²⁸

Regarding TKPP, shipments of nonsubject imports displayed the opposite trend, accounting for approximately *** percent of all imports in 2006, decreasing to *** percent in 2007, but increasing to *** percent of all shipments of imported TKPP in 2008. In the first half of 2008, however, nonsubject imports accounted for *** percent of all import shipments of TKPP, but increased to *** percent in the second half of 2008 and *** percent in the first half of 2009. The largest nonsubject sources for TKPP according to Commission questionnaire data were Belgium and Israel.²⁹

²⁶ Based on quarterly pricing data received in response to the Commission's importer questionnaires.

²⁷ Based on quarterly pricing data received in response to the Commission's importer questionnaires.

²⁸ This is corroborated by Innophos, as it reported in its 2008 annual report "Our major competitor in STPP is Mexichem in Mexico." Innophos's 2008 Annual Report, submitted as exh. 2 to respondents' postconference brief.

²⁹ Based on quarterly pricing data received in response to the Commission's importer questionnaires.

General Supply Conditions

Fertilizers are a substitute in production for phosphate salts. Strong agricultural demand in fertilizers creates competition in feedstock for phosphate supply. This can have the effect of tightening the supply of feedstock and leading to increased raw material prices, which occurred in 2008.³⁰ Demand for fertilizers in the United States is reportedly down by “at least 10 percent” in 2009, easing the pressure on raw materials for phosphate salt producers.³¹

Firms were asked to discuss the trends in raw material prices and expected future prices of raw materials. Most firms reported major increases in the costs of raw materials particularly in 2008, mainly due to increased fertilizer demand.³² Many of these firms reported that prices have declined sharply in 2009 from the 2008 peaks.^{33 34} *** reported that since 2006, the cost of phosphoric acid had increased by 35 percent, soda ash increased by 30 percent, and potassium hydroxide increased by 250 percent. While future trends in input price changes were less clear, a number of firms reported that they expected input prices to increase when the price of corn or fuel increase.

Firms were asked if they had refused, declined, or been unable to supply certain sodium and potassium phosphate salts since January 1, 2006. ***. ICL reported that it had an *** allocation on *** and limited its customers in 2008 to 2007 levels for all phosphate products, including phosphoric acid.³⁵ During this time, Prayon supplied purchasers that could not get enough material from ICL.³⁶ ***. Innophos also reported that ***. Respondents contend that ***.³⁷

Twenty-one of 36 responding importers reported limitations on the supply of phosphate salts; all 21 reported shortages in 2008.³⁸ Some importers reported that purchasers of U.S. product turned to them for product because of the lower availability of U.S.-produced phosphate salts. Importers reported U.S. product was less available both because of limitations on the inputs and because high-demand fertilizers caused the inputs to be used for fertilizers rather than phosphate salts. Importers also reported restrictions from import sources: from China because of limits on raw materials, the Olympics, and export taxes, and from Israel because Haifa was sold out of MKP. Petitioners also stated that China’s supply was disrupted in 2008 because of earthquakes and the Olympics in Beijing (in order to improve air quality and reduce the risk of a chemical spill).³⁹ Petitioners further contend that the supply of phosphoric rock in winter in China always declines due to the reduction in the availability of hydroelectric power.⁴⁰ Respondent Wenda Co., Ltd. reported, however, that the Olympics did not have a “big influence {on} phosphates

³⁰ See, e.g., Respondents’ postconference brief, p. 16-17 and exh. 12. See also *1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from China and India, Inv. Nos. 731-TA-1146-1147 (Final)*, USITC Publication 4072, April 2009, p. 14 (noting a curtailment of phosphorous production in China, “surging” global phosphorous demand for agricultural applications, and the imposition of export taxes by the Chinese government on phosphorous exports in 2008).

³¹ Conference transcript, p. 88 (Schewe).

³² *** also reported that the earthquake in China destroyed some Chinese phosphate production and a Canadian potash mine strike reduced U.S. supply of potassium.

³³ For example, *** reported that “current pricing reflects the drop in KOH 45% solution pricing from \$1800 per ton on spot market to down to below \$600 per ton today. Yellow phosphorous pricing has dropped from \$3385/MT to less than \$1850/MT today.”

³⁴ See Part V: Pricing and Related Information for data related to domestic producers’ raw material prices.

³⁵ Conference transcript, pp. 79-80 (Schewe).

³⁶ Conference transcript, p. 80 (Sexton).

³⁷ Respondents’ postconference brief, p. 21.

³⁸ One of these importer reported that the shortage began in October 2007 but continued in 2008.

³⁹ Conference transcript, pp. 27-28 (Schewe).

⁴⁰ Conference transcript, p. 27 (Schewe).

because the major five provinces where the phosphates producers are located are all in the central to west/southwest – so very far from Beijing.”⁴¹ With respect to the earthquakes, Mr. Wei of Wenda Co., Ltd. reported that some of the producers were taken offline and some have returned to production.⁴² Finally, one importer reported that in 2008, it had reduced its imports of TKPP because when prices spiked, it feared being stuck with high priced product when the prices eventually fell.⁴³

Nineteen of 35 responding importers *** reported that supply factors other than the availability of raw materials that had influenced the supply of phosphate salts in the U.S. market. ***. A number of importers reported that there had been supply restrictions from U.S. suppliers, other factors included increased transportation costs, hurricanes reducing U.S. production of TKPP, Chinese export taxes, weight restrictions, and labor cost restrictions. Importer *** stated:

“nearly all of the demand {for imported DKP} was from customers who were unable to purchase domestically produced food-grade liquid MKP and DKP. Were they able to buy domestically produced dry product as a replacement, they would have, but that material was also not available from any domestic production. So, to sustain their business our customers turned to us to import whatever we could find and China had product, albeit at elevated prices.”⁴⁴

When asked if there had been any changes in the product range or marketing of phosphate salts, *** responding producers and 30 of 34 responding importers reported “no.” ***, and respondents report that 15 states have already banned ADW detergents containing phosphates.⁴⁵ Because of the difficulty in maintaining separate supply chains, dishwashing detergent manufacturers are moving entirely to phosphate-free varieties.⁴⁶ One importer of DKP reported that its imports were a one time sale, while another importer of DKP reported that it imports directly for its own use, although it also sold some product to fertilizer wholesalers. One importer of STPP reported consolidation of phosphorous manufacturers and one reported demand for Chinese product fell in late 2007 after the melamine scare caused users to change to domestic sources until they failed to deliver on contract.

Demand

U.S. Demand

Demand Characteristics

Certain phosphate salts are used in a wide range of applications, and different phosphate salts are used in different applications, as shown in table II-3.

⁴¹ Conference transcript, p. 191 (Wei).

⁴² Ibid.

⁴³ *** importer’s questionnaire response, section III-21.

⁴⁴ *** importer’s questionnaire response.

⁴⁵ Respondents’ postconference brief, p. 9.

⁴⁶ Respondents’ postconference brief, exh. 7.

**Table II-3
DKP, MKP, STPP, and TKPP: Products for which phosphate salts are used and share of the cost of these end products as reported by U.S. producers and importers**

Phosphate salt	End Use	Cost share of phosphate salt in end use
DKP	Antifreeze	5%
	Baked goods	5%
	Meat processing	1%
	Dairy (coffee creamers, processed cheese, evaporated milk)	1-5%
	Buffering agent in compounding formulas	10%
	Metal treatment	N/A
MKP	Cement	34%
	Buffering agent in compounding formulas	10%
	Refractories	25%
	Food & beverage (yeast, food nutrient)	1%
	Chemical processing	1%
	Dog food	5%
	Fertilizer	25-65%
	Fungicide	N/A
STPP	Household and industrial products	25%
	Tile manufacturing	5%
	Anticoagulant	85%
	Detergents (automatic dishwasher detergent)	5-20%
	Water treatment	1-5%
	Meat curing, poultry, and seafood, food preservative	1-10%
	Car wash	50%
TKPP	Detergents, industrial cleaners, surfactant (cleaning products)	5-20%
	Food	1%
	Water treatment	1-30%
	Metal finishing	25%
	Paints	1%
	Pulp and paper	5%
	Household and industrial type products	25%
	Buffering agent in compounding formulas	15%
	Fertilizer, boiler descaling, dyeing, preservative	N/A
Note.—N/A is reported if none of the responding firms reported cost share.		
Source: Compiled from data submitted in response to Commission questionnaires.		

From 2006 to 2008, apparent U.S. consumption of DKP increased by *** percent, MKP increased by *** percent, STPP decreased by *** percent, and TKPP decreased irregularly by *** percent on a quantity basis. Between interim 2008 and interim 2009, apparent U.S. consumption of DKP was *** percent higher, MKP was *** percent lower,⁴⁷ STPP was *** percent lower, and TKPP was *** percent lower. ***. Importers' responses were more varied, though a plurality reported demand for STPP was declining. Responses are shown in the table II-4.

Table II-4
DKP, MKP, STPP, and TKPP: Producer and importer perceptions regarding DKP, MKP, STPP, and TKPP demand

Product	Producers				Importers			
	Increase	No change	Decrease	Fluctuated	Increase	No change	Decrease	Fluctuated
DKP	0	***	***	0	3	4	1	3
MKP	0	***	***	0	1	8	4	3
STPP	0	***	***	0	4	6	11	2
TKPP	0	***	***	0	2	9	3	3

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

The most common reason reported for reduced demand for STPP was changes in state environmental regulations that will eliminate its use in automatic dishwasher (“ADW”) detergents in 2010. In July 2010, automatic dishwashing detergents will no longer contain phosphates. This will have the effect of decreasing domestic demand for STPP, with petitioners estimating a decline of more than 50 percent by 2010 or 2011. At that point, demand for food-grade and tech-grade STPP reportedly may be about equal.⁴⁸ One source for chemical market information source estimates that the industrial and institutional cleaners (which will not face the phosphate ban) comprise 25 percent of STPP demand and ADW comprises 23 percent. Industrial and institutional cleaners will also demand less STPP as formulations become more environmentally-friendly.⁴⁹ From August 2008 to August 2009, Prayon estimated that it has experienced a 10-million pound decrease in its sales of STPP, mostly due to lower demand in the ADW market.⁵⁰ Petitioners also assert that other countries will likely ban phosphates in their ADW detergents, though this may not occur for three to five years in Europe.⁵¹ British Sulphur

⁴⁷ This is consistent with petitioners’ testimony that demand for fertilizers using technical-grade MKP decreased in 2009 compared with 2008, but that demand for food-grade MKP was increasing. Conference transcript, pp. 87-88 (Schewe).

⁴⁸ Conference transcript, p. 114 (Schewe).

⁴⁹ Ibid.

⁵⁰ Conference transcript, p. 92 (Allen). Ms. Allen also noted decreased demand due to the recession, but stated that, “. . . the recession has not had a great impact on our business because we are a commodity, we are not something that is tied to any luxury items.” Ibid.

⁵¹ Conference transcript, p. 84 (Sexton). “The European Commission, the Executive, is currently considering the possibility of introducing an EU-wide ban on phosphates in all consumer detergents.” Chemical profile: sodium tripolyphosphate, ICIS, as reported in petitioners’ postconference brief, exh. 19, and found at: <http://www.icis.com/Articles/2007/10/08/9067793/Chemical-profile-sodium-tripolyphosphate.html>, retrieved

(continued...)

Consultants' September 2007 forecast for STPP, however, estimates that despite the U.S. ban decreasing U.S. apparent consumption by nearly *** percent between 2006 and 2012, worldwide apparent consumption for STPP will increase by *** percent between 2009 and 2012.⁵²

At the staff conference, a witness for ICL forecasted demand growth for particular market segments and phosphate salts: 2.5 percent for food-grade STPP, TKPP at the rate of population growth, MKP for paints and coatings at 3 percent, MKP in food and beverage applications (Powerade/Gatorade) at greater than 3 percent, tech-grade MKP for fertilizers at 3.5 percent after this year's decline, DKP for construction at 3 percent, and DKP for "convenience foods" at greater than 3 percent.⁵³

When asked about new uses for the phosphate salts, importers' responses included DKP for meat processing and MKP for cement applications (if the price is lower than alternatives). Some importers reported that TKPP use in cleansers was declining, and others reported that demand in the overall economy would influence demand for phosphate salts.

Cost Share

Phosphate salts are used in many different applications with wide ranging cost shares, as shown in table II-3. Three importers and *** reported cost shares of DKP in their end uses, six importers and *** reported cost shares of MKP in their end uses, seven importers and *** reported cost shares of STPP in their end uses and five importers and *** reported cost shares for TKPP. Innophos reported that, "due to the low cost of specialty phosphates relative to customers' total production cost, and the high functional value of specialty phosphates in customers' products," customers are often reluctant to switch suppliers.⁵⁴

Substitute Products

Producers and importers were asked to list substitutes and the applications in which they are used. *** and one or more importer listed substitutes that could be used in a number of applications as reported in table II-5.

⁵¹ (...continued)
October 30, 2009.

⁵² Petitioners' postconference brief, exh. 14. Petitioners note, however, that this report may not fully account for "recent initiatives in numerous countries and regions to ban or limit the use of STPP in consumer automatic dishwasher detergents" submitted in other exhibits. Petitioners' postconference brief, p. 42 and exhs. 15 and 16.

⁵³ Conference transcript, pp. 115-116 (Schewe).

⁵⁴ Innophos's 2008 Annual Report, submitted in respondents' postconference brief as exh. 2.

**Table II-5
DKP, MKP, STPP, and TKPP: Applications and substitute products as reported by producers and importers**

Product	Producers		Importers		Applications and substitute products reported
	Yes	No	Yes	No	
DKP	***	***	1	17	Antifreeze - phosphoric acid. Baked goods - ammonium bicarbonate.
MKP	***	***	4	19	Cement - ammonium phosphates, potassium citrate. Agriculture - potassium hydroxide, phosphoric acid, MAP (monoammonium phosphate), KOH, KCL. Dog Food - Almost any phosphate.
STPP	***	***	11	15	Detergent - zeolites, surfactants, citrates, sodium citrates, silicas, sodium silicates, sodium carbonate. Sequestration - polymers. Meat Curing - erythorbates. Cement and Concrete - any binder. Water Treatment - phosphoric acid, sodium hexametaphosphate.
TKPP	***	***	4	22	Water Treatment - phosphoric acid, sodium hexametaphosphate. Cleaners - zeolites, silicas, citrates. Sequestration - polymers.

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

Most producers and most importers reported that changes in the price of substitutes had not affected the price of certain phosphate salts as shown in table II-6.

**Table II-6
DKP, MKP, STPP, and TKPP: Effect of price changes of substitutes on phosphate salts, as reported by producers and importers**

		DKP	MKP	STPP	TKPP
Producer	Substitutes affect price	***	***	***	***
	Substitutes do not affect price	***	***	***	***
Importer	Substitutes affect price	2	4	0	1
	Substitutes do not affect price	19	20	19	20

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

Both importers that reported that substitutes influence the price of DKP reported shortages as the reason that substitutability affected price. One importer reported that end users can use MAP as a substitute for MKP at some sacrifice of function and with a two-month changeover period. Another importer reported that large end users typically make their own MKP from potassium hydroxide and

phosphoric acid, while a third reported that if MKP prices increase, end users increase the cost of their products. For STPP, ***.⁵⁵

Most responding importers *** reported that substitutes had not changed since 2006. Two of 20 responding importers, however, reported that substitutes changed for STPP and one of the responding importers reported substitutes changed for TKPP. These firms reported polymers were new substitutes for STPP and TKPP for sequestration, and silicates were new substitutes for STPP.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported products depends upon such factors as relative prices, quality, and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on producer and importer questionnaire responses, staff believes that on the whole, there is likely to be a high degree of substitution between phosphate salts produced in the United States and those produced in China. Technical-grade phosphate salts are likely to have a higher degree of substitution than food-grade phosphate salts due to the stricter guidelines that need to be met for the food-grade products and, therefore, the fewer Chinese factories potentially capable of producing them.⁵⁶ Food-grade phosphate salts can be substituted for technical-grade phosphate salts, but not vice versa.⁵⁷ Also, purchasers reportedly may be less willing to purchase food-grade STPP from China due to recent health and safety issues like melamine found in pet food,⁵⁸ although, petitioners contend, increasing cost pressures may make some of these pressures abate somewhat.⁵⁹ ***.⁶⁰ For food-grade phosphate salts there is reportedly a long qualification process, estimated to be about one year or more.⁶¹ ⁶²

Lead Times⁶³

The three responding producers reported selling *** percent of their phosphate salts from inventories, and the remaining *** percent on a produced-to-order basis. Producers' lead times when selling out of inventory ranged from *** days to *** weeks, while lead times for produced-to-order phosphate salts ranged from *** days to *** weeks. Twenty-one of the 29 responding importers selling from U.S. inventories reported selling most their product from U.S. inventories, with 14 of these selling more than 80 percent from U.S. inventories. Lead times from importer inventories ranged from 1 to 10 days, with 12 importers reporting lead times of three days or less. Thirteen importers reported sales from overseas inventories, with four of these making more than 80 percent of their sales from these overseas

⁵⁵ The one importer reporting that substitutes for TKPP had affected its price did not report how this occurred; rather it reported that increases in prices of TKPP caused an increase in the price of the compound product produced from TKPP.

⁵⁶ Conference transcript, p. 185 (Wei) and pp. 72-73 (Cannon). Petitioners identified 14 Chinese producers of food-grade STPP. Petitioners' postconference brief, exh. 17.

⁵⁷ Conference transcript, p. 72 (Cannon), p. 163 (Metzger), and p. 203 (Wei).

⁵⁸ Respondent's postconference brief, p. 8, and ***.

⁵⁹ Conference transcript, p. 131 (Sexton).

⁶⁰ ***.

⁶¹ Conference transcript, p. 159 (Metzger) and ***.

⁶² Respondent Wenda was requested to submit a tabulation of accounts at which it is presently undergoing qualification, but did not do so in its postconference brief.

⁶³ Questionnaire respondents were requested to separate their answers if their responses differed by product. No producer or importer reported lead times differing by product.

In addition, producers and importers were asked to assess how often differences other than price were significant in sales of phosphate salts from the United States, China, and nonsubject countries (table II-8). ***. The majority of importers reported that differences other than price were either “frequently” or “sometimes” important for all product and all country pairs with the exception of TKPP for the nonsubject vs Chinese product. Differences reported include: lead times, logistics problems, technical support, European product being of better quality than Chinese product, variation in quality among the Chinese producers, product requiring qualification, Chinese product had problems with its solubility, and granulation size and U.S. MKP is food grade while Chinese MKP is technical which can not be used by many customers. In addition, one importer noted that the U.S. product was better quality.

Table II-8
DKP, MKP, STPP, and TKPP: U.S. producers’ and importers’ perceived importance of factors other than price in sales of product produced in the United States and in other countries¹

Country comparison	DKP								MKP							
	U.S. producers				U.S. importers				U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	***	***	***	***	2	2	3	1	***	***	***	***	5	1	7	2
U.S. vs. other countries	***	***	***	***	3	2	3	1	***	***	***	***	2	1	7	2
China vs. other countries	***	***	***	***	2	1	3	1	***	***	***	***	1	1	8	2
	STPP								TKPP							
	U.S. producers				U.S. importers				U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	***	***	***	***	4	2	10	3	***	***	***	***	1	1	8	3
U.S. vs. other countries	***	***	***	***	2	1	7	3	***	***	***	***	3	2	9	2
China vs. other countries	***	***	***	***	1	1	8	2	***	***	***	***	1	1	4	3

¹ Producers and importers were asked if differences other than price between certain phosphate salts produced in the United States and those produced in other countries were a significant factor in their firms’ sales of salts.

Note.--“A” = Always, “F” = Frequently, “S” = Sometimes, and “N” = Never.

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

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 subsidy and 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 (except as noted) is based on the questionnaire responses of three firms that accounted for the large majority (as much as *** percent) of U.S. production of the phosphate salts at issue in this proceeding during 2008.¹

U.S. PRODUCERS

The petition identified four U.S. producers of the phosphate salts at issue in this proceeding. The Commission sent producer questionnaires to the companies identified in the petition as well as 10 companies listed as possible producers in ***. The Commission received completed questionnaire responses from three of the four producers identified in the petition.

Presented in table III-1 is a list of current domestic producers of phosphate salts and each company's position on the petition, production location(s), firm ownership, and share of reported production of phosphate salts in 2008.

**Table III-1
DKP, MKP, STPP, and TKPP: U.S. producers, positions on the petition, firm ownership, U.S. production locations, and shares of 2008 reported U.S. production**

Firm	Position on petition	Firm ownership	U.S. production location(s)	Quantities and share of production							
				DKP		MKP		STPP		TKPP	
				1,000 lbs.	%	1,000 lbs.	%	1,000 lbs.	%	1,000 lbs.	%
ICL	Petitioner	Israel Chemical Limited	Lawrence, KS St. Louis, MO Carteret, NJ	***	***	***	***	***	***	***	***
PCS and Innophos ¹	***	***	(²)	----	----	----	----	----	----	***	***
Prayon	Petitioner	Prayon, S.A.	Augusta, GA	----	----	----	----	***	***	***	***
Totals				***	***	***	***	***	***	***	***
¹ ***. ² PCS produces TKPP in Cincinnati, OH ***. Note.—Because of rounding, shares may not total to 100.0 percent. Source: Compiled from data submitted in response to Commission questionnaires.											

¹ The Commission did not receive a response from PCS Purified Phosphates (“PCS”), which was listed as the only other U.S. producer in the petition. PCS produces TKPP. ***.

All three U.S. producers are related to foreign producers of the phosphate salts at issue in this proceeding² but none are related to U.S. importers of DKP, MKP, STPP, or TKPP from China. In addition, as discussed in greater detail below, two U.S. producers directly import certain phosphate salts and one purchases certain phosphate salts from U.S. importers.

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers’ capacity, production, and capacity utilization data for DKP, MKP, STPP, and TKPP are presented in tables III-2 through III-5, respectively. As noted by ICL in its questionnaire response, “***.”

**Table III-2
DKP: U.S. producers’ capacity, production, and capacity utilization, 2006-08, January-June 2008, and January-June 2009**

* * * * *

**Table III-3
MKP: U.S. producers’ capacity, production, and capacity utilization, 2006-08, January-June 2008, and January-June 2009**

* * * * *

**Table III-4
STPP: U.S. producers’ capacity, production, and capacity utilization, 2006-08, January-June 2008, and January-June 2009**

* * * * *

**Table III-5
TKPP: U.S. producers’ capacity, production, and capacity utilization, 2006-08, January-June 2008, and January-June 2009**

* * * * *

U.S. PRODUCERS’ SHIPMENTS

Data on U.S. producers’ shipments of DKP, MKP, STPP, and TKPP are presented in tables III-6 through III-9.

**Table III-6
DKP: U.S. producers’ shipments, by types, 2006-08, January-June 2008, and January-June 2009**

* * * * *

² U.S. Producers’ Questionnaire (question I-6).

Table III-7

MKP: U.S. producers' shipments, by types, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-8

STPP: U.S. producers' shipments, by types, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-9

TKPP: U.S. producers' shipments, by types, 2006-08, January-June 2008, and January-June 2009

* * * * *

U.S. PRODUCERS' INVENTORIES

Tables III-10 through III-13 present end-of-period inventories for DKP, MKP, STPP, and TKPP, respectively. Inventories of DKP and MKP fluctuated in a generally downward trend that was more pronounced for DKP than for MKP. Conversely, inventories of STPP and TKPP fluctuated in a generally upward trend, with *** increases in absolute and relative inventory levels in 2008.

Table III-10

DKP: U.S. producers' end-of-period inventories, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-11

MKP: U.S. producers' end-of-period inventories, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-12

STPP: U.S. producers' end-of-period inventories, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-13

TKPP: U.S. producers' end-of-period inventories, 2006-08, January-June 2008, and January-June 2009

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

U.S. producers' imports and purchases are presented in tables III-14 through III-17. ***. ***. ***.

Table III-14

DKP: U.S. producers' imports and purchases, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-15

MKP: U.S. producers' imports and purchases, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-16

STPP: U.S. producers' imports and purchases, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-17

TKPP: U.S. producers' imports and purchases, 2006-08, January-June 2008, and January-June 2009

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

The U.S. producers' aggregate employment data for DKP, MKP, STPP, and TKPP are presented in tables III-18 through III-21. Employment for the production of DKP and MKP in terms of workers and hours worked trended upwards between 2006 and 2008, as did hourly and total wages, although a declining trend in productivity contributed to rising unit labor costs, which became more pronounced in January-June 2009. Employment for the production of STPP and TKPP, in contrast, decreased between 2006 and 2008, as did wages paid (despite higher hourly wages). Employment measures were lower in January-June 2009 than in January-June 2008, and exhibited the same combination of lower productivity and higher unit labor costs.

Table III-18

DKP: U.S. producers' employment-related data, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-19

MKP: U.S. producers' employment-related data, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-20

STPP: U.S. producers' employment-related data, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table III-21

TKPP: U.S. producers' employment-related data, 2006-08, January-June 2008, and January-June 2009

* * * * *

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

U.S. IMPORTERS

Importer questionnaires were sent to 102 firms believed to be importers of subject phosphate salts, as well as to all U.S. producers of phosphate salts.¹ Usable questionnaire responses were received from 44 companies, representing *** percent of imports of DKP and MKP from China and *** percent of imports from nonsubject countries under HTS subheading 2835.24.00;² *** percent of imports of STPP from China and *** percent of imports from nonsubject countries under HTS subheading 2835.31.00; and substantially exceeding the level of imports of TKPP from China and substantially less than the level of imports from nonsubject countries indicated under HTS subheading 2835.39.10^{3 4} in 2008. However, with respect to imports from nonsubject countries, staff received questionnaires from companies representing the large majority of imports under the relevant HTS subheading, indicating that much of the nonsubject import volume consisted of a chemical other than TKPP. Table IV-1 lists all responding U.S. importers of DKP, MKP, STPP, and TKPP from China and other sources.

Table IV-1
DKP, MKP, STPP, and TKPP: U.S. importers, January 2006 - June 2009 aggregated

Firm	Phosphate salt			
	DKP	MKP	STPP	TKPP
ACS Chemical	***	***	***	***
American International Chemical Co.	***	***	***	***
BK Giuliani	***	***	***	***
Brenntag North America, Inc.	***	***	***	***
Buddenheim USA, Inc.	***	***	***	***
Cascade Columbia Distribution	***	***	***	***
Chem One Ltd.	***	***	***	***
Chementry Industries, Inc.	***	***	***	***
Chemical Specialty Group	***	***	***	***

Table continued on the following page.

¹ The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have imported at least 100,000 pounds or more than *** percent of total imports under HTS subheadings 2835.24.00, 2835.39.10, and 2835.31.00 in any one year since 2006.

² “Heading 2835.24.00, HTSUS, includes MKP and DKP, as well as another potassium phosphate, Tri-potassium phosphate (“TKP”). MKP and DKP are the most significant imports. The petitioners have not encountered imports of TKP from China in the market, and ships’ manifest data indicate that there have been only erratic, small-volume imports. All or nearly all imports of potassium phosphate from China are therefore MKP or DKP.” Petition, p. 18.

³ “Heading 2835.39.1000, HTSUS, includes TKPP, as well as Potassium tri-polyphosphate (“KTPP”). However, TKPP is the more important potassium polyphosphate in commercial terms. Indeed, TKPP is the only potassium polyphosphate known to be imported from China.” Petition, pp. 17-18.

⁴ At least one importer of TKPP, ***, reported importing TKPP under a different HTS subheading (***)

Table IV-1 – *Continued*

DKP, MKP, STPP, and TKPP: U.S. importers, January 2006 - June 2009 aggregated

Firm	Phosphate salt			
	DKP	MKP	STPP	TKPP
Compass Chemical International LLC	***	***	***	***
ChemSol, LLC	***	***	***	***
CST-SurTec, Inc.	***	***	***	***
Global Chemical Resources, Inc.	***	***	***	***
Grow More, Inc.	***	***	***	***
Haifa Nutritech, Inc.	***	***	***	***
Innophos, Inc.	***	***	***	***
K.G. International, Inc.	***	***	***	***
Kaltron-Pettibone	***	***	***	***
The Korex Corporation	***	***	***	***
Laszlo Corporation	***	***	***	***
Lidochem, Inc.	***	***	***	***
Mann Chemical LLC	***	***	***	***
Mars Petcare US	***	***	***	***
Martrex Inc.	***	***	***	***
Mexichem America, Inc.	***	***	***	***
Nealanders Food Ingredients	***	***	***	***
Omni-Chem 136, LLC	***	***	***	***
Prayon, Inc.	***	***	***	***
Quimir SA de CV	***	***	***	***
Reckitt Benckiser, Inc.	***	***	***	***
Rotem BKG LLC	***	***	***	***
Royal Canin USA	***	***	***	***
S and G Resources, Inc.	***	***	***	***
Sampco, Inc.	***	***	***	***
SBC Group, Inc. (Nutrichem)	***	***	***	***
Shanco International, Inc.	***	***	***	***
Silver Fern Chemical, Inc.	***	***	***	***
Summit Chemicals, Inc.	***	***	***	***
Univar USA, Inc.	***	***	***	***
V.L. Clark Chemical Co., Inc.	***	***	***	***
Wego Chemical and Mineral Corp.	***	***	***	***
Wenda America, Inc.	***	***	***	***
White Cross Laboratories, Inc.	***	***	***	***
Zhong Ya Chemical (USA) Ltd.	***	***	***	***

Note.— For purposes of this table “other” means unspecified sources other than China.

U.S. IMPORTS

Tables IV-2 through IV-5 present data for U.S. imports of DKP, MKP, STPP, and TKPP, respectively, from China and all other sources.

Table IV-2

DKP: U.S. imports, by sources, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-3

MKP: U.S. imports, by sources, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-4

STPP: U.S. imports, by sources, 2006-08, January-June 2008, and January-June 2009

Source	Calendar year			January-June	
	2006	2007	2008	2008	2009
Quantity (1,000 lbs. dry weight)					
China	18,828	17,153	25,969	7,606	35,550
Nonsubject	264,891	251,500	257,609	130,191	49,533
Total	283,719	268,653	283,579	137,797	85,083
Value (1,000 dollars)¹					
China	7,075	6,449	17,255	4,079	18,230
Nonsubject	104,563	98,846	153,343	63,173	35,371
Total	111,639	105,294	170,598	67,252	53,601
Unit value (per pound dry weight)¹					
China	\$0.38	\$0.38	\$0.66	\$0.54	\$0.51
Nonsubject	0.39	0.39	0.60	0.49	0.71
Average	0.39	0.39	0.60	0.49	0.63
Share of quantity (percent)					
China	6.6	6.4	9.2	5.5	41.8
Nonsubject ²	93.4	93.6	90.8	94.5	58.2
Total	100.0	100.0	100.0	100.0	100.0
Share of value (percent)					
China	6.3	6.1	10.1	6.1	34.0
Nonsubject ²	93.7	93.9	89.9	93.9	66.0
Total	100	100.0	100.0	100.0	100.0
¹ Landed, U.S. port of entry, duty-paid. ² The majority of nonsubject imports of STPP are imported from Canada, Mexico, Israel, and Germany.					
Source: Compiled from official Commerce statistics.					

Table IV-5
TKPP: U.S. imports, by sources, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-6 presents quarterly data of U.S. imports of STPP.⁵

Table IV-6
STPP: U.S. imports, by principal sources, by quarter, January 2006 - June 2009

Source	Q1	Q2	Q3	Q4	Total
Quantity (1,000 pounds)					
2006:					
China	3,634	5,756	4,546	4,892	18,828
Canada	24,271	20,276	23,695	23,254	91,496
Mexico	34,472	35,264	24,919	42,873	137,527
All others	11,124	7,956	7,191	9,597	35,868
Total	73,501	69,252	60,350	80,616	283,719
2007:					
China	4,981	4,533	3,683	3,956	17,153
Canada	25,236	24,161	20,712	22,600	92,709
Mexico	26,599	30,181	37,171	30,331	124,282
All others	8,764	10,251	6,097	9,398	34,509
Total	65,580	69,126	67,663	66,284	268,653
2008:					
China	1,474	6,133	7,926	10,437	25,969
Canada	23,039	21,906	22,129	19,451	86,524
Mexico	39,374	29,822	30,746	32,116	132,059
All others	6,775	9,275	8,677	14,299	39,026
Total	70,662	67,136	69,478	76,304	283,579
2009:					
China	17,604	17,946	--	--	35,550
Canada	17,078	16,251	--	--	33,329
Mexico	7,400	3,693	--	--	11,093
All others	1,752	3,358	--	--	5,110
Total	43,834	41,249	--	--	85,083
Note.--Because of rounding, figures may not add to the totals shown.					
Source: Compiled from official Commerce statistics.					

⁵ U.S. imports of the potassium phosphate salts do not enter the United States under unique HTS statistical reporting numbers; therefore quarterly import data are not available for DKP, MKP, or TKPP.

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.⁶ Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where 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 or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.⁷ Imports of DKP from China accounted for *** percent of total imports of DKP by quantity from July 2008-June 2009. Imports of MKP from China accounted for *** percent of total imports of MKP by quantity from July 2008-June 2009. Imports of STPP from China accounted for 23.4 percent of total imports of STPP by quantity from July 2008-June 2009. Imports of TKPP from China accounted for *** percent of total imports of TKPP by quantity from July 2008-June 2009.

APPARENT U.S. CONSUMPTION

Data concerning apparent U.S. consumption of DKP, MKP, STPP, and TKPP are shown in tables IV-7 through IV-10, respectively.

Table IV-7

DKP: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

Table IV-8

MKP: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

Table IV-9

STPP: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

⁶ Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

⁷ Section 771(24) of the Act (19 U.S.C. § 1677(24)).

Table IV-10

TKPP: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2006-08, January-June 2008, and January-June 2009

* * * * *

U.S. MARKET SHARES

U.S. market share data for DKP, MKP, STPP, and TKPP are presented in tables IV-11 through IV-14.

Table IV-11

DKP: U.S. consumption and market shares, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-12

MKP: U.S. consumption and market shares, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-13

STPP: U.S. consumption and market shares, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-14

TKPP: U.S. consumption and market shares, 2006-08, January-June 2008, and January-June 2009

* * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of imports to U.S. production of DKP, MKP, STPP, and TKPP is presented in tables IV-15 through IV-18, respectively.

Table IV-15

DKP: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-16

MKP: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-17

STPP: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table IV-18

TKPP: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-08, January-June 2008, and January-June 2009

* * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The primary raw materials used in the production of phosphate salts are phosphoric acid, potassium hydroxide (for DKP, MKP, and TKPP), and soda ash or caustic soda (for STPP). In addition, energy is needed to heat the chemical mixture to bring about the proper chemical reactions necessary to produce the phosphate salts. Yellow phosphorous, the key ingredient in making phosphoric acid, accounts for approximately 60 percent of the cost of producing STPP, and soda ash accounts for approximately 25 percent.¹ As discussed in greater detail in *Part VI* of this report, these chemicals and other raw materials accounted for *** percent of the total cost of goods sold (COGS) during 2006-08 for DKP, *** percent for MKP, *** percent for STPP, and *** percent for TKPP. In the first half of 2009, however, these shares rose to *** percent for DKP, *** percent for MKP, *** percent for STPP, and *** percent for TKPP.

The price of phosphoric acid began rising in 2008, partly due to increased demand for phosphates used in corn and soybean fertilizer applications as federal biofuel mandates were being placed into effect.² Prices for potassium hydroxide and caustic soda spiked in the first half of 2009 (figure V-1).³ Though the price of caustic soda increased *** percent at its peak, substitution for caustic soda is easily accomplished based on market pricing, generally through the use of soda ash.⁴ A three-month strike in Canada in late 2008 greatly reduced ICL's potassium phosphate production and in response, ICL imported finished product from sister companies in Brazil and Europe, and from China.⁵

¹ "How should the STPP sector shake off development crisis?" *China Chemical Reporter*, December 6, 2007, submitted as ex. 10 to Petitioners' postconference brief. It should be noted that these estimates were generated prior to the rapid increases in the prices of phosphoric acid and other inputs.

² See, e.g., Respondents' postconference brief, pp. 16-17 and ex. 12, and *1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from China and India, Inv. Nos. 731-TA-1146-1147 (Final)*, USITC Publication 4072, April 2009, p. 1.

³ Indices were calculated based on ***.

⁴ Conference transcript, p. 122 (Fyock).

⁵ Conference transcript, pp. 101-102 (Schewe).

Figure V-1
DKP, MKP, STPP, and TKPP: Indexed weighted quarterly U.S. input prices *, January 2006-June 2009**

* * * * *

U.S. Inland Transportation Costs⁶

The three responding U.S. producers reported that U.S. inland transportation costs ranged from *** percent of the total delivered cost of phosphate salts. Importers reported U.S. inland transportation costs that ranged from 1 to 20 percent, with 25 of the 32 responding importers reporting that U.S. inland transportation costs ranged between 1 and 7 percent of the total delivered cost of phosphate salts.

*** reported that *** arranged delivery and *** reported that *** arranged delivery. Twenty-eight of the 40 responding importers reported that they arranged delivery, 11 reported that the purchaser did so, one importer reported that it and the purchaser arranged transportation.⁷ Prayon and ICL reported selling ***, while Innophos reported selling TKPP ***. Twenty of 34 responding importers reported shipping from their storage facilities and the other 14 reported shipping from the point of importation.

The domestic producers reported shipping *** percent of their phosphate salts less than 100 miles, *** percent between 101 and 1,000 miles, and *** percent more than 1,000 miles. Thirty-four importers reported shipping distances. Thirty-two importers reported selling within 100 miles of their U.S. point of shipment, with 16 selling the majority within 100 miles and 13 others selling more than 80 percent within 100 miles. Thirty responding importers sold phosphate salts between 101 and 1,000 miles of their point of shipment, 19 of these sold the majority of their salts in this range. Eighteen importers reported selling phosphate salts over 1,000 miles from their U.S. point of shipment, with one of these selling all of their product in this range and all others selling less than half in this range.

PRICING PRACTICES

Pricing Methods

All three producers reported selling phosphate salts using ***, while Prayon and ICL also sold ***. *** reported that ***. *** stated that ***. *** reported it used ***. Most importers, 36 of the 38 responding, reported transaction-by-transaction negotiations, 9 reported contracts, and 5 price lists. ICL submitted eight price increase notices effective between October 1, 2007 and August 1, 2008.⁸

*** reported selling under ***. With the recent increases in raw material prices, representatives from ICL and Prayon reported that pricing contracts will now only be for a maximum of 90 days, and often the prices on those contracts can be renegotiated within that period.⁹ Seven of the 37 responding importers reported selling via long-term contracts, yet only one of these sold mainly via long-term contracts. Twenty importers reported selling via short-term contracts, with 11 of these selling half or more using short term contracts. The majority of importers (34) reported selling on the spot market, with 24 of these selling the majority of their product this way.

⁶ Questionnaire respondents were requested to separate their answers if their responses differed by product; unless noted, responses were generally applicable for each of the four chemicals.

⁷ The final importer reported that the Chinese supplier arranged transportation, apparently referring to its international shipment.

⁸ Petitioners' postconference brief, exh. 9.

⁹ Conference transcript, p. 30 (Schewe) and pp. 34-35 (Sexton).

Four importers and *** reported typical terms for their long-term contracts. Three importers, *** reported that their long-term contracts averaged 2 years, and one importer, ***, reported typical long-term contracts lasting from 2 to 4 years long. All four importers, *** reported that contracts could be renegotiated during the contract period. *** two importers reported that price was fixed by the contract while two importers reported quantity was fixed by the contract. Two importers *** reported the existence of meet-or-release clauses in their long-term contracts, while *** two importers reported the long-term contracts did not contain meet-or-release clauses.

***. Twenty importers reported the length of their short-term contracts, ranging from one month to one year in length. *** 12 of the 19 responding importers reported that short-term contracts could not be renegotiated. *** three importers reported that their contracts fix price only, while *** 17 importers reported that contracts fixed both price and quantity. *** five importers reported the existence of meet-or-release clauses in their short-term contracts, while *** 15 importers reported their short-term contracts typically do not contain these clauses.

Sales Terms and Discounts

*** and 31 of 39 responding importers reported that sales terms for phosphate salts are net 30 days. The other eight importers used a range of methods of payment including net 5, 10, 45, 60 or net 30, with half of their payment upon placement of an order and the other half upon delivery. *** reported ***. ICL and Prayon both use “support pricing” for sales to a specific end-user if there is lower priced competition for the sale.¹⁰ Twenty-seven importers reported offering no discounts, seven reported quantity discounts, three reported annual volume discounts, two reported early payment discounts, one each reported truck load pricing, discounts to meeting its competition, and *** reported distributor discounts of 5-10 percent.

*** three importers reported selling on both a delivered and f.o.b. basis. *** 19 importers reported selling on a delivered basis, 16 importers reported selling on an f.o.b. basis, and one reported selling f.o.b. China.

PRICE DATA

The Commission asked U.S. producers and importers of phosphate salts to provide quarterly data for the total quantity and f.o.b. value of phosphate salts that was shipped to unrelated customers in the U.S. market during the period January 2006 to June 2009. The products for which pricing data were requested are as follows:

Product 1.—Dipotassium phosphate (DKP), anhydrous, food grade, whether granular or powder and regardless of packaging size

Product 2.—Monopotassium phosphate (MKP), anhydrous, technical grade, whether granular or powder and regardless of packaging size

Product 3.—Sodium tripolyphosphate (STPP), anhydrous, food grade, whether granular or powder and regardless of packaging size

Product 4.—Sodium tripolyphosphate (STPP), anhydrous, technical grade, whether granular or powder and regardless of packaging size

¹⁰ Conference transcript, p. 30 (Schewe) and p. 35 (Sexton).

Product 5.—Tetrapotassium pyrophosphate (TKPP), anhydrous, food grade, whether granular or powder and regardless of packaging size

Product 6.—Tetrapotassium pyrophosphate (TKPP), anhydrous, technical grade, whether granular or powder and regardless of packaging size

Three U.S. producers provided usable pricing data for sales of the requested products including one for DKP and MKP, two for STPP, and three for TKPP. Twenty-eight importers reported pricing data for sales of these pricing products from China including 8 for DKP, 12 for MKP, 19 for STPP, and 13 for TKPP. Fifteen importers reported pricing product data for product from nonsubject countries including 6 for DKP, 7 for MKP, 8 for STPP, and 2 for TKPP. Not all firms reported pricing for all products for all quarters. Pricing data for the six products reported by these firms, shown in tables V-1 to V-6 and figures V-2 to V-7, accounted for *** percent of U.S. producers' U.S. shipments of DKP, *** percent for MKP, *** percent for STPP, and *** percent for TKPP.¹¹ Pricing data for product from China accounted for *** percent of U.S. imports of DKP from China from January 2006 to June 2009, *** percent for MKP, *** percent for STPP, and *** percent for TKPP.¹²

Table V-1

DKP: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, and margins of underselling and (overselling), by quarters, January 2006-June 2009

* * * * *

¹¹ Data reported on a quantity basis.

¹² Due to the large nonsubject share of sales in these markets, quantity data for nonsubject countries as well as China and the United States are presented graphically in appendix D. As discussed in *Part IV* of this report, imports from nonsubject countries comprised a substantial share of overall imports.

In addition, during the last three quarters for which data were collected, there is a large increase in the quantities of sales of Chinese technical-grade STPP. This is accounted for by sales of imported Mexican technical-grade STPP ***. Innophos has an STPP plant in Mexico, as does Innophos's largest customer, Quimir. In January 2009, Quimir, a division of Mexichem, closed its largest STPP plant, which accounted for about 50 percent of its STPP capacity. Innophos's 2008 Annual Report, submitted as exh. 2 to respondents' postconference brief.

Table V-2

MKP: Weighted-average f.o.b. prices and quantities of domestic and imported product 2,¹ and margins of underselling, by quarters, January 2006-June 2009

Period	United States		China		
	Price (per pound)	Quantity (pounds)	Price (per pound)	Quantity (pounds)	Margin (percent)
2006:					
January-March	\$***	***	\$0.44	545,095	***
April-June	***	***	0.44	259,059	***
July-September	***	***	0.47	308,851	***
October-December	***	***	0.46	204,319	***
2007:					
January-March	***	***	***	***	***
April-June	***	***	0.44	484,055	***
July-September	***	***	***	***	***
October-December	***	***	0.45	155,842	***
2008:					
January-March	***	***	0.46	254,550	***
April-June	***	***	***	***	***
July-September	***	***	0.98	1,548,297	***
October-December	***	***	1.13	1,958,336	***
2009:					
January-March	***	***	***	***	***
April-June	***	***	0.70	931,200	***

¹ Product 2.—Monopotassium phosphate (MKP), anhydrous, technical grade, whether granular or powder and regardless of packaging size.

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

Table V-3

STPP: Weighted-average f.o.b. prices and quantities of domestic and imported product 3,¹ and margins of underselling and (overselling), by quarters, January 2006-June 2009

Period	United States		China		
	Price (per pound)	Quantity (pounds)	Price (per pound)	Quantity (pounds)	Margin (percent)
2006:					
January-March	\$***	***	\$***	***	***
April-June	***	***	***	***	***
July-September	***	***	0.40	146,450	***
October-December	***	***	***	***	***
2007:					
January-March	***	***	0.39	184,400	***
April-June	***	***	0.42	176,900	***
July-September	***	***	0.45	268,750	***
October-December	***	***	0.47	180,550	***
2008:					
January-March	***	***	0.52	210,000	***
April-June	***	***	0.74	303,650	***
July-September	***	***	0.95	418,824	***
October-December	***	***	0.97	1,038,023	***
2009:					
January-March	***	***	0.88	915,200	***
April-June	***	***	0.68	983,460	***
¹ Product 3.—Sodium tripolyphosphate (STPP), anhydrous, food grade, whether granular or powder and regardless of packaging size.					
Source: Compiled from data submitted in response to Commission questionnaires.					

Table V-4

STPP: Weighted-average f.o.b. prices and quantities of domestic and imported product 4,¹ and margins of underselling and (overselling), by quarters, January 2006-June 2009

Period	United States		China		
	Price (per pound)	Quantity (pounds)	Price (per pound)	Quantity (pounds)	Margin (percent)
2006:					
January-March	\$***	***	\$0.44	1,992,310	***
April-June	***	***	0.45	1,825,952	***
July-September	***	***	0.46	1,799,452	***
October-December	***	***	0.47	1,523,662	***
2007:					
January-March	***	***	0.43	1,398,438	***
April-June	***	***	0.45	2,162,251	***
July-September	***	***	0.45	2,076,124	***
October-December	***	***	0.49	1,476,744	***
2008:					
January-March	***	***	0.54	1,555,462	***
April-June	***	***	0.85	2,162,868	***
July-September	***	***	0.99	2,421,585	***
October-December	***	***	0.87	6,909,326	***
2009:					
January-March	***	***	***	***	***
April-June	***	***	***	***	***
¹ Product 4.—Sodium tripolyphosphate (STPP), anhydrous, technical grade, whether granular or powder and regardless of packaging size. Source: Compiled from data submitted in response to Commission questionnaires.					

Table V-5

TKPP: Weighted-average f.o.b. prices and quantities of domestic and imported product 5, and margins of underselling and (overselling), by quarters, January 2006-June 2009

* * * * *

Table V-6

TKPP: Weighted-average f.o.b. prices and quantities of domestic and imported product 6, and margins of underselling and (overselling), by quarters, January 2006-June 2009

Period	United States		China		
	Price (per pound)	Quantity (pounds)	Price (per pound)	Quantity (pounds)	Margin (percent)
2006:					
January-March	\$***	***	\$0.66	643,913	***
April-June	***	***	0.69	738,412	***
July-September	***	***	0.62	609,247	***
October-December	***	***	0.66	627,415	***
2007:					
January-March	***	***	0.61	770,879	***
April-June	***	***	0.58	727,467	***
July-September	***	***	0.62	899,103	***
October-December	***	***	0.64	442,886	***
2008:					
January-March	***	***	0.70	731,690	***
April-June	***	***	1.07	824,592	***
July-September	***	***	1.17	535,986	***
October-December	***	***	1.37	740,483	***
2009:					
January-March	***	***	1.22	564,795	***
April-June	***	***	1.15	821,630	***

¹ Product 6.—Tetrapotassium pyrophosphate (TKPP), anhydrous, technical grade, whether granular or powder and regardless of packaging size.

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

Figure V-2

DKP: Weighted-average f.o.b. selling prices of product 1 as reported by U.S. producers and importers, by quarters, January 2006-June 2009

* * * * *

Figure V-3

MKP: Weighted-average f.o.b. selling prices of product 2 as reported by U.S. producers and importers, by quarters, January 2006-June 2009

* * * * *

Figure V-4

STPP: Weighted-average f.o.b. selling prices and quantities of product 3 as reported by U.S. producers and importers, by quarters, January 2006-June 2009

* * * * *

Figure V-5

STPP: Weighted-average f.o.b. selling prices and quantities of product 4 as reported by U.S. producers and importers, by quarters, January 2006-June 2009

* * * * *

Figure V-6

TKPP: Weighted-average f.o.b. selling prices and quantities of product 5 as reported by U.S. producers and importers, by quarters, January 2006-June 2009

* * * * *

Figure V-7

TKPP: Weighted-average f.o.b. selling prices and quantities of product 6 as reported by U.S. producers and importers, by quarters, January 2006-June 2009

* * * * *

Table V-7

DKP, MKP, STPP, and TKPP: Summary of weighted-average f.o.b. prices for products 1-6 from the United States and China

* * * * *

Price Trends

Prices of all products increased substantially from their 2006 levels, consistent with higher input costs. Pricing for all U.S.-produced products followed generally similar paths.¹³ They were mostly flat in 2006-2007, began rising in the first quarter of 2008, accelerated through the second and third quarters, peaked in the fourth quarter of 2008¹⁴ or the first quarter of 2009, and decreased in the second quarter of 2009. Overall, prices for these six products increased from the first quarter of 2006 to the second quarter of 2009, by amounts ranging from *** percent (***) to *** percent (***). The fourth quarter of 2008 corresponds to the potassium miners' strike in Canada, which is the source for ICL's potassium hydroxide. ***.¹⁵

For the most part, prices of phosphate salts products imported from China followed similar trends since 2006.¹⁶ Prices of DKP (product 1) imported from China, like their domestic counterparts, were rising slightly before 2008. Unlike pricing for domestically produced MKP, prices of MKP imported from China were flat during 2006-07, and even into the second quarter of 2008, before *** in the third quarter of 2008. Prices of technical-grade STPP (product 4) from China began falling in the fourth quarter of 2008 and declined *** in 2009. This reflects ***. Without these data, pricing trends for this product would be similar to the U.S. pricing trends on technical-grade STPP. Overall, prices for these six products increased from the first quarter of 2006 to the second quarter of 2009, by amounts ranging from *** percent (***)¹⁷ to *** percent (***)

Price Comparisons

Imports of phosphate salts from China undersold the U.S. product in 11 of 14 quarterly comparisons for DKP, all 14 possible quarterly comparisons for MKP, 14 of 28 quarterly comparisons for STPP, and 10 of 16 quarterly comparisons from TKPP. The largest margins of underselling occurred in comparisons involving product 2, MKP, which accounted for 14 of the 17 largest quarters of underselling. Data were not collected for both food-grade and technical-grade MKP, but data submitted by ICL demonstrate that pricing for food-grade MKP was higher in ***.¹⁸ Imports of phosphate salts from China oversold the U.S. product in 23 quarterly comparisons, with margins of overselling ranging from 0.7 to

¹³ The notable exception to this is MKP, which fluctuated by *** in 2006 and 2007. ICL produces MKP mostly for food-grade customers, which occupy a much smaller proportion of the market than technical-grade MKP customers, which use it in fertilizers. Conference transcript, p. 60 (Schewe). Also, prices of domestically produced DKP (product 1) were, in general, slowly rising through 2006 and 2007.

¹⁴ Prices for domestically produced food-grade STPP (product 3) *** in the fourth quarter of 2008.

¹⁵ ICL's producer questionnaire response.

¹⁶ Only two quarters of data are available for product 5, food-grade TKPP, so trends are not available.

¹⁷ ***.

¹⁸ Yearly pricing for ICL indicate that technical-grade MKP prices were \$***, compared to \$***. The *** price for food-grade MKP in 2008 was due to ICL's sales into the *** segment, which had a price of \$*** in 2008. This pricing is reflective of ***. Sales to ***. In 2008, ***. E-mail from ***, November 2, 2009. Further detail regarding ICL's sales of food-grade MKP to the *** industry, food-grade MKP to ***, and technical-grade MKP are presented in the following tabulation: ***.

28.7 percent. Two of the three quarters of underselling for product 4, technical-grade STPP, (***) occurred ***. Margins of underselling and overselling for DKP and TKPP only exceeded 20 percent in one quarter. A summary of margins of underselling and overselling is presented in table V-7.

Table V-7

DKP, MKP, STPP, and TKPP: Number of quarters of underselling and overselling and highest and lowest margins of underselling and (overselling), by product number

Product	Number of quarters of underselling	Number of quarters of (overselling)	Margins of underselling			Margins of (overselling)		
			Average (percent)	Range (percent)		Average (percent)	Range (percent)	
				Min	Max		Min	Max
1 (DKP)	11	3	***	2.4	21.0	***	(3.1)	(14.6)
2 (MKP)	14	0	***	36.2	72.6	--	--	--
3 (STPP)	11	3	***	3.7	52.2	***	(4.2)	(9.4)
4 (STPP) ¹	3	11	***	0.0	40.9	***	(2.6)	(28.7)
5 (TKPP)	1	1	***	***	***	***	***	***
6 (TKPP)	9	5	***	0.6	14.1	***	(0.7)	(13.2)
Total	49	23	26.7	0.0	72.6	(9.9)	(0.7)	(28.7)
1 ***.								
Source: Compiled from data submitted in response to Commission questionnaires.								

LOST SALES AND LOST REVENUES

The Commission requested that U.S. producers of phosphate salts report any instances of lost sales and lost revenues experienced due to competition with imports from China since January 1, 2006. Two producers reported having lost sales or revenues due to Chinese import competition during this time period. More detail is provided for some of the allegations thereafter.

DKP Lost Sales and Lost Revenues

One producer reported a lost sales allegation regarding *** pounds of *** DKP, valued at *** for purchaser ***. ***. One producer reported a lost revenue allegation regarding DKP for *** pounds of *** with a price reduction from \$*** to \$***. ***.

MKP Lost Sales

Two lost sales allegations were reported totaling *** pounds of MKP with a value of \$***, both of these reported *** to be the purchaser. ***. In response to these allegations, it reported that “***.”

STPP Lost Sales and Lost Revenues

Producers reported 48 lost sales allegations among 37 purchasers with regard to STPP, for *** pounds of material, having a lost sales value of \$***. Details are provided in table V-8. Seven of these lost sales allegations were confirmed, totaling *** pounds valued at \$***. Producers also reported 20 lost revenue allegations for STPP regarding *** pounds of material, with lost revenues valued at \$***. Details regarding these allegations can be found in table V-9. Seven of these lost revenue allegations were confirmed totaling *** pounds, valued at \$***. Additional information, where relevant, is summarized in the individual responses below.

Table V-8

STPP: U.S. producers’ lost sales allegations

* * * * *

Table V-9

STPP: U.S. producers’ lost revenue allegations

* * * * *

* * * * *

TKPP Lost Sales and Lost Revenues

U.S. producers reported 12 lost sales allegations involving 12 purchasers with regard to TKPP for *** pounds of material, having a lost sales value of \$***. (For more detailed information, see table V-10.) None of the lost sales allegations were confirmed. Producers also reported 4 lost revenue allegations for TKPP regarding 3 purchasers for *** pounds of material, having a lost revenue value of \$***. Table V-11 contains details regarding these allegations. One of these lost revenue allegations was confirmed, totaling *** pounds and valued at \$***. Additional information, where relevant, is summarized in the individual responses below.

Table V-10

TKPP: U.S. producers’ lost sales allegations

* * * * *

Table V-11

TKPP: U.S. producers’ lost revenue allegations

* * * * *

* * * * *

General Information on Purchasing Behavior

In addition, purchasers responding to lost sales and lost revenue allegations were asked whether they shifted their purchases of phosphate salts from U.S. producers to suppliers of phosphate salts from China since January 2006 and if U.S. producers had reduced their prices because of imported product from China (table V-12). Only one of the 19 responding purchasers reported shifting from U.S. product to Chinese for DKP and MKP; this firm reported shifting because of price. No firms reported that U.S. producers had reduced prices of DKP or MKP because of imports. Shifting to Chinese product was more common for STPP, and, to a lesser extent, TKPP. Furthermore, Chinese TKPP and STPP were reported to have influenced the price of U.S. product by a number of purchasers.

Table V-12
DKP, MKP, STPP, and TKPP: Purchasers' responses to questions about shifting purchases and Chinese prices influencing U.S. prices, by product

	DKP		MKP		STPP		TKPP	
	yes	no	yes	no	yes	no	yes	no
Shifted from U.S. to Chinese product	1	18	1	18	9	11	5	15
Shifted because of price	1	0	1	0	8	1	5	0
U.S. producers reduced price to compete with China	0	13	0	13	7	8	3	10

Source: Compiled from purchasers' responses to lost sales and lost revenue allegations.

*** was the only purchaser that reported shifting from U.S. to Chinese DKP and MKP product. It did not elaborate on this answer.

*** reported shifting TKPP purchases due to price; however, it reported this shift did not work out because of quality concerns. The other four purchasers reporting changes did not explain why. *** reported shifting about 40 percent of its STPP due to price, among other factors. *** reported shifting a small share of its STPP purchases because of price, and reported that the U.S. producers were greedy and may have fixed prices. The other seven purchasers reporting changes did not report any explanation. Only one purchaser that responded that Chinese prices had affected U.S. prices of TKPP and STPP gave detail. ***, responding for both STPP and TKPP, reported that, without imported product from China, domestic prices would still be very high.

PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

BACKGROUND

Three producers¹ provided usable financial results for their individual operations on DKP, MKP, STPP, and TKPP. One known producer, PCS which produced TKPP by *** operations, did not submit a response.² These firms are believed to account for a majority of the domestic industry's sales and production during 2008.³ Anhydrous DKP and MKP are produced solely by ICL, while STPP is produced by ICL and Prayon and TKPP is produced by ICL and Prayon, as well as by PCS ***.⁴ *** was the *** to report internal consumption of MKP, STPP, and TKPP (*** percent in terms of total aggregate net sales value in 2008). *** reported transfers to related firms of *** (*** percent of aggregate transfers value in terms of total aggregate net sales values in 2008), while *** reported related transfers of *** (*** percent in terms of total STPP net sales value in 2008).

OPERATIONS ON DKP, MKP, STPP, and TKPP

Results of the U.S. producers on their DKP, MKP, STPP, and TKPP operations are presented in tables VI-1, VI-2, VI-3, and VI-4, respectively, which includes data on a per-pound basis as well as operating income (loss) to net sales ratio.

Table VI-1

DKP: Results of operations of U.S. producer, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

Table VI-2

MKP: Results of operations of U.S. producer, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

Table VI-3

STPP: Results of operations of U.S. producers, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

Table VI-4

TKPP: Results of operations of U.S. producers, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

¹ All three companies' fiscal years end on December 31.

² Petition, p. 4. TKPP is manufactured by PCS at its plant in Cincinnati, OH. Approximately *** percent of PCS's production of TKPP is ***.

³ Petition, p. 5.

⁴ *Id.*

The two smallest-volume chemicals in this proceeding are DKP and MKP (tables VI-1 and VI-2). As net sales values of DKP increased between 2006 and 2008, operating income also increased, while operating income was lower in January-June (interim) 2009 compared to interim 2008, consistent with reduced sales quantities and values. Even though both net sales quantities and values of MKP increased between 2006 and 2008, operating income decreased by all measures as the increase in per-pound total cost was greater than the increase in per-pound sales values during this period. However, the opposite was true in comparing results for interim 2008 and interim 2009, as both net sales quantities and values were lower in interim 2009, but operating income was higher, again by all measures, as per-pound sales values increased more than per-pound total costs.⁵

Aggregate income-and-loss data for producers on their STPP operations are presented in table VI-3, while those data on TKPP are shown in table VI-4. Since net sales values of STPP accounted for approximately *** and *** percent of aggregate sales values of all four products in 2008 and approximately *** and *** percent of aggregate sales values in January-June (interim) 2009, the narrative analysis in this section is mainly focused on STPP.

The financial results of the producers on their STPP operations (table VI-3) deteriorated from 2006 to 2007, but improved somewhat from 2007 to 2008, as *** in 2008. The net sales values increased and the operating loss decreased from 2007 to 2008 due to an increase in per-pound net sales from ***. While both sales quantity and value decreased *** from interim 2008 to interim 2009, operating income was ***, as the change in per-pound net sales from *** exceeded the increase in per-pound total cost from ***.

While sales quantities of TKPP (table VI-4) decreased between 2006 and 2008, net sales values and operating income increased ***. This was the result of a *** increase in per-pound net sales (***) per pound) that exceeded the increase in per-pound total costs (from *** per pound). Between the two interim periods, sales quantities and values both decreased, and the *** operating income in interim 2008 changed to *** in interim 2009. The operating loss in interim 2009 reflected higher per-pound costs (from ***), relative to per-pound net sales values (***) in interim 2009).

The financial results on STPP operations (table VI-3) are somewhat different from results of operations on TKPP operations (table VI-4). Between interim 2008 and interim 2009, even though the sales quantities and values of both products decreased, operating income trends moved in different directions. ***, due to its different cost components and structures. While per-pound average selling price and per-pound total cost for TKPP were consistently higher compared to those for STPP for all periods, operating income and per-pound profitability for TKPP were *** lower than those for STPP in interim 2009 (but per-pound profitability of TKPP was *** higher than those for STPP between 2006 and 2008).

Selected financial data, by firm, are presented in table VI-5 for STPP and table VI-6 for TKPP (since, as noted above, only one company produces anhydrous DKP and MKP). While *** for the three-full year periods for which data were collected, *** experienced operating income for the three full-year periods. ***.⁶ *** incurred operating losses in interim 2009, while *** showed improved profitability in the most recent period, in interim 2009.

⁵ With respect to MKP, per-pound net sales values include sales to ***. In 2008 ***. E-mail from ***, November 2, 2009.

⁶ Conference transcript, pp. 109-110 (Ascienzo, Sexton, Allen, Schewe).

Table VI-5
STPP: Results of operations of U.S. producers, by firm, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

Table VI-6
TKPP: Results of operations of U.S. producers, by firm, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

There is some amount of toll processing done for, ***.⁷ In toll processing, the firm that owns the raw materials (the tollee) arranges for an unrelated producer (the toller) to produce phosphate salts for a fee, and then the tollee arranges for the final sale of the products to other parties. ***.

Selected aggregate per-pound cost data of the producers on STPP are presented in table VI-7. Raw material costs, especially phosphoric acid (and potassium hydroxide for DKP, MKP, and TKPP) increased *** in 2008 and 2009 which resulted in much higher cost of goods sold (“COGS”) and total cost (which included selling, general, and administrative (“SG&A”) expenses) per pound during the same periods.⁸ Per-unit factory overhead increased in 2008 and interim 2009 due to lower production/sales quantities.⁹ ***.¹⁰ SG&A expenses, especially selling expenses for STPP and TKPP, increased *** in 2008 and interim 2009. ***.¹¹ Per-unit total costs of DKP and MKP were higher than per-unit total costs of STPP and TKPP (*** was the highest and *** was the second) and their costs also increased continuously during the period, and increased *** in 2008 and interim 2009, due mainly to rising raw material costs.

Table VI-7
STPP: Per-pound costs of U.S. producers, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

A variance analysis showing the effects of prices and volume on the producers’ sales of STPP, and of costs and volume on their total cost, is shown in table VI-8. The analysis is summarized at the bottom of the table. The analysis indicates that the decrease in operating loss (***) between 2006 and 2008 was attributable mainly to the positive effects of increased price (***) which was offset by the negative effect of increased costs/expenses (***) .

Table VI-8
STPP: Variance analysis of operations of U.S. producers, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * *

⁷ Refer to ***.

⁸ Petitioner’s postconference brief, p. 11.

⁹ October 22, 2009 e-mail from ***.

¹⁰ October 22, 2009 e-mail from ***.

¹¹ October 22, 2009 e-mail from ***.

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' aggregate data on capital expenditures and research and development (R&D) expenses are presented in table VI-9. *** had *** capital expenditures reported for STPP during the period for which data were collected. ***.¹² ***.¹³ *** reported R&D expenses. Capital expenditures, by firm, for each product, are presented in table VI-10. Capital expenditures fluctuated over the period, increased somewhat in 2007 compared to 2006 and then decreased *** in 2008, while they increased from interim 2008 to interim 2009. R&D expenses overall decreased between 2006 and 2008, and again between the two interim periods.

Table VI-9
DKP, MKP, STPP, and TKPP: Capital expenditures and R&D expenses by U.S. producers, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * * * *

Table VI-10
DKP, MKP, STPP, and TKPP: Capital expenditures by U.S. producers, by products and firms, fiscal years 2006-08, January-June 2008, and January-June 2009

* * * * * * *

ASSETS AND RETURN ON INVESTMENT

U.S. producers were requested to provide data on their assets used in the production and sales of DKP, MKP, STPP, and TKPP during the period for which data were collected to assess their return on investment ("ROI"). Because sales values and the allocated assets of DKP and MKP are too small for meaningful tables for ROI, they are not presented separately. Nonetheless, the trend of ROI over the period was the same as the trend of the operating income margin to net sales shown in tables VI-1 and VI-2. Data on the U.S. producers' total assets and their ROI for STPP and TKPP are presented in table VI-11 and table VI-12, respectively.

Table VI-11
STPP: Value of assets and return on investment of U.S. producers, fiscal years 2006-08

* * * * * * *

Table VI-12
TKPP: Value of assets and return on investment of U.S. producers, fiscal years 2006-08

* * * * * * *

The value of total assets for STPP decreased from 2006 to 2007 (even though the combined total of property, plant, and equipment ("PPE") for two producers remained at relatively the same levels). The decrease resulted from ***.¹⁴ The return on investment decreased further down from 2006 to 2007 and improved from 2007 to 2008. The trend of ROI for STPP over the period was the same as the trend of the

¹² October 22, 2009 e-mail from ***.

¹³ October 22, 2009 e-mail from ***.

¹⁴ October 22, 2009 e-mail from ***.

operating income margin to net sales in table VI-3. The trend of ROI for TKPP over the period was the same as the trend of the operating income margin to net sales in table VI-4.

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual negative effects since January 1, 2006, on their 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 certain phosphate salts from China. Their responses for DKP, MKP, STPP, and TKPP are as follows:

* * * * *

The Commission also requested U.S. producers to describe any anticipated negative impact of imports of certain phosphate salts from China. Their responses are as follows:

* * * * *

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the 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

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Information on the nature of the alleged subsidies was presented earlier in this report; 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. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

THE INDUSTRY IN CHINA

The petition identified 60 alleged producers of phosphate salts in China. Tables VII-1 and VII-2 list information on nine responding Chinese firms.

Table VII-1
Certain phosphate salts: Chinese firms' reported 2008 production, exports to the United States, and exports to the United States as a share of production

* * * * *

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Table VII-2
DKP, MKP, STPP, and TKPP: Chinese firms' production

Firm	DKP	MKP	STPP	TKPP
Hubei Xingfa Chemicals Group Co., Ltd.			X	
Mianyang Aostar Phosphorus Chemical Industry Co., Ltd.		X	X	
SD BNI (CN) Co., Ltd.	X	X	X	X
Shifang Anda Chemicals Co., Ltd.		X		
Sichuan Blue Sword Chemical (Group) Co., Ltd.	X	X	X	X
Sichuan Mianzhu Norwest Chemical Co., Ltd.			X	
Thermphos (China) Food Additive Co., Ltd.	X	X	X	X
Wuhan Waking Lion Chemicals Co., Ltd.			X	
Yunnan Newswift Co. Ltd.			X	X
Total	3	5	8	4

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

In general, responding Chinese foreign producers did not report producing other products on the same equipment used in the production of the individual phosphate salts that are at issue in this proceeding. Only one Chinese producer, ***, reported that it could and did produce each of the four subject phosphate salts, as well as ***, another phosphate salt, on the same equipment.³

Coverage of export data reported by foreign producers compared to import data reported in *Part IV* are *** percent, *** percent, and *** percent, of DKP, MKP, and STPP, respectively. Coverage of export data for TKPP, however, is only *** percent. Foreign producer/exporter questionnaires were not received from the largest five Chinese exporters of goods under HTS subheading 2835.39.10, which includes TKPP, according to data compiled by Customs. These exporters are ***.

Tables VII-3 through VII-6 present data, by product, for the nine responding firms during 2006-08, January-June 2008, January-June 2009, and forecasts for 2009 and 2010. *** was the largest reporting Chinese producer, accounting for approximately *** of reported Chinese phosphate salt production and exports to the United States.

Table VII-3
DKP: Chinese production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10

* * * * *

Table VII-4
MKP: Chinese production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10

* * * * *

³ *** reported capacity for DKP and MKP “assuming *** percent capacity of the shared line.”

Table VII-5
STPP: Chinese production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10

Item	Actual experience					Projections ^{1 2}	
	2006	2007	2008	January-June ³		2009	2010
				2008	2009		
Quantity (1,000 lbs. dry weight)							
Capacity ¹	752,850	792,850	771,828	419,446	404,446	749,081	717,035
Production	585,110	599,305	698,578	420,663	277,564	521,540	510,218
End of period inventories	***	***	***	***	***	***	***
Shipments:							
Internal consumption ³	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to--							
The United States	3,240	3,913	***	***	***	***	***
All other markets	349,062	306,223	***	***	***	***	***
Total exports	352,302	310,136	***	***	***	***	***
Total shipments	606,927	561,136	723,486	366,944	282,896	517,294	513,799
Ratios and shares (percent)							
Capacity utilization ¹	77.7	75.6	90.5	100.3	68.6	69.6	71.2
Inventories to production	***	***	***	***	***	***	***
Inventories to total shipments	***	***	***	***	***	***	***
Share of total quantity of shipments:							
Internal consumption	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to--							
The United States	0.5	0.7	***	***	***	***	***
All other markets	57.5	54.6	***	***	***	***	***
All export markets	58.0	55.3	***	***	***	***	***
<p>¹ According to ***, the demand for STPP in the United States will decrease due to the progressive restrictions on the use of STPP in automatic dishwasher detergent.</p> <p>² *** did not report capacity or projections for 2009 and 2010. Capacities were estimated based on the highest production level (** pounds).</p> <p>³ *** inadvertently reported the total exports data as internal consumption/transfers, though this was corrected by staff. Staff also corrected the January-June 2008 and January-June 2009 data, as these were reported on an annual basis.</p>							
<p>Note.--Because of rounding, figures may not add to the totals shown.</p>							
<p>Source: Compiled from data submitted in response to Commission questionnaires.</p>							

Table VII-6

TKPP: Chinese production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10

* * * * *

U.S. IMPORTERS' CURRENT ORDERS

The Commission requested importers to indicate whether they imported or arranged for the importation of phosphate salts from China after June 30, 2009.

Table VII-7

Certain phosphate salts: U.S. importers' orders for delivery after June 30, 2009

Item	Quantity (1,000 lbs. dry weight)
DKP	***
MKP	***
STPP	***
TKPP	***
Total	5,853

Source: Compiled from data submitted in response to the Commission's questionnaire.

U.S. INVENTORIES OF PHOSPHATE SALTS FROM CHINA

U.S. importers' end-of-period inventories of U.S. imports as reported are presented in tables VII-8 through VII-11. Total inventories of Chinese and nonsubject DKP, MKP, STPP, and TKPP increased in absolute terms between 2006 and 2008. Inventories of DKP, MKP, and STPP from China were higher in June 2009 than in June 2008, while inventories of TKPP were lower. With respect to inventories of imports from nonsubject countries, June 2009 levels were higher than those in June 2008 for DKP and TKPP, and lower for MKP and STPP.

Table VII-8

DKP: U.S. importers' end-of-period inventories of imports, by source, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table VII-9

MKP: U.S. importers' end-of-period inventories of imports, by source, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table VII-10

STPP: U.S. importers' end-of-period inventories of imports, by source, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June	
	2006	2007	2008	2008	2009
China:					
Inventories (<i>1,000 lbs. dry weight</i>)	1,563	1,472	6,818	3,709	13,428
Ratio of inventories to imports (<i>percent</i>)	17.1	15.8	31.7	26.3	22.2
Ratio to U.S. shipments of imports (<i>percent</i>)	17.3	15.6	42.5	38.5	22.3
Ratio to total shipments of imports (<i>percent</i>)	17.1	15.6	42.2	38.0	22.3
All other sources:					
Inventories (<i>1,000 lbs. dry weight</i>)	28,313	22,716	33,517	20,845	15,189
Ratio of inventories to imports (<i>percent</i>)	11.9	9.1	13.5	8.2	14.5
Ratio to U.S. shipments of imports (<i>percent</i>)	12.7	9.8	15.0	8.6	11.4
Ratio to total shipments of imports (<i>percent</i>)	11.3	9.0	13.9	8.0	10.3
All sources:					
Inventories (<i>1,000 lbs. dry weight</i>)	29,876	24,187	40,335	24,553	28,618
Ratio of inventories to imports (<i>percent</i>)	12.1	9.3	14.9	9.1	17.3
Ratio to U.S. shipments of imports (<i>percent</i>)	12.9	10.1	16.8	9.7	14.8
Ratio to total shipments of imports (<i>percent</i>)	11.5	9.3	15.6	9.1	13.8
<p>Note.—Ratios were calculated using data from firms providing information on both inventories and imports or U.S. shipments of imports. Partial-year ratios are based on annualized import/shipment data.</p> <p>Source: Compiled from data submitted in response to the Commission's questionnaire.</p>					

Table VII-11

TKPP: U.S. importers' end-of-period inventories of imports, by source, 2006-08, January-June 2008, and January-June 2009

* * * * *

ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

None of the parties to these investigations reported dumping findings or antidumping remedies imposed on phosphate salts in third-country markets. In November 2006, Albright and Wilson (Australia) Limited petitioned for relief from the alleged dumping of STPP exported to Australia from China. However, the Australian Customs Service found that Chinese STPP had either been exported to Australia at prices that were not dumped or the dumping margins were negligible, and accordingly terminated the investigation in May 2007.⁴

INFORMATION ON NONSUBJECT COUNTRIES

In many of the more affluent markets such as the United States, environmental bans and restrictions have resulted in sharp reductions of consumption of phosphate products, most notably for STPP for use in consumer laundry detergents and, increasingly, in automatic dishwasher formulations. In less affluent markets, regulations have been less restrictive and consumption of phosphate products for use in cleaning applications has been growing, especially since population and per capita use has been increasing. Another key trend affecting the global market and industry has been a shortage of raw materials – especially phosphoric acid in 2008 – resulting in a surge of prices. This price surge has reportedly subsided somewhat in 2009 but not necessarily to pre-2008 levels.⁵

Although there are other sources of supply for the sodium and potassium phosphate salts that comprise the subject merchandise in these investigations, the leading nonsubject suppliers to the U.S. market are Canada and Mexico (particularly STPP), France and Germany (TKPP), and Germany, Israel, and Mexico (DKP and MKP). Other global suppliers with less of a presence in the U.S. market include Belgium, Brazil, Japan, and the Netherlands. The following information on the leading nonsubject suppliers to the United States is drawn largely from ***.

Canada is a substantial producer of sodium phosphates, although a number of formulated products ***. STPP is produced by Innophos in Port Maitland, Ontario, in a facility capable of producing ***. After ***, Innophos is reportedly making ***. Although there are some exports of potassium phosphates from Canada, ***. In Canada, as in other similarly situated markets, environmental pressures have adversely impacted consumption of phosphate salts in home laundry detergents ***.

In Mexico, Innophos and Mexichem produce industrial phosphates, including STPP. Production capacity for STPP in Mexico is estimated to be ***. Based on information provided by ***, ***.

Major producers of STPP in Western Europe include Prayon in Belgium and France, BK Giulini Chemie (a subsidiary of ICL) in Germany, Thermphos International in the Netherlands, and FMC Foret and Madhvani International in Spain. Overall STPP capacity is estimated to be ***. In the region, the banning and restriction on the use of phosphate salts is having a major impact. Additionally, ***. Additionally, some STPP is exported from Western Europe to the United States.

Western European producers of potassium phosphates such as MKP, DKP, and TKPP include Prayon in Belgium and France and BK Giulini Chemie, Chemische Fabrikudheim and Thermphos in Germany. Overall, capacity is estimated to be ***. One of the largest potential growth areas in potassium phosphates is ***.

⁴ Australian Customs Service / Trade Measures Branch, *Alleged Dumping of Sodium Tripolyphosphate (STPP) Exported from the People's Republic of China - Termination of an Investigation*, Report Number 121, May 11, 2007.

⁵ ***.

Israel has become a major player in the global phosphate industry by taking advantage of rich phosphate rock deposits located in the Negev.⁶ Two Israeli companies, Israel Chemicals Limited (“ICL (Israel)”) and Haifa Chemicals LTD have emerged as major producers of phosphate specialty products in both technical and food grades. In its web site, Haifa Chemicals lists 25 specialized phosphate chemicals that it produces (including MKP, DKP, STPP, and TKPP). ICL has emerged as a global player and is the parent company of ICL Performance Chemicals, headquartered in St. Louis, MO, a leading producer of phosphate chemicals in the United States. ICL (Israel) through its subsidiaries/partners has manufacturing and production facilities in other countries as well, including Argentina, Australia, Austria, Belgium, Brazil, China, France, Germany, the Netherlands, Spain, Turkey, the United Kingdom. ICL (Israel) has also continued to expand its operations within Israel itself. ***.

⁶ “<http://www.icl-perfproductslp.com>,” retrieved October 26, 2009.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

antidumping and countervailing duty investigations in 45 days, or in this case by November 9, 2009. The Commission's views are due at Commerce within five business days thereafter, or by November 17, 2009.

For further information concerning the conduct of these investigations 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).

DATES: *Effective Date:* September 24, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202-205-3188), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: *Background.* These investigations are being instituted in response to a petition filed on September 24, 2009, by ICL Performance Products, LP (St. Louis, MO) and Prayon, Inc. (Augusta, GA).

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations 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 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 these investigations 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 these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, 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 Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 15, 2009, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Jennifer Merrill (202-205-3188) not later than October 13, 2009, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations 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 October 20, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. 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 investigations must be served on all other parties to the investigations (as identified by

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-473 and 731-TA-1173 (Preliminary)]

Certain Sodium and Potassium Phosphate Salts From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701-TA-473 and 731-TA-1173 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 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 certain sodium and potassium phosphate salts,¹ provided for in subheadings 2835.24.00, 2835.31.00, and 2835.39.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in

¹ The petition individually identifies sodium tripolyphosphate, monopotassium phosphate, dipotassium phosphate, and tetrapotassium pyrophosphate.

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: These investigations are 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.

Issued: September 25, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-23627 Filed 9-30-09; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE
International Trade Administration

A-570-962

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

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

EFFECTIVE DATE: October 21, 2009.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry at (202) 482-7906, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**The Petition**

On September 24, 2009, the Department of Commerce ("Department") received a petition concerning imports of certain sodium and potassium phosphate salts ("certain phosphate salts") from the People's Republic of China ("PRC") filed in proper form by ICL Performance Products LP ("ICL") and Prayon, Inc. (collectively, "Petitioners"). See Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Sodium and Potassium Phosphate Salts from the People's Republic of China, dated September 24, 2009 ("Petition"). On September 30, 2009, the Department issued an additional request for information and clarification of certain areas of the Petition. Based on the Department's requests, Petitioners timely filed additional general information pertaining to the Petition on October 5, 2009, and additional information pertaining to the antidumping portion of the Petition on October 6, 2009 (hereinafter, "Supplement to the AD Petition"). The period of investigation ("POI") is January 1, 2009, through June 30, 2009.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("Act"), Petitioners allege that imports of certain phosphate salts 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, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are an interested party, as defined in section 771(9)(C) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation that Petitioners are requesting the Department to initiate (see "Determination of Industry Support for the Petition" section below).

Scope of Investigation

The products covered by this investigation are certain phosphate salts from the PRC. For a full description of the scope of the investigation, please see the "Scope of Investigation," in Appendix I of this notice.

Comments on Scope of Investigation

As discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by November 3, 2009.¹ Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of certain phosphate salts to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may

provide comments as to which characteristics are appropriate to use as: 1) general product characteristics; and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe certain phosphate salts, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by November 3, 2009. Additionally, rebuttal comments must be received by November 10, 2009.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (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) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission ("ITC"), which is responsible for determining whether "the domestic

¹ November 3, 2009, is twenty calendar days from the signature date of this notice.

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

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Although the reference point from which the domestic like product analysis begins is usually "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition), Petitioners presented one class or kind of merchandise, but four domestic like products.

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

With regard to section 732(c)(4)(A) of the Act, in determining whether Petitioners have standing (*i.e.*, the

domestic workers and producers supporting the Petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like products. To establish industry support, Petitioners provided their own production volume of the domestic like products for calendar year 2008, and compared that to total production volume of the domestic like products for the industry. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support for each of the four like products. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like products and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act, *see also* Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the relevant domestic like product. *See* Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the relevant domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry

support with respect to the antidumping investigation that they are requesting the Department initiate. *See* Initiation Checklist at Attachment II.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industries producing the domestic like products are being materially injured, or are threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. Petitioners contend that the industries' injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production, reduced capacity and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Analysis of Injury Allegations and Evidence of Material Injury and Causation).

Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of certain phosphate salts from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the initiation checklist. *See* Initiation Checklist.

U.S. Price

Petitioners calculated export price ("EP") based on documentation of actual sales and offers for sale obtained from confidential sources. *See* Initiation Checklist; *see also* Volume I of the Petition, at 26, and Supplement to the AD Petition at Exhibit 36. Petitioners made adjustments for distributor mark-ups and cost, insurance and freight ("CIF") charges. *See* Initiation Checklist; *see also* Volume I of the Petition, at 26. Petitioners also relied on Census Bureau statistics for U.S. price. *See* Volume I of the Petition, at 45. We did not rely on one of the provided U.S. prices because, according to the supporting affidavit, it was based on an estimated, not actual, price from a rejected sales offer. *See* Initiation Checklist; *see also* Supplement to the AD Petition at Exhibit AD-39.

Normal Value

Petitioners state that the PRC is a non-market economy (“NME”) country and no determination to the contrary has been made by the Department. See Volume I of the Petition, at 27. 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, therefore, remains in effect for purposes of the initiation of this investigation.

Accordingly, the normal value (“NV”) of the product for the PRC investigation 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 the PRC investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC’s NME status and the granting of separate rates to individual exporters.

Petitioners contend that India is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC; 2) it is a significant producer of comparable merchandise; and 3) information required to calculate unit factor costs and financial ratios is readily available. See Volume I of the Petition, at 27–30, and Volume 3 of the Petition at Exhibit AD–5. Based on the information provided by Petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), 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 calculated the NV and dumping margins using the Department’s NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated separate NV and dumping margins for integrated and non-integrated producers in order to reflect the different production processes used. Petitioners based the calculations on the experience of ICL and its predecessor, Astaris, with a few exceptions based on recent articles concerning the PRC phosphorus industry. See Volume 1 of the Petition, at 30–31, Volume 3 of the Petition, at Exhibits AD 10 and AD–11, and Supplement to the AD Petition at

13, and Exhibit AD–35. In calculating NV, Petitioners based the quantity of each of the inputs used to manufacture certain phosphate salts in the PRC on its own industry knowledge and production experience during and before the POI, with some supplemental information obtained from *China Chemical Reporter*. See Supplement to the AD Petition at 13–14, and Exhibit AD–35. Petitioner states that the constructed NV for each PRC producer may be different, depending on the level of integration. See Volume 1 of the Petition, at 31.

Petitioner determined the consumption quantities of all raw materials and packing materials based on the production experience of ICL, Astaris, and *China Chemical Reporter*. See Supplement to the AD Petition at Exhibit AD–35. Petitioners valued the factors of production based on reasonably available, public surrogate country data, specifically, Indian import statistics from the World Trade Atlas (“WTA”). See Volume 3 of the Petition, at Exhibit AD–16. Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries and from Indonesia, the Republic of Korea, and Thailand as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies. See *id.* In addition, the Petitioners made currency conversions, where necessary, based on the POI-average rupee/U.S. dollar exchange rate, as reported on the Department’s website. See Supplement to the AD Petition at 4–5, and Exhibit AD–26. Petitioners determined labor costs for STPP, TKPP, DKP and MKP using the labor consumption, in hours, derived from its ICL’s experience in 2008. See Supplement to the AD Petition Exhibit, at AD–35. Petitioners valued direct labor costs using the Department’s NME Wage Rate for the PRC at <http://ia.ita.doc.gov/wages/05wages/05wages-051608.html>. See Volume 1 of the Petition, at 41. The Department determines that the surrogate values used by Petitioners are reasonably available and, thus, acceptable for purposes of initiation.

Petitioners determined electricity costs for STPP, TKPP, DKP and MKP using the electricity consumption, in kilowatt hours, derived from ICL’s experience in 2008. See Supplement to the AD Petition, at Exhibit at AD–35. Petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. See Volume 1 of

the Petition, at 40 and Volume 3 of the Petition, at Exhibit AD–15.

Petitioners determined natural gas costs for STPP, TKPP, DKP and MKP using the natural gas consumption derived from ICL’s experience in 2008. See Supplement to the AD Petition Exhibit at AD–35. Petitioners valued natural gas using Indian import statistics from WTA. See Volume 3 of the Petition, at Exhibit AD–15.

Petitioners based factory overhead, selling, general and administrative (“SG&A”), and profit on data from Tata Chemicals, the largest Indian producer of phosphate salts, for the fiscal year April 2008 through March 2009. See Volume 3 of the Petition, at Exhibit AD–19. Petitioners state that Tata Chemicals is a producer of phosphate salts that is back-integrated to the production of phosphoric acid and that it produces more than one phosphate salt and various related upstream materials. See Volume 1 of the Petition, at 42–44. Petitioners were unable to identify a fully integrated producer of phosphate salts in India and anticipate that an adjustment may be necessary to account for differing levels of integration. However, Petitioners state that Tata Chemical provides the best information available to reasonably represent the cost structure of an integrated phosphate salt producer in the PRC. See *id.* Therefore, for purposes of the initiation, the Department finds Petitioners’ use of Tata Chemical’s unconsolidated financial ratios appropriate.

Fair-Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of certain phosphate salts from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margins for certain phosphate salts from the PRC range from 33.7 percent to 177.4 percent. See Initiation Checklist.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on certain phosphate salts from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain phosphate salts from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will

make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted-Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted-dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that “[w]ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.” See *id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted-dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

For this investigation, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in the Petition, see Petition at Exhibit GEN-12. The quantity and value data received from NME exporters/producers will be 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-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration website at <http://ia.ita.doc.gov/ia-highlights-and-news.html>, and a response to the quantity and value questionnaire is due no later than November 4, 2009.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See our practice, described in Policy Bulletin 05.1: *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, dated April 5, 2005 (“Separate Rates and Combination Rates Bulletin”), available on the Department’s website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, e.g., *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department’s website 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-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the “Respondent Selection” section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate-rate status.

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 6 (emphasis added).

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than November 9, 2009, whether there is a reasonable indication that imports of certain phosphate salts from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits. This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 14, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

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

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

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $\text{K}_4\text{P}_2\text{O}_7$. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4 . The CAS registry number for MKP is 7778-77-0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5 . MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The product covered by this investigation includes anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of STPP and TKPP, whether crushed, granule, powder, fines or solution. For purposes of the investigation, the narrative description is dispositive, not

the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

[FR Doc. E9-25340 Filed 10-20-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-570-963]

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

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

DATES: *Effective Date:* October 23, 2009.

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

SUPPLEMENTARY INFORMATION:**The Petition**

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

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

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

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

Period of Investigation

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

Scope of Investigation

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

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

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $\text{K}_4\text{P}_2\text{O}_7$. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4 . The CAS registry number for MKP is 7778-77-0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5 . MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

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

For purposes of the investigation, the narrative description is dispositive, not

the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by November 3, 2009, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Consultations

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

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the Petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Moreover, section 702(c)(4)(D)

of the Act provides that, if the Petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the Petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

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

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Although the reference point from which the domestic like product analysis begins is usually "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition), Petitioners submit that there is one class or kind of merchandise, but four domestic like products.

The four like products, when considered together, correspond to the product scope description. Based on our analysis of the information submitted on the record, we have determined that STPP, MKP, DKP, and TKPP constitute four domestic like products and we have analyzed industry support in terms

of those domestic like products. For a discussion of the domestic like product analysis in this case, *see* “Countervailing Duty Investigation Initiation Checklist: Certain Sodium and Potassium Phosphate Salts from the People’s Republic of China (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Sodium and Potassium Phosphate Salts from the People’s Republic of China, on file in the Central Records Unit (“CRU”), Room 1117 of the main Department of Commerce building.

With regard to section 702(c)(4)(A) of the Act, in determining whether Petitioners have standing (*i.e.*, the domestic workers and producers supporting the Petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like products. To establish industry support, Petitioners provided their own production volume of the domestic like products for calendar year 2008, and compared that to total production volume of the domestic like products for the industry. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

The Department’s review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support for each of the four like products. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like products and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 702(c)(4)(D) of the Act and Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the relevant domestic like product. *See* Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of

the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the relevant domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. *See* Initiation Checklist at Attachment II.

Injury Test

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

Allegations and Evidence of Material Injury and Causation

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

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

Evidence of Material Injury and Causation).

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the Petitioner(s) supporting the allegations.

The Department has examined the CVD petition on sodium and potassium phosphate salts from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of sodium and potassium phosphate salts in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

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

A. Income Tax Programs

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

B. Grant Programs

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

C. Tariff and Indirect Tax Exemption Programs

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

D. VAT and Tariff Exemptions on Imported Equipment

E. Preferential Lending Policies

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

F. Government Restraints on Exports of Yellow Phosphorus

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

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

Provision of Electricity for Less Than Adequate Remuneration

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

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the period of investigation. We intend to release the CBP data under the Administrative Protective Order (“APO”) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice.

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

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, consistent with section 351.203(c)(2) of the Department’s regulations.

ITC Notification

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

Preliminary Determination by the ITC

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

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

Dated: October 14, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Attachment I

Scope of the Investigation

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

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

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

TKPP is 7320–34–5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4 . The CAS registry number for MKP is 7778–77–0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5 . MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758–11–4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

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

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

[FR Doc. E9–25571 Filed 10–22–09; 8:45 am]

BILLING CODE 3510–DS–P

APPENDIX B
CONFERENCE WITNESSES

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference that was held in connection with the following investigation:

CERTAIN SODIUM AND POTASSIUM PHOSPHATE SALTS FROM CHINA

Investigation Nos. 701-TA-473 and 731-TA-1173 (Preliminary)

October 15, 2009 - 9:30 am

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

IN SUPPORT OF THE IMPOSITION OF COUNTERVAILING/ANTIDUMPING DUTIES:

Williams Mullen
Washington, DC
on behalf of

ICL Performance Products LP

Angela Schewe, Business Director for Industrial Phosphates
Nancy Stachiw, Director of Technical Service and Applications Research
William Fyock, Director of Engineering and Technology
Anthony Repaso, Corporate Counsel

Prayon, Inc.

Allen Sexton, Vice President for Sales
Beth Allen, Vice President for Finance and Procurement

James R Cannon, Jr.)
Dean A. Barclay)--OF COUNSEL
Benjamin Arden)

IN OPPOSITION TO THE IMPOSITION OF COUNTERVAILING/ANTIDUMPING DUTIES:

Troutman SandersLLP
Washington, DC
on behalf of

Hubei Xingfa Chemicals Group Co., Ltd., Sichuan Mianzhu Norwest Phosphate Chemical Company Limited, Wuhan Waking Lion Chemicals Co., Ltd., Thermphos (China) Food Additive Co., Ltd., and Lianyungang Natiprol (INT'L) Co., Ltd.

Xiong Wei, President, Wenda Co. Ltd.

Huamin Li, Business Coordinator, Wenda America

Deborah B. Crull, National Accounts Manager, Wenda America

Brian Metzger, National Sales Manager, Wenda America

Peter Oberacker Jr., Technical Sales and Service Manager, Wenda America

Julie Mendoza)
R. Will Planert)--OF COUNSEL
Mary Hodgins)

APPENDIX C
SUMMARY DATA

Table C-1
DKP: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table C-2
MKP: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table C-3

STPP: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound;
period changes=percent, except where noted)

Item	Reported data					Period changes			
	2006	2007	2008	January-June 2008	January-June 2009	2006-08	2006-07	2007-08	Jan.-June 2008-09
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. imports from:									
China:									
Quantity	18,828	17,153	25,969	7,606	35,550	37.9	-8.9	51.4	367.4
Value	7,075	6,449	17,255	4,079	18,230	143.9	-8.9	167.6	346.9
Unit value	\$0.38	\$0.38	\$0.66	\$0.54	\$0.51	76.8	0.0	76.7	-4.4
Ending inventory quantity	1,563	1,472	6,818	3,709	13,428	336.2	-5.8	363.2	262.1
Other sources:									
Quantity	264,891	251,500	257,609	130,191	49,533	-2.7	-5.1	2.4	-62.0
Value	104,563	98,846	153,343	63,173	35,371	46.7	-5.5	55.1	-44.0
Unit value	\$0.39	\$0.39	\$0.60	\$0.49	\$0.71	50.8	-0.4	51.5	47.2
Ending inventory quantity	28,313	22,716	33,517	20,845	15,189	18.4	-19.8	47.6	-27.1
All sources:									
Quantity	283,719	268,653	283,579	137,797	85,083	-0.0	-5.3	5.6	-38.3
Value	111,639	105,294	170,598	67,252	53,601	52.8	-5.7	62.0	-20.3
Unit value	\$0.39	\$0.39	\$0.60	\$0.49	\$0.63	52.9	-0.4	53.5	29.1
Ending inventory quantity	29,876	24,187	40,335	24,553	28,618	35.0	-19.0	66.8	16.6

Table continued on next page.

Table C-3--Continued

STPP: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound;
period changes=percent, except where noted)

Item	Reported data					Period changes			
	2006	2007	2008	January-June 2008	January-June 2009	2006-08	2006-07	2007-08	Jan.-June 2008-09
U.S. producers':									
Average capacity quantity	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000)	***	***	***	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***	***	***	***
Productivity (pounds per hour)	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***
Net sales:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce and from data submitted in response to Commission questionnaires.

Table C-4

TKPP: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

* * * * *

Table C-5

Certain phosphate salts: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

* * * * *

APPENDIX D

**QUARTERLY DOMESTIC, SUBJECT, AND
NONSUBJECT-COUNTRY PRICE DATA COMPARISONS**

Presented graphically below in figures D-1 through D-6 are quarterly pricing and quantity data for phosphate salts from the U.S., China, and nonsubject countries. Nonsubject pricing data were received from seven countries - Belgium, Canada, Germany, Israel, Japan, Mexico, and Taiwan. Belgium and Israel were the only nonsubject countries for which data was supplied for ***. Table D-7 presents data for product 4 without ***.

When comparing domestic pricing data to pricing data from all nonsubject countries, there were 304 possible pricing comparisons, in which domestic phosphate salts were priced higher in slightly more than half of the quarters (158). For DKP, domestic product was priced higher than nonsubject DKP in 45 of 73 possible comparisons. Domestic MKP was priced higher than MKP imported from nonsubject countries in 21 of 65 possible comparison. With respect to STPP, domestic food-grade STPP was priced higher than nonsubject food-grade STPP in 28 of 56 comparisons, while technical-grade STPP produced in the United States was priced higher than nonsubject technical-grade STPP in 34 of 56 possible comparisons. Domestic food-grade TKPP was priced higher than nonsubject food-grade TKPP in 7 of 24 comparisons, whereas domestic technical-grade TKPP was priced higher than nonsubject technical-grade TKPP in 23 of 30 comparisons.

When comparing Chinese pricing data to pricing data from all nonsubject countries, there were 284 possible pricing comparisons, in which imported Chinese phosphate salts were priced lower in 225 quarters. For DKP, imported Chinese product was priced lower than nonsubject DKP in 59 of 73 possible comparisons. Chinese MKP was priced lower than MKP imported from nonsubject countries in 59 of 65 possible comparison. With respect to STPP, imported food-grade Chinese STPP was priced lower than nonsubject food-grade STPP in 51 of 56 comparisons, but technical-grade STPP imported from China was priced lower than nonsubject technical-grade STPP in 28 of 56 possible comparisons. Chinese food-grade TKPP was priced lower than nonsubject food-grade TKPP in 2 of 4 comparisons, whereas Chinese technical-grade TKPP was priced lower than nonsubject technical-grade TKPP in 26 of 30 comparisons.

Figure D-1

DKP: Average prices and quantities for product 1, January 2006-June 2009

* * * * *

Figure D-2

MKP: Average prices and quantities for product 2, January 2006-June 2009

* * * * *

Figure D-3

Food-grade STPP: Average prices and quantities for product 3, January 2006-June 2009

* * * * *

Figure D-4

Technical-grade STPP: Average prices and quantities for product 4, January 2006-June 2009

* * * * *

Figure D-5

Food-grade TKPP: Average prices and quantities for product 5, January 2006-June 2009

* * * * *

Figure D-6

Technical-grade TKPP: Average prices and quantities for product 6, January 2006-June 2009

* * * * *

Figure D-7

Technical-grade STPP: Average prices and quantities for product 4^{*}, January 2006-June 2009**

* * * * *