

INDUSTRIAL PHOSPHORIC ACID FROM BELGIUM AND ISRAEL

**Determinations of the Commission
in Investigations Nos. 701-TA-285
and 286 (Preliminary) Under the Tariff
Act of 1930, Together With the
Information Obtained in the
Investigations**

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**Determinations of the Commission
in Investigations Nos. 731-TA-365
and 366 (Preliminary) Under the Tariff
Act of 1930, Together With the
Information Obtained in the
Investigations**

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Susan Liebeler, Chairman
Anne E. Brunsdale, Vice Chairman
Paula Stern
Alfred E. Eckes
Seeley G. Lodwick
David B. Rohr

Ilene Hersher, Investigator
Cynthia Trainor, Industry Analyst
Walker Pollard, Economist
Debbie VonBeulen, Financial Analyst
Jack Simmons, Attorney
Robert Eninger, Supervisory Investigator

Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigations Nos. 701-TA-285 and 286 (Preliminary) and
731-TA-365 and 366 (Preliminary)

INDUSTRIAL PHOSPHORIC ACID FROM BELGIUM AND ISRAEL

Determinations

On the basis of the record 1/ developed in the subject investigations, the Commission determines, 2/ pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belgium 3/ and Israel 4/ of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Belgium and Israel. The Commission also determines, 5/ pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belgium 6/ and Israel 7/ of industrial phosphoric acid, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 5, 1986, petitions were filed with the Commission and the Department of Commerce by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO, alleging that an industry in the United States is

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

2/ Chairman Liebel and Vice Chairman Brunsdale dissenting. Commissioner Stern did not participate in these investigations.

3/ Investigation No. 701-TA-285 (Preliminary).

4/ Investigation No. 701-TA-286 (Preliminary).

5/ Chairman Liebel and Vice Chairman Brunsdale dissenting. Commissioner Stern did not participate in these investigations.

6/ Investigation No. 731-TA-365 (Preliminary).

7/ Investigation No. 731-TA-366 (Preliminary).

materially injured or threatened with material injury by reason of subsidized and LTFV imports of industrial phosphoric acid from Belgium and Israel.

Accordingly, effective November 5, 1986, the Commission instituted preliminary countervailing duty investigations Nos. 701-TA-285 and 286 (Preliminary) and preliminary antidumping investigations Nos. 731-TA-365 and 366 (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 November 18, 1986 (51 FR 41674). The conference was held in Washington, DC, on November 26, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS ALFRED ECKES,
SEELEY LODWICK, AND DAVID ROHR

We determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of industrial phosphoric acid from Belgium and Israel which are allegedly subsidized and are allegedly being sold at less-than-fair-value (LTFV). ^{1/} ^{2/} ^{3/}

We base our conclusion primarily on the declining condition of the domestic industry, the increasing volume of imports, and the pervasive underselling of the domestic product by the imports causing price suppression and price depression.

Like product and domestic industry

In investigations under title VII of the Tariff Act of 1930, the Commission must define the industry against which to assess the effect of the imports. For this purpose, "industry" is defined as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . ." ^{4/} "Like product" is defined as "a

^{1/} Commissioner Paula Stern did not participate in these investigations.

^{2/} Chairman Susan Liebler and Vice Chairman Anne Brunsdale join this opinion in the discussion of the questions of the like product and the domestic industry. See their Dissenting Views, infra.

^{3/} Material retardation of the establishment of an industry is not an issue in any of these investigations and will not be discussed further.

^{4/} 19 U.S.C. § 1677(4)(A).

product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation." ^{5/}

The imported article in these investigations is industrial phosphoric acid. ^{6/} Industrial phosphoric acid is a relatively pure form of phosphoric acid (less than 500 parts per million impurities; that is, 0.05 percent). Industrial grade acid is used for a variety of applications, principally as an intermediate product in the manufacture of phosphate compounds, including soaps and detergents, food processing and additives, rust-proofing, pharmaceuticals, and paper and rubber processing. ^{7/}

The imported Belgian and Israeli industrial phosphoric acid is produced by the wet process in which agricultural grade phosphoric acid is produced as an intermediate product. ^{8/} In the wet process, phosphorous-bearing rock, whether or not first heated, is reacted with acid which yields a liquid containing agricultural grade phosphoric acid, with impurities at a level of 5 to 15 percent. ^{9/} To achieve industrial phosphoric acid, the agricultural

^{5/} 19 U.S.C. § 1677(10).

^{6/} The product subject to investigation is determined by the Department of Commerce (Commerce). Commerce has described the imported product subject to each of those investigations in identical terms: "industrial phosphoric acid provided for in item 416.30 of the Tariff Schedules of the United States, (TSUS)." 51 Fed. Reg. 43649 (Dec. 3, 1986) (Belgium antidumping petition), 43651 (Dec. 3, 1986) (Israel antidumping petition), 43761 (Dec. 4, 1986) (Belgium countervailing duty petition), 43762 (Dec. 4, 1986) (Israel countervailing duty petition). The word "for" was omitted from the product definition in both antidumping notices. We presume this to be a typographical error.

^{7/} Report of the Commission ("Report") at A-2.

^{8/} Transcript of the conference (Tr.) at 12-14; 119.

^{9/} If the rock is not heated first, "black acid" (due to the presence of organic material) results. The black acid has a 10-15 percent impurity

(Footnote continued on next page)

acid is subjected to a solvent extraction process, which reduces the level of impurities to about 100-200 parts per million. ^{10/}

Industrial phosphoric acid is produced in the United States by the thermal process in which phosphorous-bearing rock is treated with electric energy, which releases phosphorous gas. The gas is then burned to produce phosphorous pentoxide, which in turn is hydrated to produce industrial phosphoric acid. ^{11/} Industrial phosphoric acid produced by the thermal process is slightly more pure than industrial acid made by the wet process. ^{12/}

Petitioners argued that domestically produced industrial phosphoric acid is the like product for these investigations, despite the fact that the U.S. production methods differ from those of the Belgian and Israeli producers. ^{13/} The parties in opposition to the petition (respondents) agreed that, regardless of production process, the Belgian, Israeli, and

(Footnote continued from previous page)

level. Tr. at 14-19. If the rock is first heated, it yields "green acid" (due to the presence of nonorganic impurities)." Id. Green and black acid are also called "agricultural phosphoric acid," because they are used in agricultural applications without further processing.

^{10/} Transcript at 16.

^{11/} Tr. at 12-13; Report at A-4.

^{12/} Prayon-Rupel Post-conference Brief at 4. See Tr. at 12-13, 20.

^{13/} The production process is but one of the considerations that may be relevant to the determination of the like product. See, e.g., 64K Dynamic Random Access Memory Components from Japan, Inv. No. 731-TA-270 (Final), USITC Pub. 1862 at 5-6 (June 1986); Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Final), USITC Pub. 1721 (July 1985); Certain Radio
(Footnote continued on next page)

domestic products are essentially substitutable and interchangeable in the market. ^{14/} The respondents further stated that they do not challenge, at least for purposes of these preliminary investigations, petitioners' assertion that only domestically produced industrial phosphoric acid is like the imported industrial phosphoric acid. That is, they do not oppose exclusion of agricultural grade phosphoric acid. ^{15/}

We find, therefore, that the like product is industrial phosphoric acid. ^{16/}

Turning to the question of the definition of the domestic industry, we note that about two-thirds of domestic phosphoric acid production is dedicated to the "captive" as contrasted with the "merchant" market. ^{17/} The "captive" market consists of transfers of industrial phosphoric acid for use in the production of other commodities by the same or related firms. The

(Footnote continued from previous page)

Paging and Alerting Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 at 8-9 (1983).

^{14/} Transcript at 165. See Tr. at 120.

^{15/} Tr. at 120 (Belgian respondents); Post-conference Brief on Behalf of Negev Phosphates, Ltd. (Negev Brief) at 2.

^{16/} For purposes of these preliminary investigations, we do not find domestically produced agricultural grade phosphoric acid to be within the scope of the like product, even though some industrial phosphoric acid is sold into the agricultural phosphoric acid market. Agricultural grade phosphoric acid, as a result of its lower level of purity is usable only in fertilizers; it may not be utilized where the higher purity levels of industrial grade are required. Tr. at 22. Should any of these cases return for final investigation, we will further explore this like product issue.

^{17/} Report at Table 11.

"merchant" market consists of arm's-length sales to nonrelated parties. Respondents urged, and petitioners apparently concede, that captive production is part of the domestic industry. ^{18/}

In keeping with our consistent practice, ^{19/} we include within the scope of the domestic industry the portion of domestic production of the like product that is dedicated to the captive market. ^{20/} Accordingly, the domestic industry consists of the producers of the like product.

Condition of the Domestic Industry

In assessing the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, production, capacity, capacity utilization, shipments, inventories, employment and

^{18/} The thrust of respondents' argument regarding captive consumption is directed to causation. They argue that, to the extent that consumption is captive, the domestic industry is insulated from any effects of the imports. Prayon-Rupel Postconference Brief at 6-10. In the event of a final investigation, we will explore this issue further.

^{19/} 64K Dynamic Random Access Memory Components from Japan, Inv. No. 731-TA-270 (Final), USITC Pub. 1862 at 5-6 (June 1986); Iron Ore Pellets from Brazil, Inv. No. 701-TA-235 (Final), USITC Pub. 1880 at 6 (July 1986); Titanium Sponge from Japan and the United Kingdom, Invs. Nos. 731-TA-161 and 162 (Final), USITC Pub. 1600 (1984).

^{20/} There is no statutory basis for excluding captive production. The statute defines the term "industry" as "the domestic producers as a whole of a like product." 19 U.S.C. § 1677(4)(A). The statute further instructs the Commission, as a general rule, that "[t]he effect of the subsidized or dumped imports shall be assessed in relation to the United States production of a like product . . ." 19 U.S.C. § 1677(7)(D) (emphasis supplied). Thus, the statute defines industry in terms of production, not in terms of markets, distribution channels, or similar factors. Bicycles from Taiwan, Inv. No. 731-TA-111 (Final), USITC Pub. 1417 at 6 n. 8 (Aug. 1983).

profitability. ^{21/}

In these preliminary investigations, the Commission gathered data covering calendar years 1983 through 1985 and the periods January-September 1985 and 1986. ^{22/} These data show an industry whose performance is deteriorating on the basis of almost all the principal indicators used by the Commission.

Demand for industrial phosphoric acid has declined throughout the period of investigation. Apparent domestic consumption declined approximately 9 percent, with almost all of that decline occurring from 1984 to 1985. ^{23/} The decline occurred exclusively in the captive market; consumption in the merchant market increased slightly from 1983 to 1985, and then increased approximately five percent from January-September 1985 to January-September 1986. ^{24/ 25/}

^{21/} 19 U.S.C. § 1677(7)(C)(iii).

^{22/} For the financial data, the periods covered are the domestic producers' fiscal years 1983 through 1985 and interim fiscal years ending September 30, 1985, and September 30, 1986.

^{23/} Report at Table 4.

^{24/} *Id.*

^{25/} Petitioners characterized the domestic industrial phosphoric acid market as "mature" and predicted relative stability in demand for industrial phosphoric acid during the foreseeable future. Tr. at 105-06. See Tr. at 36. However, we note that industrial phosphoric acid is generally not an end product in itself and that the United States economy was improving overall during the period of investigation. Therefore, the declines in consumption may well be related to an overall long-term decline in the market for phosphoric acid. In the event of a final investigation, we intend to explore this matter further.

Domestic production of industrial phosphoric acid declined from 2.35 billion pounds in 1983 to 2.11 billion pounds in 1985, a drop of 11 percent. The vast majority of the decline in production occurred in 1985. Production remained stable in January-September 1986 as compared to the same period of 1985. ^{26/} U.S. producers' total shipments declined 10 percent, by weight, from 1983 to 1985. An additional slight decline is apparent when interim 1986 is compared to interim 1985. ^{27/} The same pattern prevailed for captive market shipments. Domestic shipments on the open market declined through 1985 and then increased slightly in interim 1986. ^{28/} Again, most of the declines in shipments occurred in 1985.

Domestic producers' average-for-period capacity rose slightly from 1983 to 1984 and fell in 1985 to 95 percent of 1983 capacity. It then declined 9.1 percent from January-September 1985 to January-September 1986. ^{29/} Capacity utilization levels reflect both the declines in production during 1984-85 and the declines in installed capacity from 1984 to 1985 and from January-September 1985 to January-September 1986. Thus, capacity utilization dropped from 58.8 percent in 1983 to 55.6 percent in 1985, but then increased to 62.2 percent during January-September 1986. ^{30/}

Employment data for production and related workers producing industrial

^{26/} Report at Table 5.

^{27/} Id. at Table 6.

^{28/} Id.

^{29/} Id. at Table 5. The decline in capacity appears to be the result of plant closings. Id. at A-15, n.3.

^{30/} Id. at Table 5.

phosphoric acid show generally declining trends. The average number of employees and their hours worked declined steadily throughout the investigations. Their wages and total compensation increased from 1983 to 1984, but declined steadily thereafter, although their average hourly wages and average hourly total compensation increased steadily. ^{31/}

The Commission received usable income and loss information for five U.S. firms, representing the vast majority of U.S. domestic production of industrial phosphoric acid, on their operations producing industrial phosphoric acid. Net sales declined 1.1 percent from 1983 to 1984 and 7.5 percent from 1984 to 1985. When interim 1986 is compared to interim 1985, net sales declined a further 3.1 percent. ^{32/} Operating income and net income before income taxes also declined steadily throughout the period of investigation. ^{33/} As a share of net sales, operating income declined from 4.5 percent in 1983 and 1984 to 3.0 percent in 1985 and to 1.3 percent in interim 1986. ^{34/} Of the five reporting firms, none showed losses for 1983 or 1984, but two showed losses in interim 1986. ^{35/ 36/}

^{31/} Report at Table 8.

^{32/} As pointed out by the Belgian respondents, a significant portion of domestic production is sold into the agricultural fertilizer market. Prayon-Rupel Conference Statement at 6. This market, however, requires only agricultural grade phosphoric acid, which appears to command only one-third the price per pound of industrial phosphoric acid. Tr. at 22-24. In respondents' view, the volume of sales into the agricultural market is too large to be the result of imports and, therefore, they appear to argue that the sales into this market, and the revenues derived therefrom, should be considered as evidence of lack of injury. Petitioners argued that because imports have displaced them in the merchant market, they have had to sell in the agricultural market. We intend to explore this issue in the event of a final investigation.

^{33/} Report at Table 10.

^{34/} Id.

^{35/} Id.

^{36/} We note that we use the financial information with particular caution in
(Footnote continued on next page)

The foregoing examination shows a reasonable indication that the domestic industry is experiencing material injury.

Cumulation

The Commission must cumulatively assess the volume and effect of the imports if the imports: (1) are subject to investigation; (2) compete with both other imports and the domestic like product; and (3) are marketed within a reasonably coincidental period. ^{37/} In these investigations, petitioners urge the Commission to cumulatively assess the volume and effect of the imports from Belgium and Israel. The Belgian respondents state that "it is not clear that the statutory standard for cumulation is met." ^{38/}

There seems to be no argument that the first and third criteria are met in these cases. With regard to the second criterion, there is agreement that the imports and the domestic product are commercially fungible. ^{39/} The Belgian respondents stated, however, that the imports may be geographically

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these investigations, since it includes information for both the captive and merchant markets. That portion of domestic production consumed captively is assigned a transfer price by the company. While the transfer prices assigned in these preliminary investigations appear to be based on reasonable accounting methods, they are not necessarily the same prices that prevailed in the merchant market. In the event any of these cases returns for a final investigation, the Commission will attempt to develop more complete financial information.

^{37/} 19 U.S.C. § 1677(7)(C)(iv); H.R. Rep. No. 1156 (Conf. Rep.), 98th Cong., 2d Sess. 173 (1984).

^{38/} Prayon-Rupel Postconference Brief at 19.

^{39/} E.g., Transcript at 15-16, 165.

isolated from each other and, therefore, not compete with each other. ^{40/}

Although we have considered geographic distribution of imports as a cumulation factor in preliminary investigations, the Commission has determined not to cumulate if there is no competition "in any meaningful sense" between the imports from two countries because of geographic isolation. ^{41/}

However, if the level of competition was at a meaningful level or if the extent of competition was not clear, we have cumulatively assessed the volume and effect of the imports. ^{42/} In these investigations, because the data regarding geographic distribution show competition between imports of this fungible commodity in at least one market, it cannot be said that there is no competition "in any meaningful sense." Accordingly, we cumulatively assess the volume and effect of the allegedly unfairly traded imports of phosphoric acid from Belgium and Israel.

Reasonable indication of material injury by reason of allegedly unfairly traded imports

In determining whether a domestic industry is materially injured "by reason of" imports, the Commission is to consider, among other factors, the

^{40/} Prayon-Rupel Postconference Brief at 19.

^{41/} Certain Carbon Steel Pipes and Tubes from the People's Republic of China, the Philippines, and Singapore, Invs. Nos. 731-TA-292 through 296 (Preliminary), USITC Pub. 1796 (Dec. 1985).

^{42/} Certain Carbon Steel Pipes and Tubes from the People's Republic of China, the Philippines, and Singapore, supra, at 11; Certain Steel Wire Nails from the People's Republic of China, Poland, and Yugoslavia, Invs. Nos. 731-TA-266 through 268, USITC pub. 1730 at 9 (July 1985).

volume of imports of the merchandise subject to investigation, and the effect of imports on the domestic industry and domestic prices. ^{43/}

The cumulative volume of imports increased from 18.2 million pounds in 1983 to 21.7 million pounds in 1984 and to 47.7 million pounds in 1985, and from 37.4 million pounds in January-September 1985 to 41.3 million pounds during the same period of 1986. ^{44/} As a percentage of apparent domestic consumption, the cumulative volume of imports increased from 0.8 percent in 1983 to 0.9 percent in 1984 and to 2.2 percent in 1985, and from 2.3 percent to 2.5 percent when January-September 1985 is compared to January-September 1986. ^{45/} When the imports are compared to U.S. open-market consumption, the same trend is observed, with the imports accounting for 2.4 percent of open-market consumption in 1983 and 6.9 percent in interim 1986. ^{46/} It is particularly significant that the sharp increase in both the absolute and relative volume of imports occurred during the same period (1984-85) in which the domestic industry showed its steepest decline in performance.

The Commission gathered quarterly price data for the sale of industrial grade phosphoric acid from the first quarter of 1983 through the third quarter of 1986. ^{47/} Prices for domestic industrial phosphoric acid remained stable

^{43/} 19 U.S.C. § 1677(7)(B).

^{44/} Report at Table 4.

^{45/} Id. at Table 16.

^{46/} Id.

^{47/} Petitioners have argued that industrial phosphoric acid is a commodity article sold exclusively on the basis of price. Tr. at 74, 82-83. Respondents have not disagreed with this characterization.

or exhibited a slight downward trend through 1985. Prices for each of the product specifications for which we have most complete data show significant deterioration during 1986. Prices for the imported industrial phosphoric acid generally followed the same trends. ^{48/}

When f.o.b. sales to distributors are considered, the Belgian product undersold the domestic product in all but one of the 29 quarterly comparisons for which there are data. ^{49/} The Israeli product undersold the domestic product in all 14 quarters in which comparisons are possible. ^{50/} The same pattern is present when delivered prices to distributors are compared: the Belgian product undersold the domestic product in 14 of 15 quarters for which comparisons are possible and the Israeli product undersold the domestic product in six of seven quarters for which comparisons are possible. ^{51/} When f.o.b. prices to end users are compared, there is again but one quarter in which the imported product oversold the domestic product. ^{52/} While the margins of underselling have fluctuated, they are not insignificant.

There is also some evidence of lost sales and lost revenues due to the imports. ^{53/} It appears to us, in view of the data and information regarding the operations of the market obtained during Commission telephone calls to purchasers, that the lower prices of the imports have caused price suppression and price depression.

^{48/} Report at Tables 18 through 21.

^{49/} Id. at Tables 18-19.

^{50/} Id.

^{51/} Id. at Table 20.

^{52/} Id. at Table 21.

^{53/} Id. at A-40-41.

Accordingly, we find that there is a reasonable indication that the domestic industry is materially injured by reason of imports of industrial phosphoric acid from Belgium and Israel that are allegedly subsidized and allegedly sold at less than fair value.

DISSENTING VIEWS OF CHAIRMAN LIEBELER

Industrial Phosphoric Acid from Belgium and Israel
Invs. Nos. 701-TA-285 & 286, and
731-TA-365 & 366 (Preliminary)

I determine that there is no reasonable indication than an industry in the United States is materially injured or threatened with material injury, by reason of imports of industrial phosphoric acid from Belgium and Israel which are allegedly being sold at less than fair value and are receiving benefit of subsidy.¹

I concur with the majority in their definitions of the like product and the domestic industry and with their discussion of cumulation. I concur with Vice Chairman Brunsdale in her discussion of the condition of the domestic industry. I offer these dissenting views on causation.

Material Injury by Reason of Imports

1

Since there exists a domestic industry producing industrial phosphoric acid, material retardation was not an issue in these investigations and will not be discussed further.

In order for a domestic industry to prevail in a preliminary investigation, the Commission must determine that there is a reasonable indication that the dumped or subsidized imports cause or threaten to cause material injury to the domestic industry producing the like product. The Commission must determine whether the domestic industry producing the like product is materially injured or is threatened with material injury, and whether any injury or threat thereof is by reason of the dumped or subsidized imports. Only if the Commission finds a reasonable indication of both injury and causation, will it make an affirmative determination in the investigation.

Before analyzing the data, however, the first question is whether the statute is clear or whether one must resort to the legislative history in order to interpret the relevant sections of the this import relief law. In general, the accepted rule of statutory construction is that a statute, clear and unambiguous on its face, need not and cannot be interpreted using secondary sources. Only statutes that are of doubtful² meaning are subject to such statutory interpretation.

²

C. Sands, Sutherland Statutory Construction § 45.02 (4th ed., 1985.).

The statutory language used for both parts of the analysis is ambiguous. "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant."³ As for the causation test, "by reason of" lends itself to no easy interpretation, and has been the subject of much debate by past and present commissioners. Clearly, well-informed persons may differ as to the interpretation of the causation and material injury sections of title VII. Therefore, the legislative history becomes helpful in interpreting title VII.

The ambiguity arises in part because it is clear that the presence in the United States of additional foreign supply will always make the domestic industry worse off. Any time a foreign producer exports products to the United States, the increase in supply, ceteris paribus, must result in a lower price of the product than would otherwise prevail. If a downward effect on price, accompanied by a Department of Commerce dumping or subsidy finding and a Commission finding that financial indicators were down were all that were required for an affirmative

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19 U.S.C. § 1977(7)(A) (1980).

determination, there would be no need to inquire further into causation.

But the legislative history shows that the mere presence of LTFV imports is not sufficient to establish causation. In the legislative history to the Trade Agreements Acts of 1979, Congress stated:

[T]he ITC will consider information which indicates that harm is caused by factors other⁴ than the less-than-fair-value imports.

The Finance Committee emphasized the need for an exhaustive causation analysis, stating, "the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury."⁵

The Senate Finance Committee acknowledged that the causation analysis would not be easy: "The determination of the ITC with respect to causation, is under current law, and will be, under section 735, complex and

4

Report on the Trade Agreements Act of 1979, S. Rep. No. 249, 96th Cong. 1st Sess. 75 (1979).

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Id.

difficult, and is a matter for the judgment of the

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ITC." Since the domestic industry is no doubt worse off by the presence of any imports (whether LTFV or fairly traded) and Congress has directed that this is not enough upon which to base an affirmative determination, the Commission must delve further to find what condition Congress has attempted to remedy.

In the legislative history to the 1974 Act, the Senate Finance Committee stated:

This Act is not a 'protectionist' statute designed to bar or restrict U.S. imports; rather, it is a statute designed to free U.S. imports from unfair price discrimination practices. * * * The Antidumping Act is designed to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a
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United States industry.

Thus, the focus of the analysis must be on what constitutes unfair price discrimination and what harm results therefrom:

[T]he Antidumping Act does not proscribe transactions which involve selling an imported

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Id.

⁷
Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market

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price.

This "complex and difficult" judgment by the Commission is aided greatly by the use of economic and financial analysis. One of the most important assumptions of traditional microeconomic theory is that firms attempt

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to maximize profits. Congress was obviously familiar with the economist's tools: "[I]mporters as prudent businessmen dealing fairly would be interested in maximizing profits by selling at prices as high as the U.S. market would bear."¹⁰

An assertion of unfair price discrimination should be accompanied by a factual record that can support such a conclusion. In accord with economic theory and the legislative history, foreign firms should be presumed to

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Id.

⁹
See, e.g., P. Samuelson & W. Nordhaus, Economics 42-45 (12th ed. 1985); W. Nicholson, Intermediate Microeconomics and Its Application 7 (3d ed. 1983).

¹⁰
Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

behave rationally. Therefore, if the factual setting in which the unfair imports occur does not support any gain to be had by unfair price discrimination, it is reasonable to conclude that any injury or threat of injury to the domestic industry is not "by reason of" such imports.

In many cases unfair price discrimination by a competitor would be irrational. In general, it is not rational to charge a price below that necessary to sell one's product. In certain circumstances, a firm may try to capture a sufficient market share to be able to raise its price in the future. To move from a position where the firm has no market power to a position where the firm has such power, the firm may lower its price below that which is necessary to meet competition. It is this condition which Congress must have meant when it charged us "to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry."¹¹

In Certain Red Raspberries from Canada, I set forth a framework for examining what factual setting would merit

¹¹

Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

an affirmative finding under the law interpreted in light
of the cited legislative history.¹²

The stronger the evidence of the following . . .
the more likely that an affirmative determination
will be made: (1) large and increasing market
share, (2) high dumping margins, (3) homogeneous
products, (4) declining prices and (5) barriers
to entry to other foreign producers (low
elasticity of supply of other imports).¹³

The statute requires the Commission to examine the volume
of imports, the effect of imports on prices, and the
general impact of imports on domestic producers.¹⁴ The
legislative history provides some guidance for applying
these criteria. The factors incorporate both the
statutory criteria and the guidance provided by the
legislative history. Each of these factors is evaluated
below.

Causation analysis

Examining import penetration is important because
unfair price discrimination has as its goal, and cannot

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Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19
(1985) (Additional Views of Vice Chairman Liebel).

¹³

Id. at 16.

¹⁴

19 U.S.C. § 1677(7)(B)-(C) (1980 & cum. supp. 1985).

take place in the absence of, market power. The cumulated market penetration of cumulated imports under investigation increased from 0.8 percent in 1983 to 0.9 percent in 1984 and 2.2 percent in 1985. In the absence of a showing of both inelastic supply and inelastic demand, I presume that such a small cumulated import penetration ratio is too small to be a cause of material

¹⁵ injury. Demand for industrial phosphoric acid may be inelastic because it is an intermediate product, but the evidence in the record does not indicate that supply is

¹⁶ likely to be inelastic. Import penetration for January-September 1986 remained very small at 2.5 percent up from 2.3 percent in the corresponding period of the ¹⁷ previous year. Import penetration is increasing, but it is very small and inconsistent with a finding of unfair price discrimination.

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See Certain Carbon Steel Pipes and Tubes from the People's Republic of China, Inv. No. 731-TA-292 (Final), USITC Pub. No. 1885 (1986) at 20-31 (Additional Views of Chairman Liebel) for a discussion of the 2.5 percent presumption.

16

See Dissenting Views of Vice Chairman Brunsdale, infra at p.37.

17

Report at Table 16. The penetration figures presented here are measured on a quantity basis. I note that the trend in import penetration is the same when measured on a value basis. Because I have employed the presumption only in cases where market share was strictly less than 2.5 percent, I will proceed with a full analysis of causation.

The second factor is a high margin of dumping or subsidy. The higher the margin, ceteris paribus, the more likely it is that the product is being sold below the

competitive price¹⁸ and the more likely it is that the domestic producers will be adversely affected. In a preliminary investigation, the Commerce Department has not yet had time to calculate any margins. I therefore typically rely on the margins alleged by petitioner. In this case, petitioner calculated dumping margins on total exports to the United States of industrial phosphoric acid. The alleged margins ranged from 100 percent to 160 percent for imports from Belgium, and from 13 to 42 percent for the imports from Israel.¹⁹ These margins range from small to large. Petitioners have not alleged any specific subsidy margins. In order to give petitioners the benefit of the doubt in these preliminary investigations, I will assume that the subsidy margins are substantial.

The third factor is the homogeneity of the products. The more homogeneous the products, the greater will be the

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See text accompanying note 8, supra.

¹⁹

Report at A-11-12.

effect of any allegedly unfair practice on domestic producers. Evidence presented in these investigations indicates that the domestic and imported products are

²⁰ similar. I find that these products are homogeneous.

As to the fourth factor, evidence of declining domestic prices, ceteris paribus, might indicate that domestic producers were lowering their prices to maintain market share. United States producers' prices exhibited a downward trend during the period of investigation.²¹

The fifth factor is foreign supply elasticity (barriers to entry). If there is low foreign elasticity of supply (or barriers to entry) it is more likely that a producer can gain market power. Imports from countries other than Belgium and Israel were negligible over the entire period of investigation, accounting for .1 percent of apparent consumption from 1983 through 1985.²² I conclude that foreign supply is inelastic.

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Transcript at 120; Post-Conference Brief on Behalf of Negev Phosphates, Ltd. at 2.

21

Report at Tables 18-21.

22

Report at Table 16.

These factors must be considered in each case to reach a sound determination. Cumulated market share is increasing but extremely low. Foreign supply is inelastic. Domestic prices exhibit a downward trend. The products are homogeneous. The alleged margins range from small to large. While the latter four factors are not inconsistent with an affirmative determination, they are outweighed by the lack of market power.

Threat of material injury

With respect to potential threat of material injury, the Belgian producers were operating at approximately 70 percent of capacity during the period of

²³ investigation. Capacity utilization data are available for only one of the two Israeli producers of industrial phosphoric acid. The Israeli producer for which capacity utilization data are available was operating at more than 95 percent of capacity in 1985, with projected capacity utilization of nearly 90 percent

²³

The actual capacity utilization numbers are confidential. Report at table 2.

for 1986.²⁴ These capacity utilization figures indicate that the ability to generate additional phosphoric acid exports is limited. The United States receives more than 20 percent of the Belgian and less than 20 percent of Israeli exports of the merchandise subject to investigation.²⁵ This indicates that it is possible that some imports of phosphoric acid, currently exported to countries other than the United States, could be diverted to the United States. This amount is very small compared to apparent United States consumption.

Moreover, there is no information on the record in these investigations that the Belgian or Israeli producers intend to increase their capacity or divert production to the United States. I conclude that there is no reasonable indication that injury by reason of the subject imports is "real and imminent".²⁶

Conclusion

²⁴
Report at table 3.

²⁵
Report at tables 2 and 3.

²⁶
19 U.S.C. § (7) (F) (ii) (cum. supp. 1986).

Therefore, I conclude that there is no reasonable indication that the domestic industry producing industrial phosphoric acid is materially injured or threatened with material injury by reason of imports of industrial phosphoric acid from Belgium and Israel which are allegedly being sold at less than fair value and receiving benefit of subsidy.

DISSENTING VIEWS OF VICE CHAIRMAN ANNE E. BRUNSDALE

Industrial Phosphoric Acid from Belgium and Israel

Investigations Nos. 701-TA-285 & 286
and 731-TA-365 & 366 (Preliminary)

December 22, 1986

Based on the record in these cases, I find no reasonable indication that the domestic industry producing industrial phosphoric acid is materially injured or threatened with material injury by reason of allegedly subsidized and allegedly dumped imports from Belgium and Israel.¹ I concur with my colleagues in the majority in their discussion of like product, domestic industry, and cumulation. I depart from them, however, in my assessment of the condition of the domestic industry and in my conclusions with regard to causation. My views on these issues are set forth below.

1

Because there is an existing domestic industry, material retardation of the establishment of an industry in the United States is not an issue in these investigations and will not be discussed.

Condition of the Industry

While most of the major indicators of the condition of the domestic industry have declined over the period of investigation, there have been some favorable developments. Furthermore, shipment data reveal that not all segments of the industry have declined, but rather that the decline has centered on the portion of the industry devoted to production for captive use.

Domestic production fell by 10.3 percent from 1983 through 1985, and remained virtually unchanged in January-September 1986² as compared with the corresponding period of 1985. Average capacity fluctuated, but the overall trend was down. Capacity was 5.1 percent lower in 1985 than in 1983, and 8.8 percent lower in interim 1986 than in interim 1985.³ Capacity utilization increased over the period--from 58.8 percent in 1983 to 62.2 percent in interim 1986-- but this was obviously due to the fall in capacity rather than a rise in production.⁴

It appears that the drop in capacity in interim 1986 can be attributed to the December 1985 closure of Monsanto's plant in

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See Report to the Commission ("Report") at A-16.

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See id.

⁴
Id.

Kearny, New Jersey. While the closure of productive facilities⁵ ordinarily is indicative of material injury, the closure in this case is offset by evidence that the domestic industry has⁶ sustained a very high level of capital expenditure. As a result, the value of domestic plant, property, and equipment devoted to phosphoric acid production, whether measured by book value or original cost, increased by over 30 percent from 1983⁷ through January-September 1986.

Employment data present a mixed picture of the industry's condition. Whereas the total number of employees engaged in phosphoric acid production declined by 22 percent over the period

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It should be noted that while the closure of productive facilities points in the direction of material injury, it does not establish that the industry is experiencing such injury. The experience of particular firms and particular plants must be carefully assessed against the backdrop of the condition of the industry as a whole. Most importantly, it is necessary to assess whether competition from other domestic firms, possibly new entrants to the business, may account for the closure of particular productive facilities.

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Id. at A-25.

7

See id.

of investigation,⁸ labor productivity rose by 16 percent,⁹
and average hourly compensation rose by over 26 percent.¹⁰

Financial data reveal that the industry has remained basically profitable, though its fortunes have declined. Net sales fell 8.5 percent from 1983 through 1985, and an additional 3.1 percent in January-September 1986 as compared with the corresponding period of 1985.¹¹ Operating income as a share of net sales ranged between 4.5 and 3.8 percent from 1983 through the first nine months of 1985. Only in the most recent nine-month period has operating income as a share of net sales declined significantly from earlier levels, falling to 1.3 percent.¹² Notwithstanding this decline, only two of five domestic producers reported operating losses during interim 1986.¹³

The most interesting fact revealed by the data is the degree to which the industry's downturn has centered on the captive

⁸
See id. at A-19.

⁹
See Office of Investigations Memorandum INV-J-192 (Dec. 19, 1986).

¹⁰
See Report at A-19.

¹¹
See id. at A-23.

¹²
Id.

¹³
Id.

rather than the open market for phosphoric acid. Total industry shipments fell 10.0 percent by quantity from 1983 through 1985, and an additional 0.2 percent in interim 1986 as compared with interim 1985.¹⁴ The portion of total shipments accounted for by intracompany and intercompany transfers (i.e. captive shipments) fell by 12.9 percent from 1983 through 1985, and an additional 2.1 percent in interim 1986. By contrast, domestic open market shipments fell by only 3.7 percent from 1983 through 1985, and then recovered during the first nine months of 1986, increasing by 3.7 percent over the level achieved during the corresponding period of 1985.¹⁵ Thus, shipment data demonstrate that the industry's decline has occurred primarily in the captive and not the open market.

Viewed as a whole, the indicators reveal that the domestic industry is experiencing problems. Whether these problems rise to the level of material injury is a question that I need not decide because I am able to conclude, for the reasons stated below, that even if the industry is materially injured, its injury is not "by reason of" the imports subject to investigation.

¹⁴
See id. at A-17.

¹⁵
See id.

Causation

Assuming arguendo that the domestic industry is materially injured, I nevertheless find that, under the standard set forth in American Lamb Co. v. United States,¹⁶ there is no reasonable indication that imports from Belgium and Israel are a cause of that injury. Three facts lead me to this conclusion.

First, the market penetration of the subject imports is sufficiently low to make it very unlikely that the imports could be a cause of material injury. The highest level of penetration achieved by the cumulated imports during the period of investigation was 2.3 percent by value and 2.5 percent by quantity in January-September 1986.¹⁷ As I have observed in previous investigations, import penetration levels this low cannot significantly affect either domestic prices or the quantity of domestic production unless both supply and demand in the domestic market are highly insensitive to price.¹⁸ Because

¹⁶ 785 F.2d 994, 1001 (Fed. Cir. 1986).

¹⁷ Report at A-44, A-45.

¹⁸ Certain Welded Carbon Steel Pipes and Tubes from The Philippines and Singapore, Invs. Nos. 731-TA-293, 294 and 296 (Final), USITC Pub. 1907 at 48-50 (1986) (Views of
(Footnote continued on next page)

phosphoric acid is an intermediate product, that is, a product used by manufacturers in the production of other finished goods, there is some reason to believe that demand for it may not be very sensitive to price.¹⁹ There is, however, no evidence suggesting that the supply of phosphoric acid is not sensitive to price. To the contrary, the high level of excess capacity in the domestic industry suggests that an increase in price would be likely to result in a significant increase in production.²⁰ I therefore find it highly unlikely that the subject imports could be a cause of material injury to the domestic industry given their low market penetration.

The second fact in these investigations leading me to a negative determination on causation is the extremely close correspondence between the declines in domestic production and shipments on the one hand and declining apparent domestic

(Footnote continued from previous page)
 Vice Chairman Brunsdale); Certain Steel Wire Nails from the People's Republic of China, Inv. No. 731-TA-266 (Final), USITC Pub. 1842 at 31 (1986) (Views of Commissioner Brunsdale).

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See Erasable Programmable Read-Only Memories from Japan, Inv. No. 731-TA-288 (Final), USITC Pub. 1927 at 31 (December 1986) (Additional Views of Vice Chairman Brunsdale).

20

See Report at A-16.

consumption on the other. As noted previously, both domestic production and shipments fell by approximately 10 percent between 1983 and 1985 and remained basically unchanged in interim 1986 as compared with interim 1985. Similarly, apparent domestic consumption declined by 9 percent during 1983-85, and remained²¹ relatively stable in interim 1986. This close correspondence suggests that nearly all of the drop in domestic production and shipments is attributable to falling domestic demand for phosphoric acid. Though some small portion of the drop in production and shipments may be attributable to the subject imports, the question before the Commission is whether that portion is sufficiently large to be characterized as material²² injury. The close correspondence between the drop in

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Id. at A-14.

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The Commission is, of course, forbidden by the legislative history of Title VII to weigh causes of material injury, but the same legislative history requires us to consider whether factors other than unfair imports are the cause of material injury to the domestic industry. See S. Rep. No. 249, 96th Cong., 1st Sess. 57-58 (1979) ("Current law does not, nor will section 705, contemplate that the effects from the subsidized imports be weighed against the effects associated with other factors Of course, in examining the overall injury to a domestic industry, the ITC will consider information which indicates that harm is caused by factors other than subsidized imports.") Because imports of any product

(Footnote continued on next page)

production and shipments on the one hand and the drop in apparent consumption on the other leads me to conclude that the injury, if any, caused by the imports in these cases is not material.

The third fact leading me to a negative determination on causation is the degree to which the injury in these cases centers on the captive rather than open market for phosphoric acid. As an initial matter, I note that it is not possible in most cases to draw conclusions about causation from evidence of different conditions in the captive and open markets for a like product. This is because there is inevitably competition between the two markets, inasmuch as captive consumption can always be replaced by purchases on the open market. Thus, it ordinarily is impossible to infer that imports are not a cause of material

(Footnote continued from previous page)
 increase the supply available to domestic purchasers, imports almost always work to the detriment of domestic producers of the product. This type of harm, combined with evidence that the domestic producers are experiencing material injury, is not enough to support an affirmative determination. If it were, the Commission would be compelled to reach affirmative determinations in all cases where there is both material injury and evidence that imports are entering the U.S. market. Such an interpretation would render the statutory causation requirement nugatory. It follows that, in cases where there are other factors in addition to imports that may account for an industry's depressed state, an affirmative determination is permissible only if the injury independently attributable to imports rises to the level of material injury.

injury where domestic shipments within the captive market segment have declined while domestic open market shipments have remained steady. Such evidence does not exclude the possibility that the decline in captive consumption is attributable to a decision by domestic producers to satisfy some of their internal requirements with purchases of either domestic or imported product on the open market.

In these cases, however, there is evidence in the record to exclude this possibility. According to the domestic producers' questionnaire responses, they purchased only negligible quantities of phosphoric acid on the open market during the period of investigation, and no such purchases were used in their downstream consumption of phosphoric acid. All such purchases were either resold on the open market or used exclusively for testing.²³ This fact, combined with evidence that the industry's decline has been closely associated with a fall in consumption in the captive market segment, strongly suggests that factors other than imports have caused the industry's problems. Two possible explanations readily come to mind: (1) sales of the downstream products captively produced by domestic phosphoric acid manufacturers are falling, either because of declining

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See Report at A-18.

consumption or declining market share,²⁴ or (2) the domestic producers have improved the efficiency of their downstream manufacturing operations with the result that they no longer require as much phosphoric acid to sustain the same level of downstream output. Neither of these possible explanations appears to be related in any way to imports of phosphoric acid from Belgium and Israel.²⁵

For these reasons, I conclude that the subject imports are not a cause of the problems being experienced by domestic producers of industrial phosphoric acid.

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See Post-Conference Brief of Belgian Respondents at Attachment 8.

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Another factor that I consider in determining whether the subject imports are a cause of material injury is the magnitude of the alleged subsidy and dumping margins. See Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 at 13-14 (1986). In this case, petitioners did not allege specific subsidy margins, but rather confined their allegations to a description of subsidy practices. Specific dumping margins were alleged, however, which were high in the case of Belgium, ranging from 100 to 160 percent, and moderate in the case of Israel, ranging from 13 to 42 percent. Report at A-9 to A-10. These margins weigh in favor of a preliminary finding of injury by reason of the subject imports, particularly in the case of Belgium, but as I have previously emphasized, large margins are not by themselves sufficient to reach an affirmative determination. See Certain Ethyl Alcohol from Brazil, Inv. No. 701-TA-239 (Final), USITC Pub. 1818 at 15-16 (1986). In this case, I find the evidentiary value of the alleged margins to be far outweighed by other evidence, described above, indicating that the subject imports have not injured the domestic industry.

Threat of Material Injury

I further conclude that there is no evidence in these cases of a real and imminent threat of material injury by reason of the subject imports.²⁶ Capacity utilization figures for January-September 1986 are relatively high for both Belgium and Israel.²⁷ Even assuming that both of these countries may (1) increase utilization to 100 percent and (2) direct all of the increase to the U.S. market--assumptions that are impermissibly conjectural on this record²⁸ --I would nevertheless conclude that the resulting level of import penetration would not be sufficiently high to cause material injury to the domestic industry. I likewise am unable to discern any indication from the data on Belgian and Israeli inventories and shipments to third country markets that imports from these countries may at any time in the foreseeable future enter the United States in such quantities as to cause material injury to the domestic industry.

²⁶ See 19 U.S.C. sec. 1677(7)(F)(ii).

²⁷ See Report at A-12.

²⁸ See 19 U.S.C. sec. 1677(7)(ii).

Conclusion

For the foregoing reasons, I find no reasonable indication that the domestic industry producing industrial phosphoric acid is materially injured or threatened with material injury by reason of allegedly subsidized and allegedly dumped imports from Belgium and Israel.

INFORMATION OBTAINED IN THE INVESTIGATIONS

Introduction

On November 5, 1986, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO. 1/ The petitions allege that an industry in the United States is materially injured or threatened with material injury by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of Belgium and Israel and which are allegedly being sold in the United States at less than fair value (LTFV). 2/ Accordingly, effective November 5, 1986, the Commission instituted preliminary countervailing duty investigations Nos. 701-TA-285 and 286 under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) 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 allegedly subsidized imports from Belgium and Israel. The Commission also instituted preliminary antidumping investigations Nos. 731-TA-365 and 366 under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) 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 such imports which are alleged to be sold in the United States at LTFV.

Notice of the institution of the Commission's investigations and of a 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 November 18, 1986 (51 FR 41674). 3/ The conference was held in Washington, DC, on November 26, 1986. 4/

Effective December 3, 1986, the U.S. Department of Commerce initiated antidumping investigations to determine whether the subject merchandise is being, or is likely to be, sold in the United States at LTFV. Commerce also initiated countervailing duty investigations, effective December 4, 1986, to determine whether the subject merchandise is subsidized by the Governments of Belgium and Israel. 5/

The Commission's briefing and votes on these investigations were held on December 16, 1986. The statute directs that the Commission make its determinations within 45 days after its receipt of the petitions, or in these cases, by December 22, 1986.

1/ Albright & Wilson, Inc., Hydrite Chemical Co., and Stauffer Chemical Co. support the petitions in these investigations; * * *.

2/ The petitions also allege that critical circumstances exist in these investigations.

3/ A copy of the Commission's notice is presented in app. A.

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

5/ Copies of Commerce's notices of initiation are presented in app. A.

Industrial phosphoric acid has not been the subject of any previous investigations conducted by the Commission.

The Product

Description and uses

Industrial phosphoric acid (H_3PO_4) is a colorless, odorless, sparkling liquid or white crystalline solid, depending on its concentration and temperature. At $20^\circ C/68^\circ F$, the 50- and 75-percent concentrations are mobile liquids; the 85-percent concentration is a viscous, syrupy liquid; and the 100-percent acid is a clear crystalline solid. Regardless of concentration or temperature, phosphoric acid can only be categorized as "industrial" if impurity levels are less than 500 parts per million or less than 0.05 percent. Industrial phosphoric acid is classified in terms of phosphorus pentoxide (P_2O_5) content, measured in percent by weight. Industrial phosphoric acid is used principally as an intermediate in the captive manufacture of phosphate compounds. The major portion of U.S. industrial phosphoric acid production is used to produce sodium phosphates, which in turn are used in soaps, detergents, and water treatment. Industrial phosphoric acid is also used in the manufacture of calcium phosphate products used in food and industrial markets, and to produce potassium phosphates consumed in paper processing, antifreeze, and processing rubber. Industrial phosphoric acid is also used for several other miscellaneous direct merchant market applications such as in soft drinks, jams, jellies, dye synthesis, electro-polishing, catalysts, pickling and rust proofing metals, pharmaceuticals, laboratory reagents, and foliar spray applications. ^{1/} The shares of industrial phosphoric acid production used in captive phosphate production and sold in the merchant market, as reported in questionnaire responses, are presented in the following tabulation (in percent):

<u>Market</u>	<u>Share</u>
Captive production of phosphates.....	65
Direct merchant applications.....	<u>35</u>
Total.....	100

The major end uses of industrial phosphoric acid, based on estimates provided by industry and Government sources, are shown in the following tabulation (in percent):

<u>End use</u>	<u>Share</u>
Soaps, detergents, cleaners, and water treatment—	55
Foods, beverages, and dentifrices—	14
Metal finishing—	1
Other ^{1/} —	<u>30</u>
Total—	100

^{1/} Such as fire retardants, rubber processing, and exports.

^{1/} Industrial phosphoric acid produced in the United States is also sold, * * *, at reduced prices for use as phosphatic fertilizer solutions. * * *. A-2

Industrial phosphoric acid is produced in several different grades, depending on the requirements of the market. These include the following:

- (1) Technical grade - thermal-produced acid without any further treatment. Technical grade acid is typically produced at a 75-percent assay/concentration, although 50-, 80-, 85-, 90-, and 100-percent assay/concentrations are also marketed. It is used captively in the downstream production of phosphates, and is sold for a variety of industrial uses in cleaners, cement processing, leather tanning, fire brick manufacture, varnishes, synthetic rubbers, and boiler water treatment.
- (2) Food grade - purified thermal-produced acid. Impurities such as arsenic and heavy metals are reduced to trace amounts to conform with the Food Chemicals Codex (FCC) specifications. Typically purified to assay/concentrations of 75 to 85 percent, its primary uses are as an acidulant in cola beverages and sugar refining, as an acid flavoring agent in jams and jellies, as an ingredient in bread dough and cake flour, as a yeast nutrient, and in cottage cheese production.
- (3) ACS-SEMI grade - a special pure form of 85-percent assay/concentration acid which meets the standards of the American Chemical Society (ACS) and the Semiconductor Equipment and Materials Institute (SEMI). For reasons of purity, this form of industrial phosphoric acid can only be manufactured from elemental phosphorus by the thermal process. This grade acid is designed for use as a reagent in analytical chemistry, in semiconductor manufacture, and in processing applications that require materials with extremely high purity and low residues.
- (4) Polyphosphoric acid - an acid also sometimes referred to as superphosphoric acid, due to typical assay/concentration in excess of 100 percent. This form of industrial phosphoric acid is produced by the dehydration of phosphoric acid to yield "chained" phosphate molecules or polyphosphates. This unique chemical structure meets the requirements of a small, highly specialized market segment for use as a catalytic agent, surfactant, in oil drilling, and in dyes and herbicides. This form of phosphoric acid is highly viscous, with a high melting point, and is difficult and expensive to handle.

In 1985, approximately * * * percent of U.S. producers' domestic shipments was technical grade, * * * percent was food grade, * * * percent was ACS-SEMI grade, and * * * percent was polyphosphoric acid. All six firms produce technical and food grade acids; whereas, only * * * firms, * * *, produce the ACS-SEMI grade, and * * * firms, * * *, produce polyphosphoric acid.

For certain applications, there are substitute products for industrial phosphoric acid. Citric or tartaric acid may be substituted for phosphoric acid for tartness in soft drinks, jams, and jellies. Hydrated silica may be substituted for the phosphates in dentifrices. Sodium carbonate or zeolite are used as replacements for phosphates as builders in detergents when phosphates are banned.

Production process

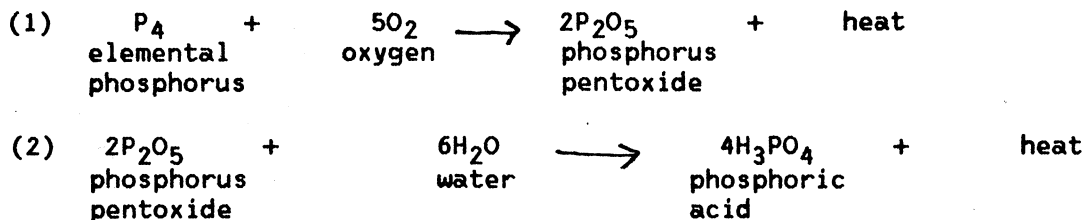
Industrial phosphoric acid may be manufactured in two ways: either by a thermal furnace process whereby elemental phosphorus is oxidized to phosphorus pentoxide and then hydrated to phosphoric acid; or by purification of phosphoric acid produced by a wet process decomposition of phosphate rock with a strong mineral acid. In the United States, industrial phosphoric acid is produced exclusively by the thermal or furnace process. Industrial phosphoric acid is produced by purification of wet process phosphoric acid outside the United States. Importers of industrial phosphoric acid from Belgium and Israel sell purified wet process produced phosphoric acid in assays thought to range from 75 percent to 93 percent.

Production of industrial phosphoric acid by thermal reduction of phosphate ore dates back to the late 19th century when blast furnaces were used to carry out the reduction with charcoal. This technology was superseded by the use of the electric arc furnace, which is the current technology used domestically to produce phosphorus for conversion to phosphoric acid. 1/

The elemental phosphorus (P_4) needed to produce thermal or furnace process industrial phosphoric acid is produced by smelting phosphate rock with coke and silica in electric furnaces. In most cases, the phosphate rock is captively mined by phosphorus manufacturers. The conversion of elemental phosphorus to phosphoric acid is effected in two stages. First, the phosphorus is mixed with an excess of air and oxidized at a high temperature in a water-cooled cylindrical corrosion-resistant chamber to produce phosphorus pentoxide, which is then cooled and absorbed in water sprayed into a cooled corrosion-resistant hydrator. Phosphoric acid of any desired concentration can be obtained by this process, but it is customary to produce acid containing 75 to 85 percent H_3PO_4 . Industrial phosphoric acid produced by this method is generally suitable for most industrial applications, but material used for some specialized food and industrial applications requires further refinement or purification.

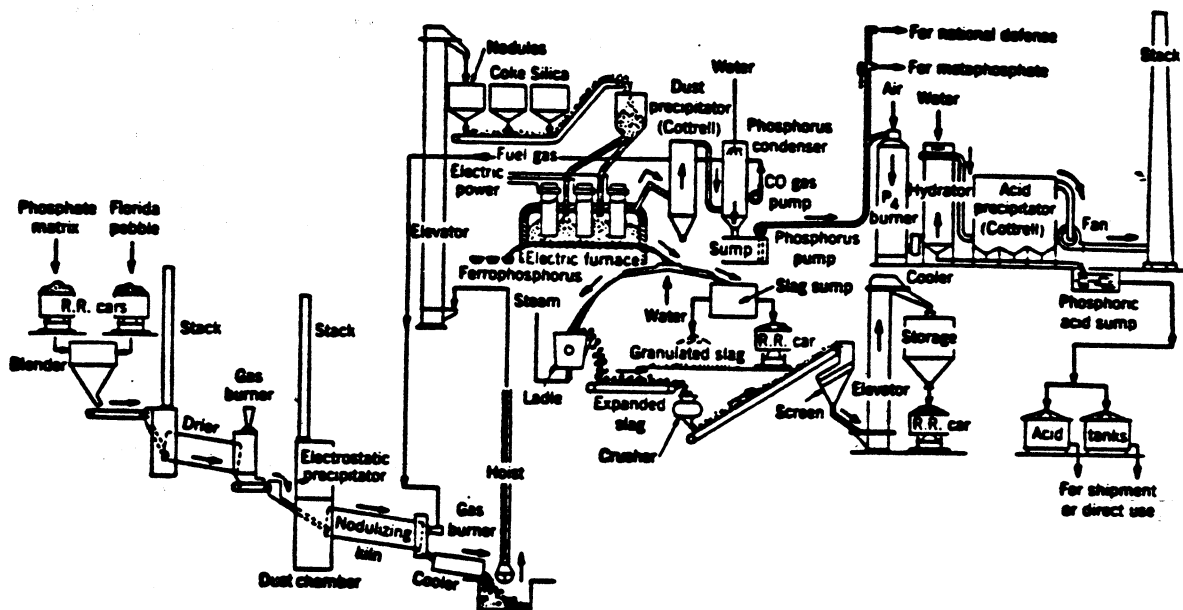
1/ Frederic Leder, Won C. Park, et. al., "New Process for Technical-Grade Phosphoric Acid," Industrial Engineering Chemical Process Design Development, vol. 24, No. 3 (1985), p. 688.

The two basic equations that describe the process are as follows:



Approximately 1 ton of elemental phosphorus is needed to produce 4 tons of 75-percent industrial phosphoric acid. There are many thermal process variations that may be used depending on final product requirement, ore grades, raw materials ratios, energy requirements, and recovery and finishing parameters. A general diagram of an integrated plant for manufacturing phosphorus and phosphoric acid is shown in figure 1.

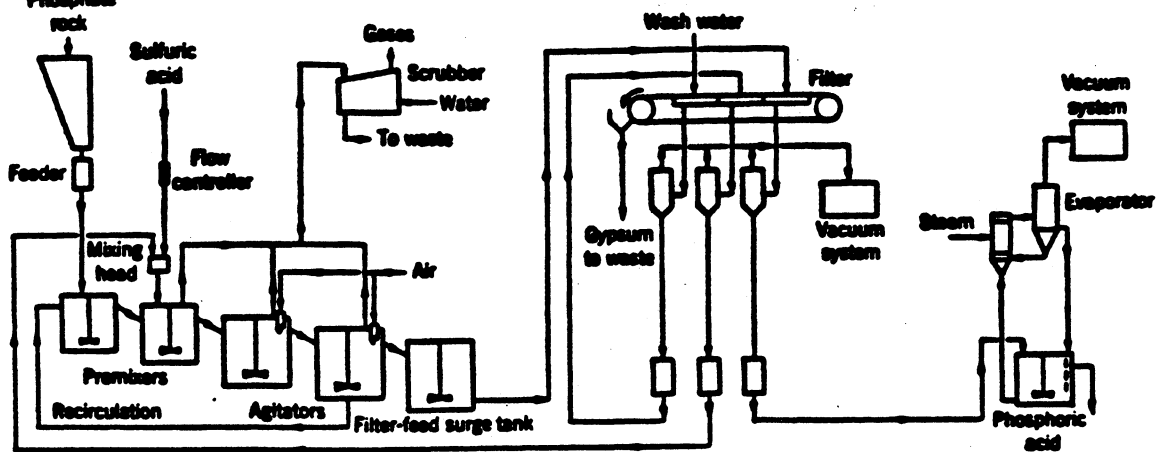
Figure 1.—Diagram of an integrated plant for manufacturing phosphorus and phosphoric acid.



Source: William H. Waggaman and E. Robert Ruhlman, Phosphate Rock: Processing and Utilization, U.S. Department of the Interior, Bureau of Mines, 1960, p. 7. A-5

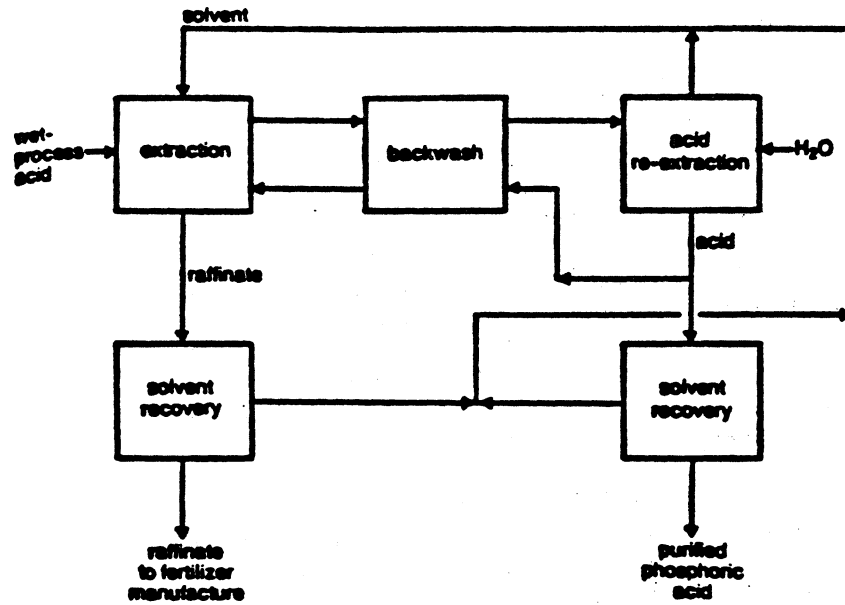
Industrial phosphoric acid may also be manufactured by purification of wet process acid. In the wet process, a concentrated mineral acid is mixed with quantities of finely ground phosphate rock while being cooled by compressed air. The resulting phosphoric acid is separated from insoluble by-products and clarified by washing on vacuum filters to give impure (5 to 15 percent impurities) phosphoric acid. This impure acid is then concentrated and further purified by chemical precipitation, solvent extraction, or ion exchange resins to yield industrial purity phosphoric acid. Figure 2 presents a general diagram of wet process phosphoric acid manufacture and figure 3 presents a process flowchart for the solvent extraction purification of wet process phosphoric acid.

Figure 2.—Diagram of wet process phosphoric acid manufacture.



Source: William H. Waggaman and E. Robert Ruhlman, Phosphate Rock: Processing and Utilization, U.S. Department of the Interior, Bureau of Mines, 1960, p. 14.

Figure 3.—Process flowchart for purification of wet process phosphoric acid by solvent extraction.



Source: "Purifying Wet Process Phosphoric Acid," Phosphorus & Potassium (No. 139) September-October 1985, p. 35.

U.S. tariff treatment

Industrial phosphoric acid covered by these investigations is classified under TSUS item 416.30. Since January 1, 1986, the most-favored-nation (MFN) column 1 rate of duty has been 0.5 percent ad valorem. ^{1/} This rate represents the seventh in a series of eight staged reductions granted in the Tokyo Round of the Multinational Trade Negotiations (MTN). The duty is being eliminated on January 1, 1987, when the eighth and final stage of the reductions becomes effective. ^{2/}

Imports of industrial phosphoric acid have been eligible for duty-free treatment under the Generalized System of Preferences (GSP) since January 1, 1976. ^{3/} The Israeli articles receive such GSP treatment. They are also eligible for duty-free treatment under the United States-Israel Free Trade Area Implementation Act of 1985.

Nature and Extent of Alleged Subsidies

Belgium

The petitioners allege that the Societe Chimique Prayon-Rupel S.A. (Prayon), the sole Belgian producer of industrial phosphoric acid, has benefited from a number of subsidies to assist its production activities and operations. The alleged subsidies established by the 1970 Economic Expansion Law, which singled out certain depressed industrial and agricultural regions of the country for preferential treatment, are as follows:

- Direct grants for capital investment,
- Interest rate reductions on loans for capital investment,
- Loan guarantees for financing capital investment,
- Accelerated depreciation on investments,
- Exemption from real property taxes,
- Exemption from the capital registration tax,
- Grants based on the creation of new jobs,
- Contractual aid to assist in reorganization and technological innovation, and
- Exemption from capital gains tax.

^{1/} Col. 1 rates of duty are applicable to the imported product from all countries except those Communist countries and areas enumerated in general headnote 3(d) of the TSUS. Imports from the latter countries are assessed the col. 2 rate of duty of 10 percent ad valorem.

^{2/} Imports of industrial phosphoric acid from least developed developing countries (LDDC's) are eligible for duty-free entry, reflecting the full MTN concession rate without staging. Imports, if from designated beneficiary countries, are also eligible for duty-free entry under the Caribbean Basin Economic Recovery Act (CBERA).

^{3/} The GSP, enacted as title V of the Trade Act of 1974, provides duty-free entry to specified eligible articles imported directly from designated beneficiary developing countries. The GSP, implemented in Executive Order No. 11888 of Nov. 24, 1975, applies to merchandise imported on or after Jan. 1, 1976, and before the close of July 4, 1993.

In addition, the petitioners allege that other countervailable subsidies include preferential loans from Government lending institutions, reimbursement of employee training costs, and other operating subsidies. The petitioners further contend that both the equity participation of the Regional Investment Company of Wallonia and the equity infusions of an agency of the Government of Morocco constitute countervailable subsidies.

Israel

The petitioners allege that Israeli producers and exporters of industrial phosphoric acid receive subsidies directly and indirectly from the Government of Israel. The alleged subsidies established by the 1959 Encouragement of Capital Investments Law 5719-1959 are as follows:

- Investment grants to finance the development of new capacity,
- Accelerated depreciation on machinery, equipment, and buildings,
- Direct reduction of tax rates, and
- Exemption from property taxes for up to 10 years.

Additional accelerated depreciation and a further reduction of tax rates established by the Encouragement of Industry (Taxes) Law of 1969 are also alleged to constitute countervailable subsidies. The petitioners also assert that Government funding of certain research and development activities may also constitute a subsidy.

The petitioners also allege that the Government of Israel provides the following direct and indirect export subsidies:

- Export loan financing of working capital for the production of export items,
- Export loan financing of accounts receivable in foreign currencies for exports,
- Export loan financing in foreign currencies of imports needed in the production of export items,
- Export fund grants to reimburse export-related expenses in overseas markets,
- Rebate of export insurance premiums, and
- Subsidized exchange rate and cost escalation risk insurance for exporters.

Nature and Extent of Alleged Sales at LTFV

Belgium

To estimate dumping margins for Belgian industrial phosphoric acid, the petitioners compared a calculated home-market price of 22.44 cents per pound with calculated U.S. ex-factory prices of 8.64, 10.31, and 11.23 cents per pound for technical grade industrial phosphoric acid with a 75-percent assay to arrive at the alleged margins of 100 to 160 percent. The home-market price was based on an average price quote from Prayon. The calculated U.S. prices were based on sales prices offered by Prayon in the United States, adjusted

for U.S. inland freight, distributor's or broker's commission and markup, ocean freight, tank storage and handling costs, customs duties, and Belgian storage, handling, inland freight, and insurance.

Israel

To estimate dumping margins for Israeli industrial phosphoric acid, the petitioners compared a calculated home-market price of 17.78 cents per pound with U.S. ex-factory prices of 12.52, 13.15, and 15.72 cents per pound for technical grade industrial phosphoric acid with a 75-percent assay to arrive at alleged margins ranging from 13 to 42 percent. To calculate the home-market price, petitioners adjusted an f.o.b. plant price for 85-percent assay industrial phosphoric acid. Petitioners calculated U.S. ex-factory prices based on actual sales prices offered by HCI Chemicals U.S.A., Inc., in the United States, converted to 75-percent assay technical grade and adjusted for U.S. inland freight, distributor's or broker's commission and markup, ocean freight, tank storage and handling, and Israeli storage, handling, inland freight, and insurance.

The U.S. Industry

The following six firms produce industrial phosphoric acid subject to these investigations: Albright & Wilson, Inc. (a subsidiary of Tenneco, Inc.), 1/ with headquarters in Richmond, VA, and a plant in Fernald, OH; 2/ FMC Corp., with headquarters in Philadelphia, PA, and plants in Lawrence, KS, Newark, CA, and Carteret, NJ; 3/ Hydrite Chemical Co., with headquarters and a plant in Milwaukee, WI; 4/ Monsanto Co., headquartered in St. Louis, MO, and operating plants in Augusta, GA, St. Louis, MO, Long Beach, CA, and Trenton, MI; 5/ Occidental Chemical Corp. (a subsidiary of Occidental Petroleum Corp.), headquartered in Niagara Falls, NY, and with plants in * * *, Jeffersonville, IN, and Dallas, TX; and Stauffer Chemical Co. (a subsidiary of Chesebrough-Pond's Inc.), headquartered in Westport, CT, and with plants in Chicago and Chicago Heights, IL, Nashville, TN, Morrisville, PA, and Richmond, CA.

1/ On May 1, 1985, the former Industrial Chemicals Group of Mobil Mining and Minerals Corp. was sold to Tenneco, Inc.

2/ * * *.

3/ In Europe, FMC produces industrial phosphoric acid through its affiliated company, Foret, S.A. in Barcelona, Spain.

4/ * * *.

5/ In December 1985, Monsanto closed its industrial phosphoric acid plant in Kearny, NJ. Monsanto do Brazil, S.A., a wholly owned subsidiary, and Industrias Resistol, S.A., an affiliated company in Mexico, produce industrial phosphoric acid, among other products. Monsanto also participates in a joint venture in Brazil, Fosbrazil Industria Brasileira de Acido Fostorico Ltd., which plans to commence production of industrial phosphoric acid in October 1987.

The shares of U.S. production and apparent U.S. consumption accounted for by each firm is presented in table 1. * * * were the two largest producers, together accounting for * * * percent of U.S. production in 1985.

Table 1.—Industrial phosphoric acid: U.S. producers' shares of U.S. production and apparent U.S. consumption, by firms, 1985

(In percent)		
Firm	Share of U.S. production	Share of apparent U.S. consumption 1/
Albright & Wilson, Inc.....	***	***
FMC Corp.....	***	***
Hydrite Chemical Co.....	***	***
Monsanto Co.....	***	***
Occidental Chemical Corp.....	***	***
Stauffer Chemical Co.....	***	***
Total.....	100.0	97.7

1/ Shares are based on U.S. producers' domestic shipments and intracompany or intercompany transfers.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. Importers

Belgium

Nitron Chemical Corp. is the * * * importer of industrial phosphoric acid produced in Belgium, accounting for * * * percent of 1985 imports from Belgium. 1/ According to the U.S. Customs Service net import file, there are * * * Belgian importers of industrial phosphoric acid, including * * *. 2/

Israel

HCI Chemicals U.S.A., Inc., the * * * importer of industrial phosphoric acid produced in Israel, accounted for * * * percent of 1985 imports from Israel. Other known importers include * * *. 3/

1/ Petitioners and counsel for Nitron Chemical Corp. both stated that Nitron is the exclusive importer of industrial phosphoric acid from Belgium. See petitions relating to imports from Belgium, p. 16, and transcript of the conference, p. 161.

2/ * * *.

3/ * * *.

The Foreign Industries

Belgium

Prayon is the sole Belgian producer of industrial phosphoric acid. The firm produces this acid at * * * plant locations: * * *, 1/

Prayon's total production of industrial phosphoric acid * * * (table 2).
 * * *. * * *. Prayon's capacity to produce industrial phosphoric acid
 * * *. Capacity utilization * * *. The firm's total capacity utilization
 * * *.

Prayon's export shipments to the United States, accounting for * * * percent of the firm's exports in 1985, * * *. * * *. * * *.

Table 2.—Industrial phosphoric acid: Prayon's production, average-for-period capacity, capacity utilization, home-market sales, and export sales, 1983-85, January-September 1985, and January-September 1986

* * * * *

Israel

There are two known Israeli producers of industrial phosphoric acid: Haifa Chemicals, Ltd., and Negev Phosphates, Ltd. 2/ Haifa Chemicals exported * * * of industrial phosphoric acid in 1985 and * * *, valued at * * *, in 1986. The acid was * * *. 3/ Data on Negev Phosphates, Ltd. is presented in table 3.

As shown, Negev Phosphates, Ltd.'s production * * *. The firm's production is expected to * * *. The firm's capacity to produce industrial phosphoric acid * * *. Capacity utilization * * *. Capacity utilization is projected to * * *.

Negev Phosphates, Ltd.'s total shipments * * *. * * *. These exports accounted for * * *. Export shipments to the United States are expected to * * *. The firm's total shipments are expected to * * *.

Table 3.—Industrial phosphoric acid: Negev Phosphates, Ltd.'s production, capacity, capacity utilization, home-market shipments, and export shipments, 1983-86 1/

* * * * *

1/ * * *.

2/ Rotem Fertilizers, Ltd., also named as a producer in the petitions, does not produce or export industrial phosphoric acid. See postconference brief of Negev Phosphates, Ltd., p. 8 and attachments 1 and 8.

3/ Haifa Chemicals, Ltd. * * *.

The Domestic Market

Apparent U.S. consumption 1/

Apparent U.S. consumption of industrial phosphoric acid declined by 9 percent from 1983 to 1985 (table 4). Consumption remained relatively stable during January–September 1986, compared with consumption during the corresponding period of 1985. U.S. open-market consumption, roughly one-third of total consumption, was generally stable from 1983 to 1985 and rose by 5 percent during January–September 1986, compared with such consumption during January–September 1985.

Channels of distribution

Distribution of industrial phosphoric acid in the merchant market, whether domestic or imported, takes place through either direct sales to end users or sales to distributors. The domestic producers ship industrial phosphoric acid from plants or terminals throughout the United States. Nitron, the * * * importer of industrial phosphoric acid from Belgium, has two storage terminal facilities, in Bayonne, NJ, and near Houston, TX. Nitron generally sells its imported acid within 500 miles of the U.S. port of entry. The firm identified * * * as its principal geographic market. HCI Chemicals, the * * * Israeli importer, reported that * * * and * * * were its principal geographic markets. 2/

1/ Apparent U.S. consumption as presented in this section is calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers to official import statistics, adjusted for misclassifications and converted to a 75-percent assay basis. Imports from Belgium are adjusted to include imports of * * * in 1985 and * * * pounds during January–September 1986 reported in official U.S. statistics as from the Netherlands and imports of * * * in 1985 and * * * during January–September 1986 reported as from France but which are known to be produced in Belgium, and to exclude imports of * * * during January–September 1986 known to be misreported as product from Belgium. Similarly, imports from Israel exclude * * * imported during January–September 1986 which are known to be misidentified as product from Israel. Imports from Belgium were converted to a 75-percent assay from an * * *-percent assay; imports from Israel from a * * *-percent assay; and imports from the United Kingdom from an * * *-percent assay. All other imports were assumed to enter on a 75-percent assay basis.

Apparent U.S. consumption calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers, domestic shipments of imports from Belgium and Israel as reported in response to the Commission's questionnaires, and adjusted official import statistics for imports from all other countries is presented in app. C., table C-1. These data reflect the same general trends as those presented in this section.

2/ During January–September 1986, 75 percent of the imports from Belgium entered the United States through New York, NY, 11 percent through Houston, TX, and 11 percent through Savannah, GA. During the same period, 56 percent of the imports from Israel entered the United States through Savannah, GA, and 22 percent through Los Angeles, CA.

Table 4.—Industrial phosphoric acid: U.S.-produced domestic shipments and intracompany or intercompany transfers, 1/ imports for consumption from Belgium, Israel, and all other countries, 2/ apparent U.S. consumption, and U.S. open-market consumption, 1983-85, January-September 1985, and January-September 1986

Source	1983	1984	1985	January-September—	
				1985	1986
	Quantity (1,000 pounds)				
U.S.—produced:					
Domestic shipments..	746,173	738,189	718,317	533,015	552,974
Intracompany or intercompany transfers.....	1,577,502	1,545,995	1,374,488	1,071,110	1,048,650
Total.....	2,323,675	2,284,184	2,092,805	1,604,125	1,601,624
Imports from:					
Belgium 3/.....	18,145	21,540	32,236	25,749	28,577
Israel 4/.....	5	150	15,425	11,620	12,696
All other 5/.....	3,011	2,030	1,923	1,485	6,687
Total.....	21,161	23,720	49,584	38,854	47,960
Apparent U.S. consumption.....	2,344,836	2,307,904	2,142,389	1,642,979	1,649,584
U.S. open-market consumption.....	767,334	761,909	767,901	571,869	600,934
	Value (1,000 dollars)				
U.S.—produced:					
Domestic shipments..	157,781	158,044	150,191	113,697	109,815
Intracompany or intercompany transfers.....	268,579	263,293	240,267	185,700	180,670
Total.....	426,360	421,337	390,458	299,397	290,485
Imports from: 6/					
Belgium.....	3,104	4,090	5,529	4,404	4,915
Israel.....	2	133	2,436	1,830	2,136
All other.....	144	240	1,188	1,039	1,381
Total.....	3,250	4,463	9,153	7,273	8,432
Apparent U.S. consumption.....	429,610	425,800	399,611	306,670	298,917
U.S. open-market consumption.....	161,031	162,507	159,344	120,970	118,247

1/ Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

2/ Compiled from official import statistics of the U.S. Department of Commerce for TSUS item 416.30.

3/ Converted from an * * *-percent assay to a 75-percent assay and adjusted for misclassifications, including imports from the Netherlands and France known to be produced in Belgium.

4/ Converted from a * * *-percent assay to a 75-percent assay and adjusted for misclassifications, including * * * imports known to be misidentified as product from Israel.

5/ Imports from the United Kingdom were converted from an * * *-percent assay to a 75-percent assay. Imports from all other countries were assumed to enter on a 75-percent assay basis.

6/ Import values are c.i.f. duty-paid values.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce. A-14

The domestic producers sell approximately * * * percent of their merchant market industrial phosphoric acid to distributors. Of the remaining * * * percent shipped to end users, roughly * * * is shipped to customers for industrial uses, and the remaining * * *, * * *, is shipped to the agricultural market. About * * * percent of * * * 's shipments to industrial end users are third-party shipments, which are sales to distributors of product that is shipped directly from the plant or terminal to the end-user customer. In these cases, the distributor functions essentially as a broker although the distributor takes title to the merchandise.

Approximately * * * percent of imported industrial phosphoric acid from Belgium is sold to distributors; whereas * * * percent of the product imported from Israel is sold to distributors. Of the shipments to end users, * * * of the imported product is sold for industrial uses. 1/

Consideration of Alleged Material Injury

In order to evaluate the condition of the U.S. industry producing industrial phosphoric acid, the Commission surveyed all known U.S. producers of the product. These producers are the six firms discussed above in the section entitled "The U.S. Industry." The following information in all of the sections describing the condition of this industry include all data relating to industrial phosphoric acid produced in the United States * * *. 2/

U.S. production, capacity, and capacity utilization

U.S. production of industrial phosphoric acid declined by 1 percent from 1983 to 1984 and by 10 percent from 1984 to 1985 (table 5). During January–September 1986, production remained relatively stable compared with production during the corresponding period of 1985. Average-for-period capacity to produce industrial phosphoric acid fell irregularly from 1983 to 1985, rising by roughly 1 percent from 1983 to 1984 and dropping by 6 percent from 1984 to 1985. Average-for-period capacity continued to decline, by 9 percent, during January–September 1986 compared with capacity during January–September 1985. Capacity utilization was relatively stable from 1983 to 1984. From 1984 to 1985, capacity utilization fell from 58.0 percent to 55.6 percent because production declined at a faster rate than capacity. Capacity utilization increased from 56.6 percent during January–September 1985 to 62.2 percent during the corresponding period of 1986 as production remained relatively stable and capacity declined. 3/

1/ Industrial uses include foliar spray applications, but exclude use as phosphatic fertilizer solutions. See transcript of the conference, p. 157 and letter to the Secretary from counsel for Nitron Chemicals Corp., Dec. 4, 1986. 2/ * * *.

3/ In December 1985, Monsanto closed its industrial phosphoric acid plant in Kearny, NJ.

Table 5.—Industrial phosphoric acid: U.S. production, average-for-period capacity, and capacity utilization, 1983–85, January–September 1985, and January–September 1986

Item	1983	1984	1985	January–September—	
				1985	1986
Production...1,000 pounds..	2,347,331	2,326,260	2,105,022	1,620,699	1,622,017
Average-for-period capacity...1,000 pounds..	3,989,154	4,009,154	3,787,536	2,862,454	2,609,242
Capacity utilization percent..	58.8	58.0	55.6	56.6	62.2

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers' shipments

U.S. producers' total shipments of industrial phosphoric acid declined by 10 percent from 1983 to 1985, falling by 2 percent from 1983 to 1984 and by 8 percent from 1984 to 1985 (table 6). Total shipments remained relatively stable during January–September 1986 compared with such shipments during the corresponding period of 1985.

Intracompany or intercompany transfers, which are captively consumed in the production of downstream phosphates and which accounted for roughly 65 percent of total shipments, followed a similar pattern as total shipments, falling by 2 percent from 1983 to 1984 and by 11 percent from 1984 to 1985. Intracompany or intercompany transfers continued to decline, by 2 percent, during January–September 1986 compared with such transfers during January–September 1985.

U.S. producers' domestic shipments, which are sold in the open market, also fell from 1983 to 1985. Such domestic shipments, which declined at a more modest rate than total shipments, dropped by 1 percent from 1983 to 1984 and by 3 percent from 1984 to 1985. Domestic shipments increased by 4 percent during January–September 1986 compared with domestic shipments during the corresponding period of 1985.

Export shipments, accounting for only 1 percent of total shipments, declined steadily throughout the period of investigation, falling by 14 percent from 1983 to 1985 and by 4 percent during January–September 1986, compared with exports during January–September 1985.

Table 6.—Industrial phosphoric acid: U.S.—produced intracompany or intercompany transfers, domestic shipments, export shipments, and total shipments, 1983–85, January–September 1985, and January–September 1986

Item	1983	1984	1985	January–September—	
				1985	1986
Quantity (1,000 pounds)					
Intracompany or inter-					
company transfers.....	1,577,502	1,545,995	1,374,488	1,071,110	1,048,650
Domestic shipments.....	746,173	738,189	718,317	533,015	552,974
Export shipments.....	31,245	30,271	26,958	18,875	18,200
Total shipments.....	2,354,920	2,314,455	2,119,763	1,623,000	1,619,824
Value (1,000 dollars)					
Intracompany or inter-					
company transfers.....	268,579	263,293	240,267	185,700	180,670
Domestic shipments.....	157,781	158,044	150,191	113,697	109,815
Export shipments.....	5,776	5,456	4,462	3,292	3,273
Total shipments.....	432,136	426,793	394,920	302,689	293,758
Unit value (per pound)					
Intracompany or inter-					
company transfers.....	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17
Domestic shipments.....	.21	.21	.21	.21	.20
Export shipments.....	.18	.18	.17	.17	.18
Total shipments.....	.18	.18	.19	.19	.18

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The unit values of total shipments remained relatively stable throughout the period of investigation. The unit values of domestic shipments were consistently higher than the unit values of both intracompany or intercompany transfers and export shipments.

U.S. producers' inventories

During 1983-85, end-of-period inventories fluctuated both in nominal terms and as a percent of total shipments of U.S.-produced industrial phosphoric acid (table 7). End-of-period inventories rose by 35 percent from 1983 to 1984 and dropped by 25 percent from 1984 to 1985. The 1985 level was 1 percent higher than the level of end-of-period inventories in 1983. During January-September 1986, end-of-period inventories declined by 20 percent compared with inventories held during the corresponding period of 1985. The ratio of such end-of-period inventories to total shipments of U.S.-produced industrial phosphoric acid was relatively low, because U.S. producers normally hold inventories of elemental phosphorus rather than industrial phosphoric acid.

Table 7.—Industrial phosphoric acid: U.S.-produced end-of-period inventories and the ratio of such inventories to total shipments, 1983-85, January-September 1985, and January-September 1986

Item	1983	1984	1985	<u>January-September—</u>	
				1985	1986
End-of-period inventories					
1,000 pounds..	39,102	52,808	39,480	53,243	42,686
Ratio of such inventories					
to total shipments					
percent..	1.7	2.3	1.9	3.3	2.6

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers' imports and domestic purchases

During the period covered by these investigations, * * * imported industrial phosphoric acid from * * *. * * *. * * *. The ratio of these imports to * * * was * * * percent. In addition, * * * imported * * * of industrial phosphoric acid produced by * * *, and * * * reported purchases of * * * of domestically produced industrial phosphoric acid.

Employment and wages

The average number of all employees in the establishments in which industrial phosphoric acid is produced declined steadily from 1983 to 1985 (table 8). The number of all employees continued to decline, by 6 percent, during January-September 1986 compared with the number during the corresponding period of 1985. The number of production and related workers producing industrial phosphoric acid, accounting for roughly 6 percent of all establishment employees during the period of investigation, also declined steadily, by 11 percent from 1983 to 1985. The number of such production and

Table 8.—Average number of employees in producing establishments, number of production and related workers producing all products and industrial phosphoric acid, average hours worked by such production and related workers, wages and total compensation paid to such production and related workers, and average hourly wages and total compensation paid to such production and related workers, 1983–85, January–September 1985, and January–September 1986

Item	1983	1984	1985	January–September—	
				1985	1986
All employees.....	3,587	3,500	3,404	3,401	3,185
Production and related workers producing:					
All products.....	2,346	2,277	2,201	2,186	2,052
Industrial phosphoric acid.....	236	227	210	210	184
Hours worked by production and related workers producing:					
All products					
1,000 hours..	4,932	4,987	4,772	3,594	3,363
Industrial phosphoric acid...1,000 hours..	470	464	428	330	280
Wages paid to production and related workers producing:					
All products					
1,000 dollars..	59,983	63,914	65,634	47,337	46,352
Industrial phosphoric acid.1,000 dollars..	5,361	5,753	5,566	4,366	4,033
Total compensation paid to production and related workers producing:					
All products					
1,000 dollars..	73,573	78,362	80,092	58,748	56,695
Industrial phosphoric acid.1,000 dollars..	6,436	6,869	6,719	5,066	4,859
Average hourly wages paid to production and related workers producing:					
All products.....	\$12.16	\$12.82	\$13.75	\$13.17	\$13.78
Industrial phosphoric acid.....	\$11.41	\$12.40	\$13.00	\$13.23	\$14.40
Average hourly total compensation paid to production and related workers producing:					
All products.....	\$14.92	\$15.71	\$16.78	\$16.35	\$16.86
Industrial phosphoric acid.....	\$13.69	\$14.80	\$15.70	\$15.35	\$17.35

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Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

related workers continued to fall, by 12 percent, during January--September 1986 compared with the number during January--September 1985. Hours worked by production and related workers producing industrial phosphoric acid followed the same pattern, declining steadily throughout the period.

Five unions represent workers producing industrial phosphoric acid: the International Chemical Workers (American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)); the Oil, Chemical and Atomic Workers International (OCAW); the Operating Engineers; the International Brotherhood of Teamsters; and the United Steelworkers.

* * * producers reported significant layoffs during the period of investigation. * * *. * * *.

Wages paid to production and related workers producing industrial phosphoric acid increased by 7 percent from 1983 to 1984 but fell by 3 percent from 1984 to 1985. During January--September 1986, wages paid to such workers dropped by 8 percent compared with wages paid during the corresponding period of 1985. Total compensation paid to such production and related workers followed a similar pattern, increasing irregularly from 1983 to 1985 and falling during January--September 1986, compared with total compensation paid during January--September 1985. Both average hourly wages paid and compensation paid to workers producing industrial phosphoric acid increased steadily throughout the period of investigation.

Financial experience of U.S. producers

Five firms ^{1/} provided usable income-and-loss data on the overall operations of their establishments within which industrial phosphoric acid is produced, as well as on their operations producing only industrial phosphoric acid. The five firms accounted for * * * percent of aggregate U.S. production of industrial phosphoric acid in 1985.

Overall establishment operations.—Aggregate income-and-loss data on overall establishment operations are presented in table 9. Overall establishment sales of the five firms rose from \$988.9 million in 1983 to \$997.7 million in 1984, representing an increase of 0.9 percent. In 1985, however, sales declined to \$946.6 million, or by 5.1 percent.

Operating income declined from \$204.7 million in 1983 to \$202.3 million in 1984, or by 1.2 percent, then fell further to \$171.6 million in 1985, or by 15.2 percent. The operating income margins for the firms during the 1983-85 period were 20.7 percent, 20.3 percent, and 18.1 percent, respectively. None of the producers experienced operating losses during 1983, 1984, or 1985.

During the interim period ended September 30, 1986, aggregate net sales totaled \$698.1 million, down 2.3 percent from net sales of \$714.8 million reported during interim 1985. Aggregate operating income of the five firms declined significantly from \$134.3 million during interim 1985 to \$107.1 million during interim 1986, or by 20.3 percent. The operating income margins for the 1985 and 1986 interim periods were 18.8 percent and 15.3 percent, respectively. None of the firms reported operating losses during the interim periods.

Operations producing industrial phosphoric acid.—Aggregate income-and-loss data for the five firms on their operations producing industrial phosphoric acid are presented in table 10. * * *. * * *.

Net sales of industrial phosphoric acid declined from \$429.1 million in 1983 to \$424.3 million in 1984, or by 1.1 percent, then fell further to \$392.5 million in 1985, or by 7.5 percent. Operating income also declined, from \$19.3 million in 1983 to \$19.1 million in 1984, or by 0.9 percent, then fell sharply to \$11.8 million in 1985, a decline of 38.4 percent. The operating income margins during 1983-85 were as follows: 4.5 percent, 4.5 percent, and 3.0 percent, respectively. None of the firms reported operating losses in 1983 or 1984, but one firm experienced an operating loss in 1985.

During interim periods 1985 and 1986, net sales fell from \$300.8 million to \$291.4 million, declining by 3.1 percent. Operating income declined significantly from \$11.4 million during interim 1985 to \$3.7 million during interim 1986, or by 67.8 percent. The operating income margins for the 1985 and 1986 interim periods were 3.8 percent and 1.3 percent, respectively. One firm reported an operating loss during interim 1985 and two firms experienced operating losses during interim 1986.

^{1/} The firms are * * *.

Table 9.—Income and loss experience of 5 U.S. firms ^{1/} on the overall operations of their establishments within which industrial phosphoric acid is produced, accounting years 1983–85, and interim periods ended Sept. 30, 1985, and Sept. 30, 1986.

Item	1983	1984	1985	Interim period ended Sept. 30—2/	
				1985	1986
Net sales.....1,000 dollars..	988,872	997,730	946,578	714,847	698,108
Cost of goods sold.....do....	737,176	745,290	725,981	543,304	547,817
Gross profit.....do....	251,696	252,440	220,597	171,543	150,291
General, selling, and admin- istrative expenses					
1,000 dollars..	47,014	50,172	49,033	37,218	43,191
Operating income.....do....	204,682	202,268	171,564	134,325	107,100
Interest expense.....do....	788	568	1,940	2,793	2,137
Other income or (expense), net.....1,000 dollars..	(20,239)	(20,791)	(19,435)	(14,827)	(15,779)
Net income before income taxes.....1,000 dollars..	183,655	180,909	150,189	116,705	89,184
Depreciation and amortization expense included above					
1,000 dollars..	28,213	30,929	30,302	25,170	24,696
Cashflow.....do....	211,868	211,838	180,491	141,875	113,880
As a share of net sales:					
Cost of goods sold..percent..	74.5	74.7	76.7	76.0	78.5
Gross profit.....do....	25.5	25.3	23.3	24.0	21.5
General, selling, and administrative expenses					
percent..	4.8	5.0	5.2	5.2	6.2
Operating income.....do....	20.7	20.3	18.1	18.8	15.3
Net income or before income taxes.....percent..	18.6	18.1	15.9	16.3	12.8
Number of firms reporting operating losses.....	0	0	0	0	0
Number of firms reporting.....	5	5	5	5	5

^{1/} The firms are * * *.

^{2/} All 5 firms reported 9 months interim data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 10.—Income and loss experience of 5 U.S. firms ^{1/} on their operations producing industrial phosphoric acid, accounting years 1983-85, and interim periods ended Sept. 30, 1985, and Sept. 30, 1986

Item	1983	1984	1985	Interim period ended Sept. 30— ^{2/}	
				1985	1986
Net sales.....1,000 dollars..	429,124	424,252	392,466	300,754	291,396
Cost of goods sold.....do....	397,012	391,116	366,725	278,749	276,682
Gross profit.....do....	32,112	33,136	25,741	22,005	14,714
General, selling, and administrative expenses					
1,000 dollars..	12,812	14,014	13,956	10,562	11,033
Operating income.....do....	19,300	19,122	11,785	11,443	3,681
Interest expense.....do....	165	0	204	864	813
Other income or (expense), net.....1,000 dollars..	(828)	(1,429)	(1,309)	(1,083)	3/(1,758)
Net income before income taxes..1,000 dollars..	18,307	17,693	10,272	9,496	1,110
Depreciation and amortization expense included above					
1,000 dollars..	2,694	4,159	5,995	5,080	4,370
Cashflow.....do....	21,001	21,852	16,267	14,576	5,480
As a share of net sales:					
Cost of goods sold..percent..	92.5	92.2	93.4	92.7	95.0
Gross profit.....do....	7.5	7.8	6.6	7.3	5.0
General, selling, and administrative expenses					
percent..	3.0	3.3	3.6	3.5	3.8
Operating income.....do....	4.5	4.5	3.0	3.8	1.3
Net income or before income taxes.....percent..	4.3	4.2	2.6	3.2	0.4
Number of firms reporting operating losses.....	0	0	1	1	2
Number of firms reporting.....	5	5	5	5	5

^{1/} The firms are * * *.

^{2/} All 5 firms reported 9 months interim data.

^{3/} Includes * * *.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The 1985 aggregate value of intracompany or intercompany transfers (which were transferred at cost, rather than at market) account for approximately 62 percent of the total sales reported by the five producers in 1985. Table 11 breaks out aggregate trade sales and intracompany or intercompany transfers and shows the resulting aggregate unit values of phosphoric acid at cost (intracompany or intercompany) and at market (trade).

Table 11.—Industrial phosphoric acid trade sales and intracompany or intercompany transfers of 5 U.S. producers, 1/ accounting years 1983–85, and interim periods ended Sept. 30, 1985, and Sept. 30, 1986

	Interim period ended Sept. 30—2/				
	1983	1984	1985	1985	1986
	Value (1,000 dollars)				
Trade 3/.....	162,607	162,818	154,179	116,539	112,654
Intracompany or intercompany...	266,517	261,434	238,287	184,215	178,742
Total.....	429,124	424,252	392,466	300,754	291,396
	Quantity (1,000 pounds)				
Trade 3/.....	774,215	765,995	742,347	549,070	569,635
Intracompany or intercompany...	1,638,181	1,647,836	1,475,788	1,149,020	1,109,676
Total.....	2,412,396	2,413,831	2,218,135	1,698,090	1,679,311
	Unit value (cents per pound)				
Trade 4/.....	21.0	21.3	20.8	21.2	19.8
Intracompany or intercompany...	16.3	15.9	16.1	16.0	16.1
Average.....	17.8	17.6	17.7	17.7	17.4

1/ The firms are * * *.

2/ All 5 firms reported 9 months interim data.

3/ * * *'s total trade sales account for the largest single percentage of aggregate trade sales (i.e., * * * percent in terms of value and * * * percent in terms of quantity in 1985). * * *.

4/ * * *.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Value of plant, property, and equipment.—The data provided by the five firms on their end-of-period investment in productive facilities in which phosphoric acid is produced are shown in table 12. The aggregate investment in productive facilities for industrial phosphoric acid, valued at cost, increased from \$57.7 million in 1983 to \$62.4 million in 1984 and rose further to \$74.8 million in 1985. The book value of such assets similarly rose from \$26.6 million in 1983 to \$29.0 million in 1984 and increased further to \$36.0

million in 1985. The asset value, at original cost, increased from \$66.1 million as of September 30, 1985, to \$75.1 million as of September 30, 1986. Similarly, the book value of such assets rose from \$27.3 million during interim 1985 to \$35.2 million during interim 1986.

Table 12.—Industrial phosphoric acid: Value of property, plant, and equipment by U.S. firms, accounting years 1983–85, and interim periods ended Sept. 30, 1985, and Sept. 30, 1986

Item	1983 2/	1984 2/	1985	Interim period ended Sept. 30—1/	
				1985	1986
All products of establishment:					
Original cost..1,000 dollars..	466,170	478,377	524,209	512,195	528,641
Book value.....do....	228,223	217,759	237,174	234,546	238,290
Number of firms reporting.....	4	4	5	5	5
Industrial phosphoric acid:					
Original cost..1,000 dollars..	57,735	62,442	74,791	66,088	75,105
Book value.....do....	26,626	29,024	35,965	27,311	35,150
Number of firms reporting.....	4	4	5	5	5

1/ All 5 firms reported 9 months interim data.

2/ * * *.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital expenditures.—The data provided by the five firms relative to their capital expenditures for land, buildings, and machinery and equipment used in the manufacture of industrial phosphoric acid are shown in table 13. Capital expenditures relating to industrial phosphoric acid increased from \$4.9 million in 1983 to \$6.4 million in 1984 and rose further to * * * million in 1985. During the interim periods ended September 30, 1985, and September 30, 1986, however, total capital expenditures fell from \$4.4 million to \$2.4 million.

Research and development expenses.—Research and development expenses for the five reporting firms are shown in the following tabulation (in thousands of dollars):

<u>Period</u>	<u>Research and development expenses</u>
1983.....	***
1984.....	***
1985.....	***
January–September—	
1985.....	***
1986.....	***

Table 13.—Industrial phosphoric acid: Capital expenditures by U.S. firms, accounting years 1983-85, and interim periods ended Sept. 30, 1985, and Sept. 30, 1986

Item	1983	1984	1985	Interim period ended Sept. 30—1/	
				1985	1986
All products of the establishments:					
Land and land improvements 1,000 dollars..	***	***	***	***	***
Building or leasehold improvements.....do....	***	***	***	***	***
Machinery, equipment, and fixtures.....do....	24,586	27,295	35,781	19,455	21,616
Total.....do....	26,346	30,035	36,918	20,165	22,231
Number of firms reporting..	5	5	5	5	5
Industrial phosphoric acid:					
Land and land improvements 1,000 dollars..	***	***	***	***	***
Building or leasehold improvements.....do....	***	***	***	***	***
Machinery, equipment, and fixtures.....do....	***	***	***	***	***
Total.....do....	4,895	6,411	***	4,350	2,364
Number of firms reporting..	5	5	5	5	5

1/ All 5 firms reported 9 months interim data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Consideration of Alleged Threat of Material Injury

In its examination of the question of the threat of material injury to an industry in the United States, the Commission may take into consideration such factors as the rate of increase in allegedly subsidized or LTFV imports, the rate of increase in U.S. market penetration by such imports, the quantities of such imports held in inventory in the United States, and the capacity of producers in Belgium and Israel to generate exports (including the availability of export markets other than the United States).

A discussion of the rates of increase in imports of industrial phosphoric acid and of the U.S. market penetration of such imports is presented in the section of this report entitled "Consideration of the Causal Relationship Between Alleged Material Injury or the Threat Thereof and Imports Allegedly Subsidized and Sold at LTFV." Information regarding the capacity of the foreign producers to generate exports was discussed in the section of this report entitled "The Foreign Industries." The following discussion addresses inventories in the United States of imported industrial phosphoric acid from Belgium and Israel.

Belgium

*** importers, accounting for *** imports from Belgium, provided data on inventories of industrial phosphoric acid. Reported end-of-period inventories *** (table 14). End-of-period inventories ***. Inventories of imports from Belgium ***.

Table 14.—Industrial phosphoric acid: End-of-period inventories of Belgian and Israeli imports held in the United States, and the ratio of such inventories to reported Belgian and Israeli imports, 1982-85, January-September 1985, and January-September 1986

* * * * *

Israel

*** importers, which account for *** imports of industrial phosphoric acid from Israel, provided data on inventories; however, *** held inventories during the period of investigation. ***.

Consideration of the Causal Relationship Between Alleged Material
Injury or the Threat Thereof and Imports Allegedly Subsidized and Sold at LTFV

U.S. imports 1/

U.S. imports from Belgium, accounting for the largest share of all imports of industrial phosphoric acid, increased steadily from 1983 to 1985, rising by 19 percent from 1983 to 1984 and by 50 percent from 1984 to 1985 (table 15). During January-September 1986, imports from Belgium continued to rise, at the more modest rate of 11 percent, compared with such imports during the corresponding period of 1985. Imports of industrial phosphoric acid from Israel increased from only 5,000 pounds in 1983 to 15.4 million pounds in 1985. During January-September 1986, such imports from Israel rose by roughly 9 percent compared with imports from Israel during the corresponding period of 1985.

1/ Data on U.S. imports of industrial phosphoric acid as presented in this section are compiled from official import statistics, adjusted for misclassifications and converted to a 75-percent assay basis. Imports from Belgium are adjusted to include imports of * * * in 1985 and * * * during January-September 1986 reported in official U.S. statistics as from the Netherlands and imports of * * * in 1985 and * * * during January-September 1986 reported as from France but which are known to be produced in Belgium, and to exclude imports of * * * during January-September 1986 known to be misreported as product from Belgium. Similarly, imports from Israel exclude * * * imported during January-September 1986 which are known to be misidentified as product from Israel. Imports from Belgium were converted to a 75-percent assay from an * * *-percent assay; imports from Israel from a * * *-percent assay; and imports from the United Kingdom from an * * *-percent assay. All other imports were assumed to enter on a 75-percent assay basis.

Domestic shipments of imports from Belgium and Israel as reported in response to the Commission's questionnaires, and adjusted official import statistics for imports from all other countries are presented in table C-2. These data reflect the same general trends as those presented in this section.

Table 15.—Industrial phosphoric acid: Imports for consumption from Belgium, Israel, and all other countries, 1/ 1983–85, January–September 1985, and January–September 1986

Source	1983	1984	1985	January–September—	
				1985	1986
Quantity (1,000 pounds)					
Belgium <u>2/</u>	18,145	21,540	32,236	25,749	28,577
Israel <u>3/</u>	5	150	15,425	11,620	12,696
All other <u>4/</u>	3,011	2,030	1,923	1,485	6,687
Total.....	21,161	23,720	49,584	38,854	47,960
Value (1,000 dollars) <u>5/</u>					
Belgium.....	3,104	4,090	5,529	4,404	4,915
Israel.....	2	133	2,436	1,830	2,136
All other.....	144	240	1,188	1,039	1,381
Total.....	3,250	4,463	9,153	7,273	8,432
Unit value (per pound)					
Belgium.....	\$0.17	\$0.19	\$0.17	\$0.17	\$0.17
Israel.....	.40	.89	.16	.16	.17
All other.....	.05	.12	.62	.70	.21
Average.....	.15	.19	.18	.19	.18
Percent of total quantity					
Belgium.....	85.7	90.8	65.0	66.3	59.6
Israel.....	<u>6/</u>	.6	31.1	29.9	26.5
All other.....	14.2	8.6	3.9	3.8	13.9
Total.....	100.0	100.0	100.0	100.0	100.0

1/ Compiled from official import statistics of the U.S. Department of Commerce for TSUS item 416.30.

2/ Converted from an * * *-percent assay to a 75-percent assay and adjusted for misclassifications, including imports from the Netherlands and France known to be produced in Belgium.

3/ Converted from a * * *-percent assay to a 75-percent assay and adjusted for misclassifications, including * * * known to be misidentified as product from Israel.

4/ Imports from the United Kingdom were converted from an * * *-percent assay to a 75-percent assay. Imports from all other countries were assumed to enter on a 75-percent assay basis.

5/ Import values are c.i.f. duty-paid values.

6/ Less than 0.05 percent.

Source: Compiled from adjusted official statistics of the U.S. Department of Commerce.

Market penetration of imports 1/

U.S.-produced domestic shipments and intracompany and intercompany transfers of industrial phosphoric acid accounted for over 97 percent of total apparent U.S. consumption throughout the period of investigation. On the basis of quantity, the market penetration of imports from Belgium increased from 0.8 percent in 1983 to 1.5 percent in 1985 (table 16). The share of the U.S. merchant market held by imports from Belgium rose from 2.4 percent in 1983 to 4.2 percent in 1985. During January-September 1986, the ratio of imports from Belgium to U.S. open-market consumption was 4.8 percent. The ratio of imports from Israel to U.S. apparent consumption of industrial phosphoric acid was 0.7 percent in 1985 and 0.8 percent during January-September 1986. The share of the U.S. merchant market held by imports from Israel was 2.0 percent in 1985 and 2.1 percent during January-September 1986.

The ratios of the value of imports to apparent U.S. consumption and U.S. open-market consumption are presented in table 17.

1/ The market penetration of imports in this section is based on apparent U.S. consumption calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers to official import statistics, adjusted for misclassifications and converted to a 75-percent assay basis. Imports from Belgium are adjusted to include imports of * * * in 1985 and * * * during January-September 1986 reported in official U.S. statistics as from the Netherlands and imports of * * * in 1985 and * * * during January-September 1986 reported as from France but which are known to be produced in Belgium, and to exclude imports of * * * during January-September 1986 known to be misreported as product from Belgium. Similarly, imports from Israel exclude * * * imported during January-September 1986 which are known to be misidentified as product from Israel. Imports from Belgium were converted to a 75-percent assay from an * * *-percent assay; imports from Israel from a * * *-percent assay; and imports from the United Kingdom from an * * *-percent assay. All other imports were assumed to enter on a 75-percent assay basis.

The market penetration of imports based on apparent U.S. consumption calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers, domestic shipments of imports from Belgium and Israel as reported in response to the Commission's questionnaires, and adjusted official import statistics for imports from all other countries is presented in table C-3 on the basis of quantity and in table C-4 on the basis of value. These data reflect the same general trends as those presented in this section.

Table 16.—Industrial phosphoric acid: Ratios of the quantity of imports for consumption from Belgium, Israel, and all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1983–85, January–September 1985, and January–September 1986

(In percent)					
Item	1983	1984	1985	January–September—	
				1985	1986
Ratio to apparent U.S. consumption of imports from—					
Belgium.....	0.8	0.9	1.5	1.6	1.7
Israel.....	1/	1/	.7	.7	.8
Subtotal.....	.8	.9	2.2	2.3	2.5
All other.....	.1	.1	.1	.1	.4
Total.....	.9	1.0	2.3	2.4	2.9
Ratio to U.S. open- market consumption of imports from—					
Belgium.....	2.4	2.8	4.2	4.5	4.8
Israel.....	1/	1/	2.0	2.0	2.1
Subtotal.....	2.4	2.8	6.2	6.5	6.9
All other.....	.4	.3	.3	.3	1.1
Total.....	2.8	3.1	6.5	6.8	8.0

1/ Less than 0.05 percent.

Source: Compiled from adjusted official statistics of the U.S. Department of Commerce.

Table 17.—Industrial phosphoric acid: Ratios of the value of imports for consumption from Belgium, Israel, and all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1/ 1983-85, January-September 1985, and January-September 1986

(In percent)					
Item	1983	1984	1985	January-September—	
				1985	1986
Ratio to apparent U.S. consumption of imports from—					
Belgium.....	0.7	1.0	1.4	1.4	1.6
Israel.....	2/	2/	.6	.6	.7
Subtotal.....	.7	1.0	2.0	2.0	2.3
All other.....	1/	.1	.3	.3	.5
Total.....	.7	1.1	2.3	2.3	2.8
Ratio to U.S. open-market consumption of imports from—					
Belgium.....	1.9	2.5	3.5	3.6	4.2
Israel.....	2/	.1	1.5	1.5	1.8
Subtotal.....	1.9	2.6	5.0	5.1	6.0
All other.....	.1	.1	.7	.9	1.2
Total.....	2.0	2.7	5.7	6.0	7.2

1/ Import values are c.i.f. duty-paid values.

2/ Less than 0.05 percent.

Source: Compiled from adjusted official statistics of the U.S. Department of Commerce.

Prices

Prices of industrial phosphoric acid are quoted on a per-pound or per-hundredweight (cwt) basis to firms that purchase from domestic producers and importers. Prices for industrial phosphoric acid have traditionally been quoted on an f.o.b. freight-equalized basis. With freight-equalized pricing, a customer only pays for the equivalent of the freight cost from the nearest production facility. The producer pays the difference when its own plant is not the one closest to the customer. In recent years, delivery costs increasingly have become a negotiating point in transactions and as a result, quotations on a freight-equalized basis have become less common.

Industrial phosphoric acid is usually transported by truck, with a tank truckload as the standard shipment size. Some acid is shipped by rail to large distributors and end users, and some is shipped in drums, usually by distributors to small customers. Most shipments are for distances under 500 miles. U.S. producers have geographically dispersed production facilities located close to most of their customers. Importers generally do not ship great distances from their terminals. Average shipping costs are typically 1-1/2 to 2 cents per pound (roughly 5 to 10 percent of the delivered price).

Producers and importers were requested to provide the Commission with net f.o.b. selling prices, shipping costs paid by seller and by purchaser, and delivered prices for their largest shipment to their three best customers, as well as total quantity and value of shipments to all customers, in each product category during each calendar quarter from January 1983 through September 1986. Information was requested for shipments to distributors and end users of 75-percent and 80-percent assay technical grade acid, 75-percent and 85-percent assay food grade acid, and any other grades for which the firm had significant sales. Tables 18-21 present weighted-average prices for 75-percent technical grade acid sold to distributors (f.o.b. and delivered); 75-percent technical grade acid sold to end users (f.o.b.); and 80-percent technical grade acid sold to distributors (f.o.b.). ^{1/} Questionnaires with usable data were received from four domestic producers and four importers. The most accurate and complete data were for f.o.b. prices—in some cases, producers and importers estimated, or did not know, delivery costs paid by customers. Reported delivered prices were most complete for 75-percent assay technical grade acid sold to distributors. U.S. producers' prices of 75-percent technical grade acid sold to distributors were generally higher than prices to end users, reflecting the greater market power of the large end users and the strong degree of competition for their accounts. ^{2/}

^{1/} Usable data on U.S. producers' prices for other grades of industrial phosphoric acid are presented in table C-5.

^{2/} Staff conversations with * * *.

Table 18.—Industrial phosphoric acid, 75-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to distributors, 1/ by quarters, January 1983–September 1986

Period	U.S. producers' price	Importers prices of product from —		Margins of underselling (overselling)	
		Belgium	Israel	Belgium	Israel
		Per pound		Percent	
1983:					
Jan.–Mar....	\$0.2409	****	<u>2/</u>	***	—
Apr.–June...	.2415	***	<u>2/</u>	***	—
July–Sept....	.2461	***	<u>2/</u>	***	—
Oct.–Dec....	.2433	***	<u>2/</u>	***	—
1984:					
Jan.–Mar....	.2417	***	<u>2/</u>	***	—
Apr.–June...	.2386	***	<u>2/</u>	***	—
July–Sept....	.2418	***	<u>2/</u>	***	—
Oct.–Dec....	.2373	***	<u>2/</u>	***	—
1985:					
Jan.–Mar....	.2357	***	****	***	***
Apr.–June...	.2383	***	***	***	***
July–Sept....	.2494	***	***	***	***
Oct.–Dec....	.2431	***	***	***	***
1986:					
Jan.–Mar....	.2371	***	***	***	***
Apr.–June...	.2347	***	***	***	***
July–Sept....	.2152	***	***	***	***

1/ Weighted-average net f.o.b. point of shipment prices for largest quarterly sale to 3 best customers.

2/ No sales reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 19.—Industrial phosphoric acid, 80-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to distributors, 1/ by quarters, January 1983–September 1986

Period	U.S. producers' price	Importers prices of product from —		Margins of underselling (overselling)	
		Belgium	Israel	Belgium	Israel
		<u>Per pound</u>		<u>Percent</u>	
1983:					
Jan.—Mar....	\$0.2668	2/	2/	—	—
Apr.—June...	.2609	***	2/	***	—
July—Sept...	.2600	***	2/	***	—
Oct.—Dec....	.2597	***	2/	***	—
1984:					
Jan.—Mar....	.2492	***	2/	***	—
Apr.—June...	.2290	***	2/	***	—
July—Sept...	.2451	***	2/	***	—
Oct.—Dec....	.2460	***	2/	***	—
1985:					
Jan.—Mar....	.2424	***	\$***	***	***
Apr.—June...	.2479	***	***	***	***
July—Sept...	.2471	***	***	***	***
Oct.—Dec....	.2487	***	***	***	***
1986:					
Jan.—Mar....	.2325	***	***	***	***
Apr.—June...	.2256	***	***	***	***
July—Sept...	.2222	***	***	***	***

1/ Weighted-average net f.o.b. point of shipment prices for largest quarterly sale to 3 best customers.

2/ No sales reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 20.—Industrial phosphoric acid, 75-percent assay technical grade: U.S. producers' and importers' delivered prices for sales to distributors, 1/ by quarters, January 1983–September 1986

Period	U.S. producers' price	Importers prices of product from —		Margins of underselling (overselling)	
		Belgium	Israel	Belgium	Israel
		Per pound		Percent	
1983:					
Jan.—Mar....	\$0.2672	***	<u>2/</u>	***	—
Apr.—June...	.2632	***	<u>2/</u>	***	—
July—Sept...	.2667	***	<u>2/</u>	***	—
Oct.—Dec....	.2626	***	<u>2/</u>	***	—
1984:					
Jan.—Mar....	.2522	***	<u>2/</u>	***	—
Apr.—June...	.2491	***	<u>2/</u>	***	—
July—Sept...	.2523	***	<u>2/</u>	***	—
Oct.—Dec....	.2506	***	<u>2/</u>	***	—
1985:					
Jan.—Mar....	.2513	***	\$***	***	***
Apr.—June...	.2552	***	***	***	***
July—Sept...	.2620	***	***	***	***
Oct.—Dec....	.2593	***	***	***	***
1986:					
Jan.—Mar....	.2540	***	***	***	***
Apr.—June...	.2509	***	***	***	***
July—Sept...	.2317	***	***	***	***

1/ Weighted-average delivered prices for largest quarterly sale to 3 best customers.

2/ No sales reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 21.—Industrial phosphoric acid, 75-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to end users, 1/ by quarters, January 1983–September 1986

Period	U.S. producers' price	Importers prices of product from —		Margins of underselling (overselling)	
		Belgium	Israel	Belgium	Israel
		Per pound		Percent	
1983:					
Jan.–Mar....	\$0.2494	***	<u>2/</u>	***	—
Apr.–June...	.2120	***	<u>2/</u>	***	—
July–Sept...	.2138	***	<u>2/</u>	***	—
Oct.–Dec....	.1979	***	<u>2/</u>	***	—
1984:					
Jan.–Mar....	.2156	***	<u>2/</u>	***	—
Apr.–June...	.2187	***	<u>2/</u>	***	—
July–Sept...	.2155	***	<u>2/</u>	***	—
Oct.–Dec....	.2139	***	<u>2/</u>	***	—
1985:					
Jan.–Mar....	.2103	***	<u>2/</u>	***	—
Apr.–June...	.2103	***	<u>2/</u>	***	—
July–Sept...	.2118	***	<u>2/</u>	***	—
Oct.–Dec....	.2147	***	<u>2/</u>	***	—
1986:					
Jan.–Mar....	.1953	***	<u>2/</u>	***	—
Apr.–June...	.1978	***	<u>2/</u>	***	—
July–Sept...	.1990	***	<u>2/</u>	***	—

1/ Weighted-average net f.o.b. point of shipment prices for largest quarterly sale to 3 best customers.

2/ No sales reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Domestic prices.—Prices for the major assays and grades exhibited no change or a slight downward trend over most of the period under investigation, with a noticeable decline in 1986, especially during July–September. F.o.b. prices for 75-percent technical grade acid sold to distributors started at \$0.2409 per pound during January–March 1983, and fluctuated within a range of \$0.2357 to \$0.2494 per pound throughout 1984 and 1985 (table 18). They fell to \$0.2371, \$0.2347, and \$0.2152 per pound in the successive quarters of 1986. F.o.b. prices per pound for 80-percent technical grade acid sold to distributors fell from a peak of \$0.2668 during January–March 1983 to \$0.2290 during April–June 1984, rose to \$0.2487 during October–December 1985, and fell to a low of \$0.2222 during July–September 1986 (table 19). Prices in other series followed similar patterns.

Importer prices.—Importer prices followed patterns similar to those for domestic prices. F.o.b. prices per pound for 75-percent technical grade acid from Belgium sold to distributors fluctuated in a range between \$* * * and \$* * * between January–March 1983 and April–June 1986, and fell to \$* * * during July–September 1986. F.o.b. prices per pound for 75-percent technical grade acid from Israel sold to distributors rose irregularly from \$* * * during January–March 1985 to \$* * * during April–June 1986 and fell to \$* * * during July–September 1986. F.o.b. prices per pound of 80-percent technical grade acid from Belgium sold to distributors fell irregularly from \$* * * during April–June 1983 to a low of \$* * * during April–June 1986, and rose to \$* * * during July–September. F.o.b. prices per pound of 80-percent technical grade acid from Israel sold to distributors started at \$* * * during January–March 1985 and ended at \$* * * during July–September 1986. Prices in other series followed similar patterns.

Margins of underselling and overselling

Import prices were generally lower than U.S. producers' prices over the period of investigation, with the margin being smaller for delivered prices than for f.o.b. prices. The margin of underselling for the delivered price for 75-percent technical grade acid from Belgium sold to distributors rose to a peak of * * * percent during July–September 1983, fell to * * * percent during January–March 1985, rose to * * * percent during July–September 1985, then fell and reversed to a * * * percent margin of overselling during July–September 1986. The margin of underselling for the delivered price of the same product imported from Israel peaked at * * * percent during October–December 1985 and fell to * * * percent during April–June 1986, and reversed to a * * * percent margin of overselling during July–September 1986.

Exchange rates

Exchange rate indices of the Belgian franc and the Israeli sheqalim indicate that during the period January 1983–September 1986, the quarterly nominal value of the Belgian franc advanced by 13.8 percent against the U.S. dollar; whereas, the value of Israel's currency depreciated 97.5 percent relative to the dollar. Quarterly exchange rate and producer price data pertaining to the aforementioned countries supplying the products covered in these investigations are presented in table 22.

Table 22.—Exchange rates: 1/ Nominal-exchange-rate equivalents of the Belgian franc and the Israeli sheqalim in U.S. dollars, real-exchange-rate equivalents, and producer price indicators in Belgium and Israel 2/ indexed by quarters, January 1983–September 1986

Period	U.S.	Belgium			Israel		
	Pro- ducer Price Index	Pro- ducer Price Index	Nominal- exchange- rate index	Real- exchange- rate index 3/	Pro- ducer Price Index	Nominal- exchange- rate index	Real- exchange- rate index 3/
			—US dollars/franc—			—US dollars/sheqalim—	
1983:							
Jan.–Mar...	100.0	100.0	100.0	100.0	100.0	100.00	100.0
Apr.–June...	100.3	102.0	99.3	100.9	121.5	84.56	102.5
July–Sept...	101.3	105.7	92.7	96.7	151.8	66.12	99.1
Oct.–Dec...	101.8	108.7	89.7	95.7	234.4	41.09	94.6
1984:							
Jan.–Mar...	102.9	110.7	87.2	93.9	346.2	28.10	94.6
Apr.–June...	103.6	112.5	88.0	95.5	507.5	19.08	93.5
July–Sept...	103.3	111.9	83.2	90.0	804.9	11.79	91.9
Oct.–Dec...	103.0	112.1	79.9	86.9	1,358.8	6.81	89.8
1985:							
Jan.–Mar...	102.9	113.4	75.4	83.2	1,724.1	5.01	83.9
Apr.–June...	103.0	113.1	79.3	87.1	2,343.4	3.62	82.3
July–Sept...	102.2	111.2	85.3	92.8	3,363.0	2.47	81.2
Oct.–Dec...	102.9	109.6	93.9	100.0	3,614.7	2.48	87.1
1986:							
Jan.–Mar...	101.3	107.2	101.9	107.8	3,776.0	2.47	92.0
Apr.–June...	99.4	104.7	107.2	112.9	3,957.2	2.47	98.4
July–Sept...	99.0	4/ 103.7	113.8	4/ 119.1	4/ 4,070.5	2.46	4/ 101.2

1/ Exchange rates expressed in U.S. dollars per unit of foreign currency.

2/ Producer price indicators—intended to measure final product prices—are based on average quarterly indexes presented in line 63 of the International Financial Statistics.

3/ The indexed real exchange rate represents the nominal exchange rate adjusted for the relative economic movement of each currency as measured here by the Producer Price Index in the United States and the respective foreign country. Producer prices in the United States decreased 1.0 percent during the interval January 1983–September 1986 compared with increases of 3.7 percent in Belgium and 3,970.5 percent in Israel during the same period.

4/ Average for July–August.

Source: International Monetary Fund, International Financial Statistics, November 1986.

Note.—January–March 1983=100.0.

Because the level of inflation in Belgium was similar to that in the United States over the 15-quarter period, changes in the estimated real value of the franc were not significantly different from changes in the nominal value. In contrast, vastly higher levels of inflation in Israel relative to those in the United States offset the impact of rapidly depreciating nominal exchange rates during most of the period. The real value of the Israeli sheqalim relative to the U.S. dollar decreased irregularly during January 1983–September 1985 and then increased from October–December 1985 through July–August 1986 to a level that was 1.2 percent above its January–March 1983 level.

Lost sales and lost revenue

Domestic producers were asked to furnish the Commission with customer names, quantities, and dates relating to any sales or revenues of industrial phosphoric acid since January 1983 that have been lost to imports of industrial phosphoric acid from Belgium and Israel. Five producers provided quantifiable allegations of lost revenue, totaling \$* * *, and lost sales, totaling \$* * *. Fifteen of the firms listed in the allegations were contacted by the Commission's staff. At five of the firms contacted no one knowledgeable about phosphoric acid purchases was available. At three of the firms contacted, purchasers were unwilling to discuss the allegations.

* * * alleged a lost sale of * * * tons of 80-percent assay technical grade acid to * * * on * * *, because of competition from imports from Belgium. * * * stated that the company has never purchased any Belgian industrial phosphoric acid, but that * * * had lowered its price to * * * for phosphoric acid that * * * was to sell to a customer that had been given a low-price offer for Belgian acid. * * * said that * * * had not received any offers for Belgian or Israeli acid other than an offer to become a distributor of Belgian acid over 10 years ago.

* * * alleged a lost sale of * * * tons of 75-percent assay technical grade acid to * * * on * * *, because of competition from imports from Israel. * * * stated that the company does not purchase any imports of industrial phosphoric acid.

* * * alleged a lost sale of * * * tons of 80-percent assay technical grade acid to * * * on * * *, because of competition from imports from Belgium. * * * stated that * * * originally offered * * * a 1986 contract price for 80-percent technical grade acid of \$* * *. He said that * * * received an offer for Belgian acid at \$* * * and that another domestic producer matched the importer's terms and price. * * * said that * * * was buying acid from the importer and the other domestic producer in early 1986 until * * *, in early * * *, lowered its price to \$* * *, a price * * * said was in fact lower than was necessary for * * * to get * * *'s business. On * * *, * * * issued a blanket order for acid from * * * at the price of \$* * * for the remainder of the year. He said that * * * was not * * *'s exclusive supplier.

* * * alleged a lost sale of * * * tons of 75-percent assay technical grade acid to * * * on * * *, because of competition from imports from Belgium. * * * stated that * * * has never bought Belgian acid, but it has bought some 85-percent assay acid in drums from Israel.

* * * alleged lost revenues on 1986 contract sales of * * * tons of 75-percent assay food grade acid to * * *, because of price competition from Belgian imports. * * * stated that the company had not been directly contacted by importers. He said that one of the company's customers bought imported acid of unspecified origin because of a lower price. He said that the specific price paid by * * * depends on market conditions for its customers and that * * * 's suppliers will reduce their prices when specific market conditions warrant a reduction.

* * * alleged lost revenues on sales of * * * tons of 75-percent technical grade acid to * * * on * * *, because of price competition from Belgian imports. * * * acknowledged purchasing * * * of Belgian acid in * * * and stated that domestic producers have since matched the import price. She stated that * * * buys acid from several suppliers on a noncontract basis and that prior to * * * domestic suppliers were offering material at a price of \$* * *. * * * stated that the imported acid was purchased at a price of \$* * *, and that purchases of domestic material have subsequently been made at that price.

* * * alleged lost revenues on sales of * * * tons of 80-percent technical grade acid to * * * on * * *, because of price competition from Israeli imports. * * * said that the company buys ACS grade phosphoric acid from domestic producers and that imported acid would probably not meet their specifications.

APPENDIX A

FEDERAL REGISTER NOTICES

(Investigations Nos. 701-TA-285 and 286 (Preliminary) and 731-TA-365 and 366 (Preliminary))

Industrial Phosphoric Acid From Belgium and Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-285 and 286 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of Belgium and Israel.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-365 and 366 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine

whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in TSUS item 416.30, which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a) of the act, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by December 22, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202-523-4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on November 5, 1986, by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO.

Participation in the Investigations

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a 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. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 26, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Ilene Hersher (202-523-4616) not later than November 24, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping 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.

Written Submission

Any person may submit to the Commission on or before December 2, 1986 a written statement of information pertaining to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-28025 Filed 11-17-86; 8:45 am]

BILLING CODE 7030-02-M

DEPARTMENT OF COMMERCE**International Trade Administration****[A 423-602]****Initiation of Antidumping Duty Investigation; Industrial Phosphoric Acid From Belgium****AGENCY:** Import Administration, International Trade Administration, Commerce.**ACTION:** Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial phosphoric acid from Belgium are being, or likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Administration (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 22, 1986, and we will make ours on or before April 14, 1987.

EFFECTIVE DATE: December 3, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:**The Petition**

On November 5, 1986, we received a petition filed in proper form by FMC Corporation and Monsanto Company on behalf of the U.S. industry producing industrial phosphoric acid. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of industrial phosphoric acid from Belgium are being, or likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry. Critical circumstances have also been alleged under section 733(e) of the Act.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation

of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on industrial phosphoric acid from Belgium and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether industrial phosphoric acid from Belgium is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 14, 1987.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid provided in item 416.30 of the *Tariff Schedules of the United States, (TSUS)*.

United States Price and Foreign Market Value

Petitions based United States price on a U.S. importer's price quotes for Belgium industrial phosphoric acid in the United States on a C.I.F., duty paid, delivered basis. Petitioners based foreign market value on the Belgium producer's ex-factory price quotes.

Based on a comparison of United States price and foreign market value, petitioners alleged dumping margins of 100 percent to 117 percent.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 22, 1986, whether there is a reasonable indication that imports of industrial phosphoric acid from Belgium materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed

according to the statutory and regulatory procedures.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import
Administration.

November 25, 1986

[FR Doc. 86-27158 Filed 12-2-86; 8:45 am]

BILLING CODE 3510-06-M

will make ours on or before April 14, 1987.

EFFECTIVE DATE: December 3, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On November 5, 1986, we received a petition filed in proper form by FMC Corporation and Monsanto Company on behalf of the U.S. industry producing industrial phosphoric acid. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of industrial phosphoric acid from Israel are being, or likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry. Critical circumstances have also been alleged under section 733(e) of the Act.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on industrial phosphoric acid from Israel and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether industrial phosphoric acid from Israel is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 14, 1987.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid provided in item 416.30 of the *Tariff Schedules of the United States (TSUS)*.

United States Price and Foreign Market Value

Petitioners based United States price on a U.S. importer's price quotes for Israeli industrial phosphoric acid in the United States on a C.I.F. delivered basis. Petitioners based foreign market value

on the Israeli producer's ex-factory price quotes.

Based on a comparison of United States price and foreign market value, petitioners alleged dumping margins of 13.5 percent to 42 percent.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 22, 1986, whether there is a reasonable indication that imports of industrial phosphoric acid from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration
November 25, 1986.

[FR Doc. 86-27159 Filed 12-2-86; 8:45 am]

BILLING CODE 3510-06-01

[A-508-804]

Initiation of Antidumping Duty Investigation; Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial phosphoric acid from Israel are being, or likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 22, 1986, and we

(C-423-603)

Initiation of Countervailing Duty Investigation: Industrial Phosphoric Acid From Belgium**AGENCY:** Import Administration, International Trade Administration, Commerce.**ACTION:** Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Belgium of industrial phosphoric acid, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Belgium materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 22, 1986, and we will make ours on or before January 29, 1987.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161 or 377-2438.

SUPPLEMENTAL INFORMATION:**The Petition**

On November 5, 1986, we received a petition filed in proper form on behalf of the U.S. industry producing industrial

phosphoric acid from FMC Corporation and Monsanto Company. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Belgium of industrial phosphoric acid receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Belgium is a "country under the agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Belgium materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on industrial phosphoric acid and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Belgium of industrial phosphoric acid as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before January 29, 1987.

Scope of Investigation

The product covered by this investigation is "industrial phosphoric acid" which is provided for in item 416.30 of the *Tariff Schedules of the United States*, (TSUS).

Allegations of Subsidies

The petition lists a number of practices by the Government of Belgium which allegedly confer subsidies on manufacturers, producers, or exporters in Belgium of industrial phosphoric acid. We are initiating an investigation on the following programs:

- *Programs Created by the 1970 Economic Expansion Law (EEL)*
- Capital Grants and Interest Rate Reductions
- Loan Guarantees

- Accelerated Depreciation
 - Exemption from Real Property Tax
 - Exemption from Capital Registration Tax
 - Employment Premiums
 - Contractual Aid
 - Exemption from Capital Gains Tax
 - *Preferential Loans*
 - *Employment-Based Benefits*
 - *Operating Subsidies*
 - *Investment in Prayon by the Regional Investment Company of Wallonia (SRIW)*
 - *1985 Equity Infusions by SRIW*
- We are not initiating an investigation on the following program:
- *Investment in Prayon by the Office Cherifien des Phosphates of Morocco (OCPM).*

According to the petition, one of Prayon's major investors in its 1982 reorganization was the OCPM, an agency of the Government of Morocco. Petitioners contend that the fact that the OCPM is an agency of the Moroccan government does not preclude it from bestowing a countervailable subsidy on Prayon. Petitioners further assert that there is no statutory requirement that the government responsible for a countervailable investment be the central government of the country in which the imported merchandise is produced.

Section 303 of the Act states that whenever any country

... shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country ... then upon the importation of such article or merchandise into the United States there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant however the same be paid or bestowed. (emphasis added)

While this investigation is under section 701, rather than section 303, the definition of subsidy in section 771(5) of the Act is defined to have the same meaning as "bounty or grant" under section 303. Since one country can not subsidize another under section 303, a similar limitation is applicable to investigations under section 701. Based on the statutory language, therefore, we do not consider any investment by the Government of Morocco in Prayon to constitute a countervailable subsidy within the meaning of the Act.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of industrial phosphoric acid from Belgium.

They claim that the product concerned benefits from subsidies that are inconsistent with the GATT Subsidies Code, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the express written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 22, 1986, whether there is a reasonable indication that imports of industrial phosphoric acid from Belgium materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 25, 1986.

[FR Doc. 86-27292 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-06-M

[C-506-605]

Initiation of Countervailing Duty Investigation: Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial phosphoric acid as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the

countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 22, 1986, and we will make ours on or before January 29, 1987.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Gary Taverman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2438 or 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On November 5, 1986, we received a petition in proper form filed on behalf of the U.S. industry producing industrial phosphoric acid from the FMC Corporation and the Monsanto Company. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of industrial phosphoric acid receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry producing a like product. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial phosphoric acid and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a

countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial phosphoric acid as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before January 29, 1987.

Scope of Investigation

The product covered by this investigation is "industrial phosphoric acid," as provided for in item 416.30 of the *Tariff Schedules of the United States (TSUS)*.

Allegations of Subsidies

The petition lists a number of practices by the Government of Israel which allegedly confer subsidies on manufacturers, producers, or exporters in Israel of industrial phosphoric acid. We are initiating an investigation on the following alleged programs:

- *Benefits Under the Encouragement of Capital Investment Law 5719-1959:*
 - Investment Grants
 - Accelerated Depreciation
 - Direct Reduction of Corporate Tax
 - Tax Exemptions
- *Direct Export Subsidies From the Bank of Israel*
- Export Production Fund ("EPF")
- Export Shipment Fund ("ESF")
- Imports-for-Exports Fund ("IEF")
- *Export Promotion Fund*
- *Exchange Rate Risk Insurance*
- *Eligible Foreign Investment Company*
- *Benefits Provided Under the Encouragement of Industry Law of 1969 (the "1969 Tax Law")*
 - Preferential Accelerated Depreciation
 - Further Reduction of Tax Rates
- *Subsidies for Research and Development Activities*
- *Long-Term Development Loans*

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of industrial phosphoric acid from Israel. They claim that the products concerned benefit from export subsidies that are inconsistent with the GATT Subsidies Code, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the express written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 22, 1986, whether there is a reasonable indication that imports of industrial phosphoric acid from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 25, 1986.

[FR Doc. 86-27293 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

1. The first part of the document is a list of the names of the persons who were present at the meeting. The names are listed in alphabetical order.

APPENDIX B

LIST OF WITNESSES APPEARING AT THE PUBLIC CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Investigations Nos. 701-TA-285 and 286 (Preliminary)
and 731-TA-365 and 366 (Preliminary)

INDUSTRIAL PHOSPHORIC ACID FROM BELGIUM AND ISRAEL

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the subject investigations at 9:30 a.m. on November 26, 1986, in the Hearing Room of the U.S. International Trade Commission, 701 E Street, NW, Washington, DC.

In support of the petition:

Gibson, Dunn & Crutcher
Washington, DC
on behalf of

FMC Corp.
Monsanto Co.

Lewis G. Furman, Marketing Manager, Phosphorus Chemicals Division,
FMC Corp.

Lyle Nehls, Director of Technology, Phosphorus Chemicals Division,
FMC Corp.

Roger Sellew, Director, Commercial Detergents and Food Ingredients,
Monsanto Co.

Joseph H. Price)
Josiah O. Hatch, III)—OF COUNSEL

In opposition to the petition:

Squire, Sanders & Dempsey
Washington, DC
on behalf of

Societe Chimique Prayon-Rupel S.A.
Nitron Chemical Corp.

Alain Flausch, Deputy General Manager, Societe Chimique
Prayon-Rupel S.A.

Ritchie T. Thomas)
William D. Kramer)—OF COUNSEL

In opposition to the petition:

Kaplan, Russin & Vecchi
Washington, DC
on behalf of

Negev Phosphates Ltd.

Kathleen F. Patterson)
Dennis James, Jr.) —OF COUNSEL

APPENDIX C

ADDITIONAL TABLES

Table C-1.—Industrial phosphoric acid: U.S.-produced domestic shipments and intracompany or intercompany transfers, domestic shipments of imports from Belgium and Israel, and imports for consumption from all other countries, apparent U.S. consumption, and U.S. open-market consumption, 1983-85, January-September 1985, and January-September 1986

* * * * *

Table C-2.—Industrial phosphoric acid: Domestic shipments of imports from Belgium and Israel and imports for consumption from all other countries, 1983-85, January-September 1985, and January-September 1986

* * * * *

Table C-3.—Industrial phosphoric acid: Ratios of the quantity of domestic shipments of imports from Belgium and Israel and imports for consumption from all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1983-85, January-September 1985, and January-September 1986

* * * * *

Table C-4.—Industrial phosphoric acid: Ratios of the value of domestic shipments of imports from Belgium and Israel and imports for consumption from all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1983-85, January-September 1985, and January-September 1986

* * * * *

Table C-5.—Industrial phosphoric acid: U.S. producers' f.o.b. prices for sales to distributors, by types and by quarters, January 1983-September 1986

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