

DEPARTMENT OF COMMERCE**International Trade Administration**

(C-570-938)

Notice of Initiation of Countervailing Duty Investigation: Citric Acid and Certain Citrate Salts from the People's Republic of China

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

EFFECTIVE DATE: May 12, 2008

FOR FURTHER INFORMATION CONTACT: David Neubacher, Scott Holland, and Shelly Atkinson, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5823, (202) 482-1279, and (202) 482-0116, respectively.

SUPPLEMENTARY INFORMATION:**The Petition**

On April 14, 2008, the Department of Commerce (the "Department") received a petition filed in proper form by Archer Daniels Midland Company, Cargill, Inc., and Tate and Lyle Americas, Inc. (the "petitioners"), domestic producers of citric acid and certain citrate salts ("citric acid"). On April 22, 2008, the Department received a supplement to the petition alleging several additional subsidy programs. In response to the Department's requests, the petitioners provided timely information supplementing the petition on April 24, 2008 and April 28, 2008.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended ("the Act"), the petitioners allege that manufacturers, producers, or exporters of citric acid in the People's Republic of China (the "PRC"), receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

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

Period of Investigation

The period of investigation is January 1, 2007, through December 31, 2007.

Scope of the Investigation

The scope of this investigation includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this investigation also includes all forms of unrefined calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this investigation includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), respectively. Potassium citrate and calcium citrate are classifiable under 2918.15.5000 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit ("CRU"), Room 1117, U.S. Department of Commerce, 14th Street

and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the PRC for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China, with representatives of the Government of the PRC on April 28, 2008. See the Memorandum to The File, entitled, "Consultations with Officials from the Government of the People's Republic of China" (April 28, 2008) on file in the CRU of the Department of Commerce, Room 1117.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding

the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

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

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that citric acid and certain citrate salts (unrefined calcium citrate, sodium citrate, and potassium citrate) constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Countervailing Duty Investigation Initiation Checklist: Citric Acid and Certain Citrate Salts from the People's Republic of China (PRC)*, Industry Support at Attachment II (*PRC Initiation Checklist*) on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that the petitioners have established industry support. First, the petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). See Section 702(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or

workers) who support the petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See PRC Initiation Checklist at Attachment II (Industry Support).

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. See *PRC Initiation Checklist* at Attachment II (Industry Support).

Injury Test

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

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of citric acid and certain citrate salts from the PRC are benefitting from countervailable subsidies and that such imports are causing or threatening to cause, material injury to the domestic industry producing citric acid and certain citrate salts. The petitioners contend that the industry's injured condition is illustrated by the reduced market share, reduced production and capacity utilization, reduced employment, underselling and price depressing and suppressing effects, lost revenue and sales, a decline in financial performance, and an increase in import penetration. The Department has assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and the Department determines that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See

PRC Initiation Checklist at Attachment III.

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

Preferential Lending

1. Government Policy Lending Program

2. Funds provided for the rationalization of the citric acid industry

3. Discounted loans for export-oriented industries

4. Loans provided pursuant to the Northeast Revitalization Program *Grant Programs*

5. State Key Technology Renovation Program Fund

6. National level grants to loss-making state-owned enterprises

7. "Famous Brands" Program *Income Tax Programs*

8. "Two Free, Three Half" program

9. Reduced income tax rates for foreign-investment enterprises based on location

10. Income tax exemption program for export-oriented foreign-investment enterprises

11. Tax benefits to foreign-investment enterprises for certain reinvestment of profits

12. Reduced income tax rate for high or new technology enterprises

13. Reduced income tax rate for technology or knowledge intensive foreign-investment enterprises

14. Preferential income tax rate for research and development at foreign-investment enterprises

15. Preferential tax programs for encouraged industries

16. Preferential tax policies for township enterprises

17. Income tax credits on purchases of domestically produced equipment

Indirect Tax Programs and Import Tariff Program

18. Value added tax rebate for purchases by foreign-investment enterprises of domestically produced equipment

19. Value added tax and duty exemptions on imported equipment

20. Excessive value added tax rebates on exports

Provincial/Local Subsidy Programs

21. Provincial level grants to loss-making state-owned enterprises

22. Local income tax exemption and reduction program for "productive" foreign-investment enterprises

Anhui Province:

23. Reduced income tax rates for

encouraged industries in Anhui Province

24. Provision of land for less than adequate remuneration in Anhui Province

Guangdong Province:

25. Funds for "outward expansion" of industries in Guangdong Province

Jiangsu Province:

26. Income tax exemption for foreign-investment enterprises located in Jiangsu Province

27. Preferential tax programs for enterprises located in the Su Qian Economic Development Zone

28. Provision of land for less than adequate remuneration in the Su Qian Economic Development Zone

29. Provision of electricity for less than adequate remuneration in the Su Qian Economic Development Zone

Liaoning Province:

30. Loans and interest subsidies pursuant to the Liaoning Province's five-year framework

Shandong Province:

31. Local and income tax exemptions and reductions for firms located in Qilu Chemicals Industry Park

Shanxi Province:

32. Preferential tax program for enterprises located in Shanxi Province

33. Funding for enterprises under the Shanxi Province 10th Five-year Plan

Shenzhen City:

34. Export interest subsidy funds for enterprises located in Shenzhen City

Zhejiang Province:

35. Export interest subsidy funds for enterprises located in Zhejiang Province

36. Exemptions and reductions in taxes and fees for chemical research and development institutions located in Zhejiang Province

37. Provision of land for less than adequate remuneration for enterprises located in Hangzhou Bay Fine Chemical Park

38. Provision of electricity for less than adequate remuneration for enterprises located in Hangzhou Bay Fine Chemical Park

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

We are not including in our investigation the following programs

alleged to benefit producers and exporters of the subject merchandise in the PRC:

Provision of Goods and Services- for Less Than Adequate Remuneration by the GOC

1. Water

The petitioners allege that through the program of rationalization, the GOC has promoted differential water rates to favored citric acid producers within the Chinese chemicals industry, despite China's limited water resources and the water-intensive nature of the citric acid industry. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

2. Land

The petitioners allege that the GOC provides citric acid producers with land grants and/or reduced land costs. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

3. Electricity and natural gas

The petitioners allege that Chinese citric acid producers benefit from government-provided electricity and natural gas at subsidized prices. The GOC controls and sets prices for electricity and natural gas. The petitioners note that the GOC acknowledged in its WTO accession documents that it provides subsidies on energy inputs to "special industry sectors." The government has also recently identified the citric acid industry as a high polluting industry and non-backward producers as "preferred," and has committed to ending preferential policies to those companies. Thus, the petitioners allege that the remaining citric acid producers will continue to receive energy subsidies available to certain sectors. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

Income Tax Programs

4. Preferential tax program for

enterprises in Beijing Municipality
Petitioners allege that the Beijing Municipality provides subsidies to develop the fine chemical industry, which includes the citric acid industry.

Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

5. Preferential tax program for enterprises in Chongqing Municipality

In accordance with the West Revitalization Project, the GOC offers encouraged industries in the Chongqing Municipality a preferred tax rate of 15%. Petitioners allege further that fine chemical companies located in the Chongqing Chemical Industrial Park are eligible for additional benefits. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

6. Preferential tax program for enterprises in Shandong Province

Petitioners allege that municipal governments encourages the development of the chemical industry by granting tax reductions and exemptions for companies located in chemical parks such as Qilu Chemical Industry Park. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non-market economy ("NME") country in all past AD investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and 10 Unfinished, ("TRBs") From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500-1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001-2002 Administrative Review*, 68 FR 70488, 70488-89 (December 18, 2003).

In the final affirmative CVD determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary

criteria in the CVD law. *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying Issues and Decision Memorandum at Comment 1. Therefore, because Petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a CVD investigation of citric acid from the PRC, initiation of a CVD investigation is warranted in this case. For further information, see *CVD Initiation Checklist*.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection data for U.S. imports during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

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

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

Dated: May 5, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

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