



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-160, A-533-922]

### 2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India: Initiation of Less-Than-Fair-Value Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable April 23, 2024.

**FOR FURTHER INFORMATION CONTACT:** Alexander Cipolla (the People's Republic of China (China)) at (202) 482-4956; and Melissa Porpotage (India) at (202) 482-1413; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

### SUPPLEMENTARY INFORMATION:

#### The Petitions

On March 14, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of 2,4-dichlorophenoxyacetic acid (2,4-D) from China and India filed in proper form on behalf of Corteva Agriscience LLC (the petitioner)<sup>1</sup> a domestic producer of 2,4-D. These AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of 2,4-D from China and India.<sup>2</sup> On April 3, 2024, after considering comments regarding industry support, Commerce extended the initiation deadline by 20 days to further examine the issue of industry support, because it was not clear from the Petitions whether the industry support criteria had been met.<sup>3</sup>

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<sup>1</sup> See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated March 14, 2024 (the Petitions).

<sup>2</sup> *Id.*

<sup>3</sup> See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: 2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India*, 89 FR 24431, 24432 (April 8, 2024).

Between March 18 and April 4, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.<sup>4</sup> The petitioner filed responses to the supplemental questionnaires between March 20 and April 9, 2024.<sup>5</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of 2,4-D from China and India are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the 2,4-D industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.<sup>6</sup>

### **Periods of Investigation**

Because the Petitions were filed on March 14, 2024, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the India LTFV investigation is January 1, 2023, through December 31, 2023. Because China is a non-market economy (NME) country, pursuant to 19

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<sup>4</sup> See Commerce's Letter, "Supplemental Questions," dated March 18, 2024 (General Issues Questionnaire); see also Commerce's Letters, "Supplemental Questions," dated March 18, 2024 (Country-Specific Supplemental Questionnaires); Memoranda, "Phone Call," dated March 26, 2024 (March 26 Memorandum), and April 4, 2024, respectively; and Commerce's Letter, "Supplemental Questions Pertaining to Industry Support," dated April 4, 2024 (Industry Support Supplemental Questionnaire).

<sup>5</sup> See Petitioner's Letter, "General Issues and Injury Questionnaire Response," dated March 20, 2024 (First General Issues Supplement); see also Petitioner's Letter, "China Antidumping Supplemental Questionnaire Response," dated March 20, 2024; Petitioner's Letter, "India Antidumping Supplemental Questionnaire Response," dated March 20, 2024; Petitioner's Letter, "Scope Supplemental Questionnaire Response," dated March 27, 2024 (Second General Issues Supplement); and Petitioner's Letter, "Supplemental Questions on Industry Support," dated April 9, 2024 (Industry Support Supplement).

<sup>6</sup> See "Determination of Industry Support for the Petitions" section, *infra*.

CFR 351.204(b)(1), the POI for the China LTFV investigation is July 1, 2023, through December 31, 2023.

### **Scope of the Investigations**

The product covered by these investigations is 2,4-D from China and India. For a full description of the scope of these investigations, *see* the appendix to this notice.

### **Comments on the Scope of the Investigations**

Between March 18 and April 4, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>7</sup> Between March 20 and April 9, 2024, the petitioner provided clarifications and/or revised the scope.<sup>8</sup> The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).<sup>9</sup> Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,<sup>10</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on May 13, 2024, which is 20 calendar days from the signature date of this notice.<sup>11</sup> Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 23, 2024, which is 10 calendar days from the initial comment deadline.

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<sup>7</sup> *See* General Issues Questionnaire; *see also* March 26 Memorandum; and Industry Support Supplemental Questionnaire.

<sup>8</sup> *See* First General Issues Supplement at 1-3 and Exhibit S-I-4; *see also* Second General Issues Supplement at 1-2; and Industry Support Supplement at 1.

<sup>9</sup> *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

<sup>10</sup> *See* 19 CFR 351.102(b)(21) (defining "factual information").

<sup>11</sup> *See* 19 CFR 351.303(b)(1).

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

### **Filing Requirements**

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.<sup>12</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due.

### **Comments on Product Characteristics**

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of 2,4-D to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there

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<sup>12</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at [https://access.trade.gov/help/Handbook\\_on\\_Electronic\\_Filing\\_Procedures.pdf](https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf).

may be some physical product characteristics utilized by manufacturers to describe 2,4-D, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on May 13, 2024, which is 20 calendar days from the signature date of this notice.<sup>13</sup> Any rebuttal comments must be filed by 5:00 p.m. ET on May 23, 2024, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

### **Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce 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 to poll the “industry.”

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<sup>13</sup> See 19 CFR 351.303(b)(1).

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 Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>14</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’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.<sup>15</sup>

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

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.<sup>16</sup> Based on our analysis of the information submitted on the record, we have determined that 2,4-D, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>17</sup>

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<sup>14</sup> See section 771(10) of the Act.

<sup>15</sup> 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)).

<sup>16</sup> See Petitions at Volume I (pages 11-16 and Exhibits I-5, I-6 and I-9); see also First General Issues Supplement at 3-6.

<sup>17</sup> For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Checklists, “Antidumping Duty Investigation Initiation Checklists: 2,4-Dichlorophenoxyacetic Acid from the People’s Republic of China and India,” dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering 2,4-Dichlorophenoxyacetic Acid from the People’s Republic of China and India (Attachment II). These checklists are on file electronically via ACCESS.

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions, and supplements thereto, with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023 and compared this to the estimated total production of the domestic like product for the entire domestic industry.<sup>18</sup> We relied on data provided by the petitioner for purposes of measuring industry support.<sup>19</sup>

On March 29, 2024, we received comments on industry support from Nufarm Americas Inc. (Nufarm), a U.S. importer and converter of 2,4-D.<sup>20</sup> On April 2, 2024, the petitioner responded to the letter from Nufarm.<sup>21</sup> On April 11, 2024, we received comments on industry support from Drexel Chemical Company (Drexel), a U.S. importer and converter of 2,4-D.<sup>22</sup>

Our review of the data provided in the Petitions, the First General Issues Supplement, the Second General Issues Supplement, the letters from Nufarm and Drexel, the Petitioner’s Response, the Industry Support Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.<sup>23</sup> First, the Petitions 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, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>24</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the

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<sup>18</sup> See Industry Support Supplement at 1-6 and Exhibits S-I-21, S-I-23, S-I-24, and S-I-29.

<sup>19</sup> *Id.* at 1-6 and Exhibits S-I-21, S-I-23, S-I-24, and S-I-29. For further discussion, see Attachment II of the Country-Specific AD Initiation Checklists.

<sup>20</sup> See Nufarm’s Letter, “Nufarm’s Request for the Department to Defer Initiation for Lack of Standing and Poll the Industry,” dated March 29, 2024.

<sup>21</sup> See Petitioner’s Letter, “Petitioner’s Response to Industry Comments,” dated April 2, 2024 (Petitioner’s Response).

<sup>22</sup> See Drexel’s Letter, “Information Submitted by Drexel Chemical Company to Rebut, Clarify or Correct Corteva’s April 9, 2024 Response to Supplemental Questions on Industry Support,” dated April 11, 2024.

<sup>23</sup> See Attachment II of the Country-Specific AD Initiation Checklists.

<sup>24</sup> *Id.*; see also section 732(c)(4)(D) of the Act.

Petitions account for at least 25 percent of the total production of the domestic like product.<sup>25</sup>

Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions 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 Petitions.<sup>26</sup> Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.<sup>27</sup>

### **Allegations and Evidence of Material Injury and Causation**

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>28</sup>

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; underselling and price depression and/or suppression; declining profitability; declines in volume of production and capacity utilization; lost sales and revenues; lost market share; and the magnitude of the alleged dumping margins.<sup>29</sup> We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.<sup>30</sup>

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<sup>25</sup> See Attachment II of the Country-Specific AD Initiation Checklists.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Petitions at Volume I (page 17 and Exhibit I-11); *see also* First General Issues Supplement at 6 and Exhibit S-I-16.

<sup>29</sup> See Petitions at Volume I (pages 17-37 and Exhibits I-10 through I-19); *see also* First General Issues Supplement at 6 and Exhibits S-I-16 and S-I-17.

<sup>30</sup> See Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering 2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India.

## **Allegations of Sales at LTFV**

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of 2,4-D from China and India. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

### **U.S. Price**

For China and India, the petitioner based export price (EP) on the average unit values derived from official import statistics for imports of 2,4-D from these countries into the United States during the POI.<sup>31</sup> For each country, the petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.<sup>32</sup>

### **Normal Value<sup>33</sup>**

For India, the petitioner stated that it was unable to obtain home market or third country pricing information for 2,4-D to use as a basis for NV.<sup>34</sup> Therefore, for India, the petitioner calculated NV based on CV.<sup>35</sup> For further discussion of CV, *see* the section “Normal Value Based on Constructed Value,” below.

Commerce considers China to be an NME country.<sup>36</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME

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<sup>31</sup> *See* Country-Specific AD Initiation Checklists.

<sup>32</sup> *Id.*

<sup>33</sup> In accordance with section 773(b)(2) of the Act, for the India investigation, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

<sup>34</sup> *See* India AD Initiation Checklist.

<sup>35</sup> *Id.*

<sup>36</sup> *See, e.g., Certain Freight Rail Couplers and Parts Thereof from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances*, 88 FR 34485 (May 30, 2023); and *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016-2017*, 84 FR 18007 (April 29, 2019).

country for purposes of the initiation of these investigations. Accordingly, we base NV on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioner claims that Türkiye is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.<sup>37</sup> The petitioner provided publicly available information from Türkiye to value all FOPs.<sup>38</sup> Based on the information provided by the petitioner, we believe it is appropriate to use Türkiye as a surrogate country for China to value all FOPs for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

### **Factors of Production**

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioner used product-specific consumption rates from a U.S. producer of 2,4-D as a surrogate to value Chinese manufacturers' FOPs.<sup>39</sup> Additionally, the petitioner calculated factory overhead, selling, general, and administrative expenses (SG&A), and profit based on the experience of a Turkish producer of comparable merchandise for China.<sup>40</sup>

### **Normal Value Based on Constructed Value**

As noted above for India, the petitioner stated that it was unable to obtain home market or third-country prices for 2,4-D to use as a basis for NV. Therefore, for India, the petitioner calculated NV based on CV.<sup>41</sup>

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<sup>37</sup> See China AD Initiation Checklist.

<sup>38</sup> *Id.*

<sup>39</sup> See China AD Initiation Checklist.

<sup>40</sup> *Id.*

<sup>41</sup> See India AD Initiation Checklist.

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, SG&A, financial expenses, and profit.<sup>42</sup> In calculating the cost of manufacturing, the petitioner relied on the production experience and input consumption rates of a U.S. producer of 2,4-D, valued using publicly available information applicable to India.<sup>43</sup> In calculating SG&A, financial expenses, and profit ratios, the petitioner relied on the 2022-2023 financial statements of a producer of identical merchandise in India.<sup>44</sup>

### **Fair Value Comparisons**

Based on the data provided by the petitioner, there is reason to believe that imports of 2,4-D from China and India are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for 2,4-D for the countries covered by this initiation are as follows: (1) China – 127.21 percent; and (2) India – 36.41 percent.<sup>45</sup>

### **Initiation of LTFV Investigations**

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of 2,4-D from China and India are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

### **Respondent Selection**

#### *India*

In the Petitions, the petitioner identified four companies in India as producers/exporters of 2,4-D.<sup>46</sup> Following standard practice in LTFV investigations involving market economy

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See Country-Specific AD Initiation Checklists.

<sup>46</sup> See Petitions at Volume I (page 9 and Exhibit I-2); see also First General Issues Supplement at Exhibit S-I-2.

countries, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the "Scope of the Investigations," in the appendix.

On March 29, 2024, Commerce released CBP data on imports of 2,4-D from India under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.<sup>47</sup> Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

### *China*

In the Petitions, the petitioner named 12 companies in China as producers and/or exporters of 2,4-D.<sup>48</sup> Our standard practice for respondent selection in AD investigations involving NME countries is to select respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petitions, Commerce will solicit Q&V

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<sup>47</sup> See Memorandum, "Release of Data from U.S. Customs and Border Protection," dated March 29, 2024.

<sup>48</sup> See Petitions at Volume I (page 9 and Exhibit I-2); see also First General Issues Supplement at 1 and Exhibit S-I-2.

information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 12 Chinese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Commerce will post the Q&V questionnaire along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>.

Producers/exporters of 2,4-D from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on May 7, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

### **Separate Rates**

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html>. The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and

have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

### **Use of Combination Rates**

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

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.<sup>49</sup>

### **Distribution of Copies of the Petitions**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of China and India via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

### **ITC Notification**

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

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<sup>49</sup> See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries," (April 5, 2005) at 6 (emphasis added), available on Commerce's website at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

## **Preliminary Determinations by the ITC**

Typically, the ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that subject imports are materially injuring, or threatening material injury to, a U.S. industry.<sup>50</sup> Here, due to Commerce's extension of the initiation decision deadline to further examine the issue of industry support for the Petitions, the ITC has extended the time for issuance of its preliminary determination for imports of 2,4-D from China and India. At this time, the ITC has indicated it will make its preliminary determination on or about May 20, 2024. A negative ITC determination for either country will result in the investigation being terminated with respect to that country.<sup>51</sup> Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

## **Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)-(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>52</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.<sup>53</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the

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<sup>50</sup> See section 733(a) of the Act.

<sup>51</sup> *Id.*

<sup>52</sup> See 19 CFR 351.301(b).

<sup>53</sup> See 19 CFR 351.301(b)(2).

type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

### **Particular Market Situation Allegation**

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act (*i.e.*, a cost-based PMS allegation), Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a cost-based PMS exists under section 773(e) of the Act, then it will modify its margin calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent’s initial section D questionnaire response.

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.*, a sales-based PMS allegation) must be filed within 10 days of submission of a respondent’s initial section B questionnaire response, in accordance with 19 CFR 301(c)(2)(i) and 19 CFR 351.404(c)(2).

### **Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an

extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.<sup>54</sup> For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date.<sup>55</sup> Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.<sup>56</sup>

### **Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>57</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>58</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

### **Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance).

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<sup>54</sup> See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

<sup>55</sup> See *Time Limits Final Rule* at 57792.

<sup>56</sup> See 19 CFR 351.302; see also, e.g., *Time Limits Final Rule*.

<sup>57</sup> See section 782(b) of the Act.

<sup>58</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information and has made additional clarifications and corrections to its AD/CVD regulations.<sup>59</sup>

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act and 19 CFR 351.203(c).

Dated: April 23, 2024.

**Ryan Majerus,**

*Deputy Assistant Secretary*

*for Policy and Negotiations,*

*performing the non-exclusive functions and duties*

*of the Assistant Secretary for Enforcement and Compliance.*

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<sup>59</sup> See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

## Appendix

### Scope of the Investigations

The merchandise covered by these investigations is 2,4-dichlorophenoxyacetic acid (2,4-D) and its derivative products, including salt and ester forms of 2,4-D. 2,4-D has the Chemical Abstracts Service (CAS) registry number of 94-75-7 and the chemical formula  $C_8H_6Cl_2O_3$ .

Salt and ester forms of 2,4-D include 2,4-D sodium salt (CAS 2702-72-9), 2,4-D diethanolamine salt (CAS 5742-19-8), 2,4-D dimethyl amine salt (CAS 2008-39-1), 2,4-D isopropylamine salt (CAS 5742-17-6), 2,4-D tri-isopropanolamine salt (CAS 3234180-3), 2,4-D choline salt (CAS 1048373-72-3), 2,4-D butoxyethyl ester (CAS 1929-733), 2,4-D 2-ethylhexylester (CAS 1928-43-4), and 2,4-D isopropylester (CAS 94-11-1). All 2,4-D, as well as the salt and ester forms of 2,4-D, is covered by the scope irrespective of purity, particle size, or physical form.

The conversion of a 2,4-D salt or ester from 2,4-D acid, or the formulation of nonsubject merchandise with the subject 2,4-D, its salts, and its esters in the country of manufacture or in a third country does not remove the subject 2,4-D, its salts, or its esters from the scope. For any such formulations, only the 2,4-D, 2,4-D salt, and 2,4-D ester components of the mixture is covered by the scope of the investigations. Formulations of 2,4-D are products that are registered for end-use applications with the Environmental Protection Agency and contain a dispersion agent.

The country of origin of any 2,4-D derivative salt or ester is determined by the country in which the underlying 2,4-D acid is produced. 2,4-D, its salts, and its esters are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2918.99.2010. Subject merchandise, including the abovementioned formulations, may also be classified under HTSUS subheadings 2922.12.0001, 2921.11.0000, 2921.19.6195, 2922.19.9690, 3808.93.0050, and 3808.93.1400. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes. The written description of the scope of the investigations is dispositive.

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