



DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-169]

Certain Alkyl Phosphate Esters from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: Applicable May 13, 2024.

FOR FURTHER INFORMATION CONTACT: Benjamin Nathan, AD/CVD Operations,
Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of
Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-
3834.

SUPPLEMENTARY INFORMATION:

The Petition

On April 23, 2024, the U.S. Department of Commerce (Commerce) received a
countervailing duty (CVD) petition concerning imports of certain alkyl phosphate esters (alkyl
phosphate esters) from the People's Republic of China (China) filed in proper form on behalf of
ICL-IP America, Inc. (the petitioner).¹ The CVD petition was accompanied by an antidumping
duty (AD) petition concerning imports of alkyl phosphate esters from China.²

¹ See Petitioner's Letter, "Antidumping and Countervailing Duty Petition," dated April 23, 2024 (the Petition); and
"Errata to Antidumping and Countervailing Duty Petition," dated April 24, 2024.

² *Id.*

Between April 25 and May 2, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petition.³ Between April 29 and May 3, 2024, the petitioner filed responses to these requests for additional information.⁴

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of alkyl phosphate esters from China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing alkyl phosphate esters in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition was accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition 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 with respect to the initiation of the requested CVD investigation.⁵

Period of Investigation

Because the Petition was filed on April 23, 2024, the period of investigation (POI) for China is January 1, 2023, through December 31, 2023.⁶

³ See Commerce's Letters, "Supplemental Questions," dated April 25, 2024; "Supplemental Questions," dated April 25, 2024 (General Issues Questionnaire); and "Supplemental Questions," dated April 29, 2024; *see also* Memorandum, "Phone Call with Counsel to Petitioner," dated May 2, 2024 (May 2 Memorandum).

⁴ See Petitioner's Letters, "Responses to General Issues Questionnaire," dated April 29, 2024 (First General Issues Supplement); "Responses to Countervailing Duty Petition Supplemental Questionnaire," dated May 2, 2024; and "Responses to Second Petition Supplemental Questionnaire," dated May 3, 2024 (Second General Issues Supplement).

⁵ See section on "Determination of Industry Support for the Petition," *infra*.

⁶ See 19 CFR 351.204(b)(2).

Scope of the Investigation

The merchandise covered by this investigation is alkyl phosphate esters from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On April 25 and May 2, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁷ On April 29 and May 3, 2024, the petitioner provided clarifications and revised the scope.⁸ The description of merchandise covered by this investigation, 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).⁹ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.¹⁰ To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on June 3, 2024, which is the next business day after 20 calendar days from the signature date of this notice.¹¹ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 13, 2024, which is 10 calendar days from the initial comment deadline.

⁷ *See* General Issues Questionnaire; *see also* May 2 Memorandum.

⁸ *See* First General Issues Supplement at 2-7 and Exhibits I-15 and I-16; *see also* Second General Issues Supplement at 1-2.

⁹ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁰ *See* 19 CFR 351.102(b)(21) (defining "factual information").

¹¹ The deadline for scope comments falls on June 2, 2024, which is a Sunday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on June 3, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

Commerce requests that any factual information that parties consider relevant to the scope of the investigation be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation 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 AD 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.¹² An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided an opportunity for consultations with respect to the Petition.¹³ On April 29, 2024, the GOC submitted comments on the Petition in lieu of consultations.¹⁴

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of

¹² 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.

¹³ See Commerce's Letter "Invitation for Consultation to Discuss the Countervailing Duty Petition on Certain Alkyl Phosphate Esters from the People's Republic of China," dated April 25, 2024.

¹⁴ See GOC's Letter, "China-USA Consultations with Respect to Possible Initiation of Countervailing Investigation Against Imports of Alkyl Phosphate Esters from China," dated May 8, 2024.

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, 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.”

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 apply the same statutory definition regarding the domestic like product,¹⁵ 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.¹⁶

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).

¹⁵ See section 771(10) of the Act.

¹⁶ 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 Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

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 investigation.¹⁷ Based on our analysis of the information submitted on the record, we have determined that alkyl phosphate esters, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁸

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023.¹⁹ The petitioner asserts that there are currently no other known producers of alkyl phosphate esters in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.²⁰ We relied on data provided by the petitioner for purposes of measuring industry support.²¹

Our review of the data provided in the Petition, the First General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.²² 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, Commerce is not required to take further action to evaluate industry support (*e.g.*, polling).²³ Second, the domestic producers (or workers) have met the

¹⁷ See Petition at Volume I (pages 15-17 and Exhibits I-4 and I-6); *see also* First General Issues Supplement at 11-15.

¹⁸ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, “Certain Alkyl Phosphate Esters from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Certain Alkyl Phosphate Esters from the People’s Republic of China. This checklist is on file electronically via ACCESS.

¹⁹ See Petition at Volume I (Exhibit I-11); *see also* First General Issues Supplement at 10-11.

²⁰ See Petition at Volume I (pages 3-5 and Exhibits I-1, I-2, and I-8); *see also* First General Issues Supplement at 7-11 and Exhibit I-17.

²¹ See Petition at Volume I (pages 3-5 and Exhibits I-1, I-2, and I-8, and I-11); *see also* First General Issues Supplement at 7-11 and Exhibit I-17. For further discussion, *see* Attachment II of the China CVD Initiation Checklist

²² See Attachment II of the China CVD Initiation Checklist.

²³ *Id.*; *see also* section 702(c)(4)(D) of the Act.

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.²⁴ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²⁵ Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²⁶

Injury Test

Because China 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 China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from China exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁷

The petitioner contends that the industry’s injured condition is illustrated by the significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; negative impact on domestic industry capacity,

²⁴ See Attachment II of the China CVD Initiation Checklist.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Petition at Volume I (page 18 and Exhibit I-10).

capacity utilization, and employment; and negative impact on domestic industry sales revenue and operating profits.²⁸ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.²⁹

Initiation of CVD Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of alkyl phosphate esters from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 41 of the programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection.

In the Petition, the petitioner identified 65 companies in China as producers and/or exporters of alkyl phosphate esters.³⁰ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based on Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports

²⁸ *Id.* at 18-34 and Exhibits I-1, I-3, I-4, I-8, and I-10 through I-13.

²⁹ *See* China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petition Covering Certain Alkyl Phosphate Esters from the People's Republic of China.

³⁰ *See* Petition at Volume I (page 14 and Exhibit I-8); *see also* First General Issues Supplement at 1 and Exhibit I-8.

of alkyl phosphate esters during the POI under the appropriate Harmonized Tariff Schedule of the United States subheadings listed within the “Scope of the Investigation” in the appendix.

On May 8, 2024, Commerce released the CBP data for imports of alkyl phosphate esters from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of this investigation.³¹ Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 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>.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. 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, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of alkyl phosphate esters from China are materially injuring, or threatening material injury to, a U.S. industry.³² A negative ITC

³¹ See Memorandum, “Countervailing Duty Petition on Certain Alkyl Phosphate Esters from China: Release of Data from U.S. Customs and Border Protection,” dated May 8, 2024.

³² See section 703(a)(1) of the Act.

determination will result in the investigation being terminated.³³ Otherwise, this CVD investigation 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 of production 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 submitted³⁴ 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.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

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.³⁶ 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. Under certain circumstances,

³³ *Id.*

³⁴ *See* 19 CFR 351.301(b).

³⁵ *See* 19 CFR 351.301(b)(2).

³⁶ *See* 19 CFR 351.302.

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 this investigation.³⁷

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁸ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁹ 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 this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁴⁰

³⁷ 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>.

³⁸ See section 782(b) of the Act.

³⁹ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁴⁰ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 13, 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.*

Appendix

Scope of the Investigation

The products covered by this investigation are alkyl phosphate esters, which are halogenated and non-halogenated phosphorus-based esters with a phosphorus content of at least 6.5 percent (per weight) and a viscosity between 1 and 2000 mPa.s (at 20-25 °C).

Merchandise subject to this investigation primarily includes Tris (2-chloroisopropyl) phosphate (TCPP), Tris (1,3-dichloroisopropyl) phosphate (TDCP), and Triethyl Phosphate (TEP)).

TCPP is also known as Tris (1-chloro-2-propyl) phosphate, Tris (1-chloropropan-2-yl) phosphate, Tris (monochloroisopropyl) phosphate (TMCP), and Tris (2-chloroisopropyl) phosphate (TCIP). TCPP has the chemical formula $C_9H_{18}Cl_3O_4P$ and the Chemical Abstracts Service (CAS) Nos. 1244733-77-4 and 13674-84-5. It may also be identified as CAS No. 6145-73-9.

TDCP is also known as Tris (1,3-dichloroisopropyl) phosphate, Tris (1,3-dichloro-2-propyl) phosphate, Chlorinated tris, tris {2-chloro-1-(chloromethyl ethyl)} phosphate, TDCPP, and TDCIPP. TDCP has the chemical formula $C_9H_{15}Cl_6O_4P$ and the CAS No. 13674-87-8.

TEP is also known as Phosphoric acid triethyl ester, phosphoric ester, flame retardant TEP, Tris(ethyl) phosphate, Triethoxyphosphine oxide, and Ethyl phosphate (neutral). TEP has the chemical formula $(C_2H_5O)_3PO$ and the CAS No. 78-40-0.

Imported alkyl phosphate esters are not excluded from the scope of this investigation even if the imported alkyl phosphate ester consists of a single isomer or combination of isomers in proportions different from the isomers ordinarily provided in the market.

Also included in this investigation are blends including one or more alkyl phosphate esters, with or without other substances, where the alkyl phosphate esters account for 20 percent or more of the blend by weight.

Alkyl phosphate esters are classified under subheading 2919.90.5050, Harmonized Tariff Schedule of the United States (HTSUS). Imports may also be classified under subheadings 2919.90.5010 and 3824.99.5000, HTSUS. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes. The written description of the scope is dispositive.

[FR Doc. 2024-10935 Filed: 5/17/2024 8:45 am; Publication Date: 5/20/2024]