



DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-195]

Active Anode Material from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: Applicable January 7, 2025.

FOR FURTHER INFORMATION CONTACT: Gorden Struck, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8151.

SUPPLEMENTARY INFORMATION:

The Petition

On December 18, 2024, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of active anode material from the People's Republic of China (China) filed in proper form on behalf of the American Active Anode Material Producers (the petitioner),¹ an *ad hoc* trade association of domestic producers.² The CVD Petition was accompanied by an antidumping duty (AD) petition concerning imports of active anode material from China.³

¹ The members of the American Active Anode Material Producers are Anovion Technologies, Syrah Technologies LLC, NOVONIX Anode Materials LLC, Epsilon Advanced Materials, and SKI US, Inc.

² See Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties," dated December 18, 2024 (Petition).

³ *Id.*

Between December 19, 2024, and January 2, 2025, Commerce requested supplemental information pertaining to certain aspects of the Petition in supplemental questionnaires.⁴ On December 27, 2024, and January 3, 2025, the petitioner filed timely responses to these requests for additional information.⁵

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 active anode material in China, and that imports of such products materially retard the establishment of an industry in the United States, or in the alternative, that such products are materially injuring, or threatening material injury to, the active anode material industry 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)(F) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.⁶

⁴ See Commerce's Letters, "Supplemental Questions," dated December 19, 2024; and "Supplemental Questions," dated December 20, 2024 (General Issues Questionnaire); see also Memorandum, "Phone Call with Counsel to the Petitioner," dated January 2, 2025 (January 2, 2025, Memorandum).

⁵ See Petitioner's Letters, "Response to Supplemental Questions Regarding Common Issues and Injury Volume I of the Petitions," dated December 27, 2024 (First General Issues Supplement); "Response to Supplemental Questions Regarding Countervailing Duty Volume III of the Petitions," dated December 27, 2024; and "Response to Supplemental Questions Regarding Volume I of the Petitions," dated January 3, 2025 (Second General Issues Supplement).

⁶ See section on "Determination of Industry Support for the Petition," *infra*.

Period of Investigation

Because the Petition was filed on December 18, 2024, the period of investigation for the CVD investigation is January 1, 2023, through December 31, 2023.⁷

Scope of the Investigation

The product covered by this investigation is active anode material 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 December 20, 2024 and January 2, 2025, 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.⁸ On December 27, 2024 and January 3, 2025, the petitioner provided clarifications and revised the scope.⁹ 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).¹⁰ 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.¹¹ To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on January 27, 2025, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on February 6, 2025, which is 10 calendar days from the initial comment deadline.

⁷ See 19 CFR 351.204(b)(2).

⁸ See General Issues Questionnaire; *see also* January 2, 2025, Memorandum.

⁹ See First General Issues Supplement at 2-5; *see also* Second General Issues Supplement at 1-6 and Exhibits I-Supp2-1 through I-Supp2-3.

¹⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹¹ See 19 CFR 351.102(b)(21) (defining "factual information").

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 The GOC did not request consultations.

Determination of Industry Support for the Petition

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

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," dated December 19, 2024.

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,¹⁴ 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.¹⁵

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).

¹⁴ See section 771(10) of the Act.

¹⁵ 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.¹⁶ Based on our analysis of the information submitted on the record, we have determined that active anode material, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁷

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 the 2023 production of the domestic like product for the supporters of the Petition and compared this to total 2023 production for the U.S. active anode material industry.¹⁸ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁹

On December 30, 2024, we received timely filed comments on industry support from Tesla, Inc. (Tesla), a U.S. importer of active anode material.²⁰ On January 2, 2025, the petitioner responded to the comments from Tesla in a timely filed rebuttal submission.²¹

Our review of the data provided in the Petition, the First General Issues Supplement, the Second General Issues Supplement, the Petitioner’s Response, 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

¹⁶ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, “Countervailing Duty Investigation Initiation Checklist: Active Anode Material 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 Petitions Covering Active Anode Material from the People’s Republic of China (Attachment II). This checklist is on file electronically via ACCESS.

¹⁷ *See* Attachment II of the China CVD Initiation Checklist.

¹⁸ *Id.*

¹⁹ For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

²⁰ *See* Tesla’s Letter, “Request to Reject the Petition or to Poll the Industry,” dated December 30, 2024.

²¹ *See* Petitioner’s Letter, “Rebuttal Industry Support Comments,” dated January 2, 2025 (Petitioner’s Response).

²² *See* Attachment II of the China CVD Initiation Checklist.

such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²³ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the 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, or whether the establishment of a U.S. industry is materially retarded, by reason of imports of the subject merchandise from China.

Allegations and Evidence of Material Injury and Causation

Section 703(a)(1)(B) of the Act states that the ITC “shall determine ... whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.” The petitioner alleges that imports of subject merchandise are benefiting from countervailable subsidies and that such imports are materially retarding the establishment of the U.S. industry producing active anode material.²⁷

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

²⁴ *See* Attachment II of the China CVD Initiation Checklist.

²⁵ *Id.*

²⁶ *Id.*

²⁷ For a discussion of the petitioner’s injury allegation, *see* China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Retardation, Material Injury, and Causation for the Antidumping and Countervailing Duty Petitions Covering Active Anode Material from the People’s Republic of China (Attachment III).

The petitioner argues that its production has been “modest” and has not stabilized and, therefore, the U.S. industry producing active anode material has not been established.²⁸ To support its argument, the petitioner examined the five factors²⁹ the ITC considers to determine if an industry is established, as set forth in the ITC’s *AD/CVD Handbook*.³⁰ If the ITC determines that an industry is not established, it then considers whether the performance of the industry reflects normal start-up difficulties or whether the imports of the subject merchandise have materially retarded the establishment of the industry.³¹ The petitioner contends that the domestic industry has performed substantially worse than what could reasonably be expected during normal start-up conditions, thereby demonstrating that the establishment of the domestic industry has been materially retarded by subject imports.³² The petitioner also alleges that, in the alternative, 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 benefitting from countervailable subsidies.³³ In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided under section 771(24)(A) of the Act.³⁴

The petitioner contends that the industry’s materially retarded, or in the alternative, injured condition is illustrated by a significant volume of subject imports; significant market share of subject imports; lost sales and revenues; underselling; low levels of production; and negative impact on financial performance.³⁵ We assessed the allegations and supporting evidence regarding material retardation, 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.³⁶

²⁸ *Id.*

²⁹ For a discussion of the factors related to whether an industry is established, *see* Attachment III of the China CVD Initiation Checklist.

³⁰ *See Antidumping and Countervailing Duty Handbook* (14th Ed.), USITC Pub. 4540 (June 2015) (*AD/CVD Handbook*), at II-33.

³¹ *Id.*

³² *See* Attachment III of the China CVD Initiation Checklist.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

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 active anode material 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 34 of the 36 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 30 companies in China as producers and/or exporters of active anode material.³⁷ 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, Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the "Scope of the Investigation" in the appendix.

On January 7, 2025, Commerce released CBP data on imports of active anode material 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 on CBP data and/or respondent selection must do so within three business days of the publication date of the notice

³⁷ *See* Petition at Volume I (pages 6-7 and Exhibit I-9); *see also* First General Issues Supplement at 1-2 and Exhibit I-Supp-1.

of initiation of this investigation.³⁸ 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>.

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 active anode material from China materially retard the establishment of a U.S. industry, or that subject imports are materially injuring, or threatening material injury to, a U.S. industry.³⁹ A negative ITC determination will result in the investigation being terminated.⁴⁰ 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

³⁸ See Memorandum, "Release of U.S. Customs and Border Protection Entry Data," dated January 7, 2025.

³⁹ See section 703(a)(1) of the Act.

⁴⁰ *Id.*

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 submitted⁴¹ 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.⁴² 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.⁴³ 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, 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

⁴¹ See 19 CFR 351.301(b).

⁴² See 19 CFR 351.301(b)(2).

⁴³ See 19 CFR 351.302.

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.⁴⁴

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁴⁵ Parties must use the certification formats provided in 19 CFR 351.303(g).⁴⁶ 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).⁴⁷

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

Dated: January 7, 2025.

Steven Presing,
*Acting Deputy Assistant Secretary
for Policy and Negotiations.*

⁴⁴ 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>.

⁴⁵ See section 782(b) of the Act.

⁴⁶ 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.

⁴⁷ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

Appendix

Scope of the Investigation

The merchandise covered by this investigation is active anode material, which is an anode grade graphite material with a graphite minimum purity content of 90 percent carbon by weight, whether containing synthetic graphite, natural graphite, or a blend of synthetic and natural graphite; with or without coating. Subject merchandise may be in the form of powder, dry, liquid, or block form and is covered irrespective of the form in which it enters. Subject merchandise typically has a maximum size of 80 microns when in powder form. Subject merchandise has an energy density of 330 milliamp hours per gram or greater and a degree of graphitization of 80 percent or greater, where graphitization refers to the extent of the graphite crystal structure.

Subject merchandise is covered regardless of whether it is mixed with silicon based active materials, *e.g.*, silicon-oxide (SiOx), silicon-carbon (SiC), or silicon, or additives such as carbon black or carbon nanotubes. Subject merchandise is covered regardless of the combination of compounds that comprise the graphite material. Subject merchandise is covered regardless of whether it is imported independently, as part of a compound, in a battery, as a component of an anode slurry, or in a subassembly of a battery such as an electrode. Only the anode grade graphite material is covered when entered as part of a mixture with silicon based active materials, as part of a compound, in a batter, as a component of an anode slurry, or in a subassembly of a battery such as an electrode.

Active anode material subject to the investigation may be classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2504.10.5000 and 3801.10.5000. Subject merchandise may also enter under HTSUS subheadings 2504.10.1000 and 3801.90.0000. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

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