

# **INDUSTRIAL PHOSPHORIC ACID FROM BELGIUM AND ISRAEL**

**Determination of the Commission in  
Investigation No. 701-TA-286 (Final)  
Under the Tariff Act of 1930,  
Together With the Information  
Obtained in the Investigation**

**ISITC PUBLICATION 2000**

**AUGUST 1987**

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

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## COMMISSIONERS

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

---

**Ilene Hersher, Investigator**  
**Cynthia Trainor, Industry Analyst**  
**Terry Planton, Economist**  
**Debbie VonBeulen, Financial Analyst**  
**Mitchell Dale, Attorney**  
**Robert Eninger, Supervisory Investigator**

---

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

# C O N T E N T S

	<u>Page</u>
Determinations	1
Views of Commissioner Eckes, Commissioner Lodwick, and Commissioner Rohr	3
Dissenting views of Chairman Liebeler	23
Dissenting views of Vice Chairman Anne E. Brunsdale	39
Information obtained in the investigations:	
Introduction	A-1
Background	A-2
The product:	
Description and uses	A-2
Production process	A-5
World market	A-10
U.S. tariff treatment	A-11
Nature and extent of Israeli subsidies	A-11
Nature and extent of LTFV sales:	
Belgium	A-12
Israel	A-13
The U.S. industry	A-14
U.S. importers:	
Belgium	A-16
Israel	A-16
The foreign industries:	
Belgium	A-16
Israel	A-18
Apparent U.S. consumption	A-19
Consideration of alleged material injury:	
U.S. production, capacity, and capacity utilization	A-21
U.S. producers' shipments	A-22
U.S. producers' inventories	A-25
U.S. producers' imports and domestic purchases	A-26
Employment and wages	A-26
Financial experience of U.S. producers:	
Overall establishment operations	A-28
Operations producing industrial phosphoric acid	A-30
Value of plant, property, and equipment	A-35
Capital expenditures	A-35
Research and development expenses	A-36
Consideration of alleged threat of material injury:	
Belgium	A-38
Israel	A-38
Consideration of the causal relationship between alleged material injury or the threat thereof and imports subsidized and sold at LTFV:	
U.S. imports	A-39
Market penetration of imports	A-39
Channels of distribution	A-42
Competition between imports	A-43
Prices	A-48

## CONTENTS

	<u>Page</u>
Information obtained in the investigations—Continued	
Consideration of the causal relationship between alleged material injury or the threat thereof and imports subsidized and sold at LTFV—Continued	
Prices—Continued	
Price trends	A-49
Price comparisons	A-49
Purchasers' responses	A-49
Other price factors	A-55
Lost sales and lost revenue	A-57
Exchange rates	A-59
Appendix A. <u>Federal Register</u> notices	A-61
Appendix B. List of witnesses appearing at the public hearing	A-87
Appendix C. Additional tables	A-91

## Figures

1. U.S. production of thermal phosphoric acid and STPP, 1975-86	A-7
2. Diagram of an integrated plant for manufacturing phosphorus and phosphoric acid	A-8
3. Diagram of wet-process phosphoric acid manufacture	A-9
4. Process flowchart for purification of wet-process phosphoric acid by solvent extraction	A-10
5. Channels of distribution for domestic and imported phosphoric acid	A-43

## Tables

1. U.S. production of thermal phosphoric acid and STPP, 1975-86	A-6
2. Industrial phosphoric acid: U.S. producers' shares of U.S. production and apparent U.S. consumption, by firms, 1986	A-15
3. Industrial phosphoric acid: Prayon's production, average-for-period capacity, capacity utilization, home-market sales, export sales, and end-of-period inventories, 1984-88	A-18
4. Industrial phosphoric acid: Negev's production, capacity, capacity utilization, home-market sales, export sales, and end-of-period inventories, 1984-88	A-19
5. Industrial phosphoric acid: U.S.-produced domestic shipments and intracompany or intercompany transfers, U.S. shipments of imports from Belgium and Israel, imports for consumption from all other countries, apparent U.S. consumption, and U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987	A-20
6. Industrial phosphoric acid: U.S. production, average-for-period capacity, end-of-period capacity, and capacity utilization, 1984-86, January-March 1986, and January-March 1987	A-22

## CONTENTS

## Tables—Continued

	<u>Page</u>
7. Industrial phosphoric acid: U.S.-produced intracompany or intercompany transfers, domestic shipments, export shipments, and total shipments, 1984-86, January-March 1986, and January-March 1987-----	A-23
8. Industrial phosphoric acid: U.S.-produced domestic shipments, by uses, 1984-86, January-March 1986, and January-March 1987-----	A-24
9. Industrial phosphoric acid: U.S.-produced end-of-period inventories, 1983-86, January-March 1986, and January-March 1987-----	A-26
10. Industrial phosphoric acid: Average number of employees in producing establishments, number of production and related workers producing all products and industrial phosphoric acid, average hours worked, wages and total compensation paid, average hourly wages and total compensation paid, and productivity of production and related workers producing industrial phosphoric acid, 1984-86, January-March 1986, and January-March 1987-----	A-27
11. Industrial phosphoric acid: Income-and-loss experience of 5 U.S. firms on the overall operations of their establishments within which industrial phosphoric acid is produced, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987-----	A-29
12. Income-and-loss experience of 5 U.S. firms on their operations producing industrial phosphoric acid, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987-----	A-31
13. Industrial phosphoric acid: Trade sales and intracompany transfers of 5 U.S. producers, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987-----	A-32
14. Industrial phosphoric acid: Contribution margin analysis of trade sales of 5 U.S. producers, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987-----	A-33
15. Industrial phosphoric acid: Unit analysis of all trade sales and agricultural sales of 5 U.S. producers, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987-----	A-34
16. Industrial phosphoric acid: Value of property, plant, and equipment of 5 U.S. producers, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987-----	A-35
17. Industrial phosphoric acid: Capital expenditures by 5 U.S. producers, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987-----	A-36
18. Industrial phosphoric acid: End-of-period inventories of Belgian and Israeli imports held in the United States, 1983-86, January-March 1986, and January-March 1987-----	A-38
19. Industrial phosphoric acid: U.S. shipments of imports from Belgium and Israel, and U.S. imports for consumption from all other countries, 1984-86, January-March 1986, and January-March 1987-----	A-40

## CONTENTS

## Tables--Continued

	<u>Page</u>
20. Industrial phosphoric acid: Ratios of the quantity of U.S. shipments of imports from Belgium and Israel and U.S. imports for consumption from all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987-----	A-41
21. Industrial phosphoric acid: Ratios of the value of U.S. shipments of imports from Belgium and Israel and U.S. imports for consumption from all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987-----	A-41
22. Industrial phosphoric acid, 75-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to distributors, by quarters, January 1984-March 1987-----	A-50
23. Industrial phosphoric acid, 75-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to end users, by quarters, January 1984-March 1987-----	A-51
24. Industrial phosphoric acid, 80-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to distributors, by quarters, January 1984-March 1987-----	A-52
25. Industrial phosphoric acid, 80-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to end users, by quarters, January 1984-March 1987-----	A-53
26. Industrial phosphoric acid, 75-percent assay food grade and agricultural grade: U.S. producers' f.o.b. prices for sales to distributors and end users, by quarters, January 1984-March 1987-----	A-54
27. Phosphoric acid: U.S. producers' and importers' delivered prices for 75-percent and 80-percent assay technical grade and U.S. producers' delivered prices for product for agricultural uses as reported by purchasers, by quarters, January 1985-March 1987-----	A-56
28. Exchange rates: Nominal-exchange-rate equivalents of the Belgian franc and the Israeli sheqalim in U.S. dollars, real-exchange-rate equivalents, and producer price indicators in Belgium and Israel, indexed by quarters, January 1984-March 1987-----	A-60
C-1. Industrial phosphoric acid: U.S.-produced domestic shipments and intracompany or intercompany transfers, imports for consumption from Belgium, Israel, and all other countries, apparent U.S. consumption, and U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987-----	A-92
C-2. Industrial phosphoric acid: Imports for consumption from Belgium, Israel, and all other countries, 1984-86, January-March 1986, and January-March 1987-----	A-93

## CONTENTS

## Tables—Continued

	<u>Page</u>
C-3. Industrial phosphoric acid: Ratios of the quantity of imports for consumption from Belgium, Israel, and all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987-----	A-94
C-4. Industrial phosphoric acid: Ratios of the value of imports for consumption from Belgium, Israel, and all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987-----	A-95

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





UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC

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

INDUSTRIAL PHOSPHORIC ACID FROM BELGIUM AND ISRAEL

Determinations

On the basis of the record 1/ developed in the subject investigations, the Commission determines, 2/ pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)), that an industry in the United States is materially injured by reason of imports from Israel 3/ of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Israel. The Commission also determines, 4/ pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from Belgium 5/ and Israel 6/ of industrial phosphoric acid, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted its final countervailing duty investigation effective February 5, 1987, following a preliminary determination by the Department of Commerce that imports of industrial phosphoric acid from Israel

---

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

2/ Chairman Liebel and Vice Chairman Brunsdale dissenting.

3/ Inv. No. 701-TA-286 (Final).

4/ Chairman Liebel and Vice Chairman Brunsdale dissenting.

5/ Inv. No. 731-TA-365 (Final).

6/ Inv. No. 731-TA-366 (Final).

were being subsidized within the meaning of section 701 of the Act (19 U.S.C. § 1671). 1/ Notice of the institution of the Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 4, 1987 (52 FR 6631). Notice of the Commission's hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 13, 1987 (52 FR 18031). Similarly, the Commission instituted its final antidumping investigations effective April 20, 1987, following preliminary determinations by the Department of Commerce that imports of industrial phosphoric acid from Belgium and Israel were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 29, 1987 (52 FR 15566). The hearing was held in Washington, DC, on July 7, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

---

1/ The Commission also instituted a final countervailing duty investigation concerning imports from Belgium of industrial phosphoric acid. Following a negative final determination by the Department of Commerce, the Commission terminated the investigation effective July 17, 1987.

VIEWS OF COMMISSIONER ECKES, COMMISSIONER LODWICK,  
AND COMMISSIONER ROHR

On the basis of the record developed in these investigations, <sup>1/</sup> we determine that an industry in the United States is materially injured by reason of imports of industrial phosphoric acid from Israel <sup>2/</sup> which the Department of Commerce (Commerce) has determined are subsidized by the Government of Israel.

We also determine that an industry in the United States is materially injured by reason of imports of industrial phosphoric acid from Belgium <sup>3/</sup> and Israel <sup>4/</sup> which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

We base our determinations primarily on the overall decline in the performance of the domestic industry, the increased volume and market share of the cumulated subject imports, and evidence of underselling of the domestic product by the imports causing price suppression and price depression.

---

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

<sup>2/</sup> Inv. No. 701-TA-286.

<sup>3/</sup> Inv. No. 731-TA-365.

<sup>4/</sup> Inv. No. 731-TA-366.

Like product and domestic industry

As a prerequisite to its material injury analysis in a Title VII investigation, the Commission must first identify the relevant domestic industry. "Industry" is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . ." <sup>5/</sup>

"Like product" is defined 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." <sup>6/</sup>

The imported article subject to investigation is industrial phosphoric acid. <sup>7/</sup> The principal component of phosphoric acid is phosphorus pentoxide. Industrial phosphoric acid is a relatively pure form of phosphoric acid which generally contains impurity levels of less than one percent, measured in ranges of parts per million. <sup>8/</sup> It is distinguished from

---

<sup>5/</sup> 19 U.S.C. § 1677(4)(A).

<sup>6/</sup> 19 U.S.C. § 1677(10).

<sup>7/</sup> The product subject to investigation is determined by Department of Commerce (Commerce), which initiated the investigations. Commerce has described the imported product subject to each of these investigations as: "industrial phosphoric acid provided for in item 416.30 of the Tariff Schedules of the United States, (TSUS)" 51 Fed. Reg. 43649 (Dec. 3, 1986) (Belgium antidumping investigation), 43651 (Dec. 3, 1986) (Israel antidumping investigation), 43762 (Dec. 4, 1986) (Israel countervailing duty investigation). The word "for" was omitted from the product definition in both antidumping notices. We presume this to be a typographical error.

<sup>8/</sup> Staff Report to the Commission ("Report") at A-2.

agricultural grade phosphoric acid, which contains impurity levels of five to 15 percent and which is used primarily in the production of agricultural fertilizers. <sup>9/</sup>

Industrial phosphoric acid is produced in the United States generally in four grades, each having distinct uses and distinct assays/concentrations. The bulk of U.S. producers' shipments, as well as the subject imported acid, is technical grade acid. <sup>10/</sup> In addition, industrial phosphoric acid may be processed to yield food grade, <sup>11/</sup> ACS-SEMI grade, <sup>12/</sup> and polyphosphoric

---

<sup>9/</sup> Hearing Transcript ("Tr.") at 8; Report at A-2, n.1. Agricultural acid is also imported under a different tariff schedule category from industrial phosphoric acid -- TSUSA No. 480.7010, "Phosphate Fertilizers and Fertilizer Materials." Pre-hearing Brief of FMC Corporation and Monsanto Company, at 6.

<sup>10/</sup> Report at A-4, A-48. Technical grade acid is used captively by domestic producers in the downstream production of phosphates, which in turn are used in soaps, detergents, and water treatment. It also is sold in the open market for industrial use in cleaners, cement processing, leather tanning, fire brick manufacture, varnishes, and the manufacture of synthetic rubbers. Report at A-3-A-4.

<sup>11/</sup> In food grade industrial phosphoric acid, impurities such as arsenic and heavy metals are reduced to trace amounts to conform to the Food Chemicals Codex (FCC) specifications. The primary uses for food grade acid are as an acidulant in cola beverages and sugar refining, as flavoring in jams and jellies, as a yeast nutrient, and in cottage cheese production. Report at A-4.

<sup>12/</sup> ACS-SEMI grade acid is a particularly pure form of 85-percent assay/concentration acid which meets the standards of the American Chemical Society (ACS) and the Semiconductor Equipment and Materials Institute (SEMI), and is used as a reagent in analytical chemistry, in semiconductor manufacture, and in processing applications requiring extremely high purity and low residues. Report at A-4.

grade acid. <sup>13/</sup>

Agricultural phosphoric acid cannot be used in any of the foregoing commercial applications, wherein the higher purity levels of industrial grade are required. Agricultural acid differs from industrial phosphoric acid in terms of its Tariff classification, its technical specifications, and its commercial use. We determine, as we did in our preliminary determinations in these cases, that agricultural grade phosphoric acid does not constitute a "like product" within the meaning of the statute.

The imported Belgian and Israeli industrial phosphoric acid is produced by the purified wet process. <sup>14/</sup> Industrial phosphoric acid is produced in the United States by the thermal or furnace process. <sup>15/</sup> Notwithstanding the different production processes involved in the manufacture of domestically produced acid as compared to the imported acid, <sup>16/</sup> Belgian respondents concede that, for the purpose of these investigations, the "like product" is domestically produced industrial phosphoric acid. <sup>17/</sup> Although the Israeli

---

<sup>13/</sup> Polyphosphoric acid, sometimes referred to as superphosphoric acid, is produced by the dehydration of phosphoric acid to yield "chained" phosphate molecules or polyphosphates. It is used in a very small, highly specialized market segment as a catalytic agent, a surfactant, in oil drilling, and in dyes and herbicides. Report at A-4.

<sup>14/</sup> Report at A-5.

<sup>15/</sup> Id.

<sup>16/</sup> The production process is but one of the considerations that may be relevant to the determination of the like product. See, e.g., 64K Dynamic Random Access Memory Components from Japan, Inv. No. 731-TA-270 (Final), USITC Pub. 1862 (June 1986), at 5-6; Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Final), USITC Pub. 1721 (July 1985) at 5.

<sup>17/</sup> Prehearing Brief of Respondents Societe Chimique Prayon-Rupel S.A. and Nitron Chemical Corp., at 4.

respondents argue that the product from Israel is not fungible, <sup>18/</sup> it is clear from the record that to a great extent, domestically produced industrial phosphoric acid and the imports from both Belgium and Israel are essentially substitutable and interchangeable in the market. <sup>19/</sup> We find, therefore, that the like product is industrial phosphoric acid.

Turning to the question of the scope of the domestic industry, 66 percent of the domestic production of industrial phosphoric acid is used in the captive manufacture of phosphates and 34 percent is sold in the open market. <sup>20/ 21/</sup> Although the product subject to investigation and the

---

<sup>18/</sup> Israeli respondents claim that industrial phosphoric acid from Israel cannot be certified for food grade uses and that it is not suitable for, or used in place of, ACS-SEMI grade or polyphosphoric acid. See, Post-Hearing Brief on Behalf of Negev Phosphates, Ltd. of Israel, at 3; Post-Conference Brief on Behalf of Negev Phosphates, Ltd. of Israel, at 4. Petitioners allege that some Israeli acid, although not certified for food use, is of food grade purity and has been sold to end users who require acid of food grade purity. Tr. at 37-38.

<sup>19/</sup> The bulk of domestically produced industrial phosphoric acid, and of the acid imported from Belgium and Israel, is technical grade industrial phosphoric acid. Report at A-4, A-48. Further, it is clear that the imports from Belgium and from Israel are purchased in lieu of domestically produced technical grade industrial phosphoric acid and are substitutable for such domestically produced acid in a variety of industrial uses. Tr. at 149; Report at A-42, A-45-A-49, A-57-A-59.

<sup>20/</sup> Report at A-3.

<sup>21/</sup> The open market, also cited in the Report as the merchant market or as trade sales, refers to arms length commercial transactions for the sale of industrial phosphoric acid, as distinguished from captive consumption, wherein the like product is consumed by the domestic manufacturer itself in the downstream production of sodium phosphates or other products. "Intracompany and intercompany transfers" refers to captive consumption, although intercompany transfers normally are transfers from a domestic producer to a subsidiary or other affiliated, yet technically distinct, entity. See, e.g., A-20, Table 5; A-22; A-23, Table 7.

like product compete with each other only in the open market, petitioners and respondents agree that the domestic industry must include production of the like product for captive consumption. <sup>22/</sup> Therefore, in keeping with our preliminary determinations and with our practice in other investigations, <sup>23/</sup> we include within the domestic industry all domestic production of the like product whether it is captively consumed or sold in the open market. Accordingly, we determine that the domestic industry consists of all producers of the like product, industrial phosphoric acid.

#### Condition of the domestic industry

In assessing the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, production, capacity, capacity utilization, shipments, inventories, employment and profitability. <sup>24/</sup>

U.S. production of industrial phosphoric acid dropped from 2.4 billion pounds in 1984 to 2.1 billion pounds in 1986. During January-March 1987, production fell 11 percent as compared to production during the same period in 1986. <sup>25/</sup>

---

<sup>22/</sup> Prehearing Brief of FMC Corporation and Monsanto Company, at 31-32. Prehearing Brief of Respondents Societe Chimique Prayon-Rupel S.A. and Nitron Chemical Corp., at 10-11; Post-Conference Brief on Behalf of Negev Phosphates, Ltd. of Israel, at 6.

<sup>23/</sup> See, e.g., Iron Ore Pellets from Brazil, Inv. No. 701-TA-235 (Final), USITC Pub. 1880 (July 1986) at 6; Titanium Sponge from Japan and the United Kingdom, Invs. Nos. 731-TA-161 and 162 (Final) USITC Pub. 1600 (Nov. 1984) at 4-5.

<sup>24/</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>25/</sup> Report at A-22, Table 6.



Average-for-period capacity to produce industrial phosphoric acid followed the same trend as production, dropping 13 percent from 1984 to 1986. <sup>26/</sup> This was due to plant closings and other reductions in plant capacity. <sup>27/</sup> Capacity remained relatively stable during January-March 1987, compared with the corresponding period in 1986. <sup>28/</sup>

Capacity utilization declined from 58.7 percent in 1984 to 56.3 percent in 1985, as production fell at a faster rate than capacity. Capacity utilization increased from 56.3 percent in 1985 to 60.5 percent in 1986, because capacity fell more rapidly than production. During January-March 1987, whereas production capacity remained relatively stable as compared to January-March 1986, production dropped by more than 10 percent causing a drop in capacity utilization to 60.3 percent, compared to 67.5 percent for the corresponding period in 1986. <sup>29/</sup>

Domestic producers' total shipments of industrial phosphoric acid dropped from 2.4 billion pounds in 1984 to 2.2 billion pounds in 1985, and dropped further to 2.1 billion pounds in 1986. In the first quarter of 1987, shipments fell 7 percent compared with such shipments during the corresponding period in 1986. <sup>30/</sup>

Intracompany or intercompany transfers, which are captively consumed in the production of downstream phosphates and which accounted for approximately

---

<sup>26/</sup> Id.

<sup>27/</sup> Id. at A-21.

<sup>28/</sup> Id. at A-22, Table 6.

<sup>29/</sup> Id.

<sup>30/</sup> Id. at A-22, A-23, Table 7.

65 percent of total shipments from 1984 through 1986, decreased from 1.5 billion pounds in 1984 to 1.4 billion pounds in 1985, and then increased by 1 percent in 1986. <sup>31/</sup>

Apparent total U.S. consumption declined during the period under investigation. <sup>32/</sup> Domestic shipments sold in the open market <sup>33/</sup> also declined during the period of investigation, falling from 782.2 million pounds in 1984 to 752.7 million pounds in 1985 to 705.0 million pounds in 1986. Domestic shipments dropped from 221.3 million pounds in January-March 1986 to 191.9 million pounds in January-March 1987. <sup>34/</sup>

The data show similar trends in domestic shipments for industrial use. During the period of investigation, more than two-thirds of all U.S. producers' domestic open market shipments were sold for industrial, rather than agricultural, uses. <sup>35/</sup> Shipments to industrial users dropped from 578.1 million pounds in 1984 to 520.3 million pounds in 1985, then increased to 532.2 million pounds in 1986. <sup>36/</sup> In the first quarter of 1987, such

---

<sup>31/</sup> Id. at A-23, Table 7.

<sup>32/</sup> Id. at A-20, Table 5.

<sup>33/</sup> In the open market, industrial phosphoric acid is sold for both industrial and agricultural uses. Industrial phosphoric acid is purer than agricultural grade acid and therefore is said to be overqualified for agricultural uses. Nevertheless, industrial phosphoric acid which cannot be sold to industrial users is sold to agricultural users, generally at significantly lower prices. Report at A-24-A-25, A-50-A-54. See also Tr. at 17-18.

<sup>34/</sup> Id. at A-23, Table 7.

<sup>35/</sup> Id. at A-24, Table 8; A-24-A-25, n.1.

<sup>36/</sup> Id. at A-24, Table 8.

shipments increased slightly over the corresponding period in 1986. <sup>37/</sup> The unit value (per pound) of shipments to industrial users remained the same from 1984 to 1985, and then declined in both 1986 and the first quarter of 1987. <sup>38/</sup> Inventories held by domestic producers fluctuated from 1983 to 1986. <sup>39/</sup>

Employment data for production and related workers producing industrial phosphoric acid also show declining trends. <sup>40/</sup> The average number of production and related workers, and their hours worked, declined from 1984 to 1986. <sup>41/</sup> Some producers reported significant layoffs during the investigatory period. <sup>42/</sup>

The Commission received usable income and loss data for five U.S. firms representing the majority of U.S. producers and over 95 percent of aggregate U.S. production of industrial phosphoric acid in 1986. The data on U.S. operations producing industrial phosphoric acid show financial declines. Net sales (including open market sales and intracompany transfers) declined during the period of investigation from \$433.7 million in 1984 to \$401.9 million in

---

<sup>37/</sup> Id.

<sup>38/</sup> Id.

<sup>39/</sup> The ratio of end-of-period inventories to total shipments of U.S. produced phosphoric acid has remained at relatively low levels during the period of investigation, because U.S. producers usually hold inventories of elemental phosphorous rather than industrial phosphoric acid. Id. at A-26, Table 9.

<sup>40/</sup> Id. at A-27, Table 10.

<sup>41/</sup> Id.

<sup>42/</sup> Id. at A-28.

1985 to \$384.4 million in 1986. <sup>43/</sup> Net sales for the interim period 1987 were \$94.8 million, a decline of 9 percent from the level of net sales in interim 1986. <sup>44/</sup> Operating income also declined, from \$20.2 million in 1984 to \$14.5 million in 1985 to \$5.5 million in 1986. Comparing interim periods 1986 and 1987, operating income fell 63 percent. <sup>45/</sup> Operating margins dropped from 4.7 percent in 1984 to 1.4 percent in 1986. <sup>46/</sup> In the period January-March 1987, the operating margin was 0.8 percent, down from 2.0 percent in January-March 1986. <sup>47/</sup>

Trends in open market sales also show a decline. <sup>48/</sup> Open market sales dropped 14 percent from 1984 to 1986. <sup>49/</sup> Although operating income margins for open market sales are higher than for the industry's industrial phosphoric acid operations as a whole, they declined from 11.9 percent in 1984 to 3.4

---

<sup>43/</sup> Id. at A-31, Table 12.

<sup>44/</sup> Id.

<sup>45/</sup> Id.

<sup>46/</sup> Id.

<sup>47/</sup> Id.

<sup>48/</sup> In assessing material injury to the domestic industry, the Commission has examined conditions within both open and captive markets. See, e.g., Titanium Sponge from Japan and the United Kingdom, Invs. Nos. 731-TA-161 and 162 (Final), USITC Pub. 1600 (Nov. 1984) at 4-7; Chlorine from Canada, Inv. No. 731-TA-90 (Preliminary), USITC Pub. 1249 (May 1982) at 5-6; Melamine from Brazil, Inv. No. 731-TA-107 (Preliminary), USITC Pub. 1303 (Oct. 1982) at 4, n.5.

<sup>49/</sup> Report at A-33, Table 14.

percent in 1986. <sup>50/</sup> In interim 1987, open market sales declined 10 percent, and operating margins on open market sales dropped from 4.8 percent to 2.1 percent, as compared to interim 1986. <sup>51/</sup>

Based on our overall assessment of conditions in the domestic industry, we conclude that the domestic industry is experiencing material injury.

#### Cumulation

The petitioners argue that we should cumulate the imports from Belgium and Israel in determining whether material injury is by reason of those imports. The Commission must cumulatively assess the volume and effect of imports if the imports: (1) are subject to investigation; (2) compete with both other imports and the domestic like product; and (3) are marketed within a reasonably coincidental period. <sup>52/</sup>

In determining whether the imported products compete with each other and with the like product in the United States market, and whether the marketing of imports is reasonably coincident, the Commission has considered the following factors:

(1) the degree of fungibility between imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;

---

<sup>50/</sup> Id.

<sup>51/</sup> Id.

<sup>52/</sup> 19 U.S.C. § 1677(7)(C)(iv); H.R. Rep. No. 1156, 98th Cong., 2d Sess. 173 (1984).

(3) the existence of common or similar channels of distribution of imports from different countries and the domestic like product;

(4) whether the imports are simultaneously present in the market.

These factors provide a basis on which to decide whether the statutory criteria for cumulation are established. This list is not exhaustive and no single factor is determinative. <sup>53/</sup>

In the instant investigations, imports of industrial phosphoric acid from both Belgium and Israel are subject to investigation, have been present simultaneously in the United States market over much, if not all, of the period of investigation, <sup>54/</sup> and also have competed with the domestic industry for sales in the open market. <sup>55/</sup>

The remaining factor is whether the imports from Belgium and from Israel compete with one another. It is clear that while the Belgian and the Israeli respondents export acid of varying assays/concentrations and purities, in the main, their products are fungible. <sup>56/</sup>

Respondents, however, argue that the Commission must not cumulate, because imports from Belgium and Israel do not compete with each other "in any

---

<sup>53/</sup> See, e.g., Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986) at 8, n.26.

<sup>54/</sup> Report at A-16, A-39-A-41; Tr. at 29-32.

<sup>55/</sup> Id. See also, Report at A-57-A-59; Tr. at 30-34.

<sup>56/</sup> Report at A-42-A-48.

meaningful sense" <sup>57/</sup> due to the fact that they are sold in different geographic markets. <sup>58/</sup> In our preliminary investigations, we determined that cumulation was appropriate, "because the data regarding geographic distribution show competition between imports of this fungible commodity in at least one market." <sup>59/</sup>

Additional information obtained in the final stage of these investigations indicates that both domestic producers and importers "generally ship to customers within 500 miles of their production facility or holding terminal." <sup>60/</sup> The principal importer of Belgian acid, Nitron Chemical Corp., has import storage terminals at Bayonne, New Jersey and near Houston, Texas. <sup>61/</sup> The storage terminals for imported Israeli acid are located in Savannah, Georgia and Los Angeles, California. <sup>62/</sup> Thus, there is geographic overlap of the 500-mile radii surrounding facilities storing Israeli acid and facilities storing Belgian acid in parts of North Carolina

---

<sup>57/</sup> Certain Carbon Steel Pipes and Tubes from the People's Republic of China, the Philippines, and Singapore, Invs. Nos. 731-TA-292 through 296 (Preliminary), USITC Pub. 1796 (Dec. 1985) at 17.

<sup>58/</sup> Prehearing Brief of Respondents Societe Chimique Prayon-Rupel S.A. and Nitron Chemical Corp., at 25-33; Post-Conference on Behalf of Negev Phosphates, Ltd. of Israel, at 6-8.

<sup>59/</sup> Industrial Phosphoric Acid from Belgium and Israel, Invs. Nos. 701-TA-285 and 286 and 731-TA-365 and 366 (Preliminary), USITC Pub. 1931 (Dec. 1986) at 12.

<sup>60/</sup> Report at A-42.

<sup>61/</sup> *Id.*

<sup>62/</sup> Post-Conference Brief on Behalf of Negev Phosphates, Ltd. of Israel, at 7.

and Virginia, and in eastern Louisiana and western Alabama. <sup>63/</sup>

Moreover, during 1986, nine percent of the imports reported from Belgium entered the United States through Savannah, the principal point of entry for imported Israeli acid. <sup>64/</sup> Respondents provided data indicating that deliveries of Belgian and Israeli acid have been made to a number of purchasers in states outside the 500-mile radii of their import terminals, and the volumes of these deliveries are not insignificant. <sup>65/</sup> In addition, it appears that importers of Israeli and Belgian acid employ similar channels of distribution. <sup>66/</sup>

The Commission staff contacted numerous distributors, brokers, and end users to whom petitioners allege Belgian and/or Israeli acid has been sold or offered for sale. The results of these inquiries, although business confidential, indicate that substantial quantities of both Belgian and Israeli acid have been sold, or offered for sale, in areas far beyond 500 miles from respondents' import terminals. <sup>67/</sup> Thus, the extent of competition between the imports, as reflected in the volume of acid sold or offered for sale, as well as the geographic areas involved, cannot be said to be "meaningless." We determine that imports from Belgium and Israel do compete with one another.

We therefore cumulate imports from Belgium and Israel in our evaluation

---

<sup>63/</sup> Report at A-43.  
<sup>64/</sup> Id. at A-43, n.1.  
<sup>65/</sup> Id. at A-44.  
<sup>66/</sup> Id. at A-42-A-43.  
<sup>67/</sup> Id. at A-44-A-47.



of their volume and their effect on prices. <sup>68/</sup> <sup>69/</sup>

Material injury by reason of unfairly traded imports

In determining whether a domestic industry is materially injured "by reason of" imports, the Commission is to consider, among other factors, the volume of imports of the merchandise subject to investigation, and the effect of imports on the domestic industry and domestic prices. <sup>70/</sup>

Respondents argue that the volume of imports subject to investigation is too low to constitute a "significant" cause of material injury to the domestic industry. <sup>71/</sup> Yet, as recognized in the legislative history to the Trade Agreements Act of 1979, for some industries an apparently small volume of

---

<sup>68/</sup> Belgian respondents have argued that cumulation is also inappropriate because the periods when "significant" volumes of Belgian imports and of Israeli imports first began to enter the United States, and the subsequent "trends" with respect to the absolute and relative volumes of imports from each country, "have not been coincident." Prehearing Brief of Respondents Societe Chimique Prayon-Rupel S.A. and Nitron Chemical Corp., at 32. We are not persuaded that the differences in the trends regarding the respective imports, even if they were material to our analysis as to cumulation, are that significant. In any case, we determine that the statutory criteria for cumulation have been met.

<sup>69/</sup> For purposes of our analysis in the Israeli countervailing duty investigation (Inv. No. 701-TA-286), in assessing the volume and effect of both LTFV imports from Belgium and subsidized imports from Israel, we are "cross-cumulat[ing]" said imports in accordance with the decision of the Court of Appeals for the Federal Circuit in *Bingham & Taylor Division, Virginia Industries, Inc. v. United States*, 815 F.2d 1482 (CAFC 1987).

<sup>70/</sup> 19 U.S.C. § 1677(7)(B).

<sup>71/</sup> See Post-Hearing Brief on Behalf of Negev Phosphates, Ltd. of Israel, at 2; Posthearing Brief of Respondents Societe Chimique Prayon-Rupel S.A. and Nitron Chemical Corp., at 1, 5.

imports may cause harm that is not inconsequential. <sup>72/</sup> For example, a certain volume of imports in a market dominated by a relatively healthy domestic industry may be incapable of causing material injury. However, in a market where both consumption and the performance of the domestic industry are in decline, and where there is severe price competition, that same volume of imports, even if it should lead to a relatively small number of lost sales, may cause substantial price suppression or depression, thereby reducing profitability throughout the domestic industry. Thus, whether a particular volume of imports is a significant cause of material injury depends upon the conditions of trade in the industry, the nature of the industry itself, and the economic conditions of the industry at the time the imports become a factor in the market.

Over the period of investigation, the combined volume of imports from Belgium and Israel, as reflected in adjusted official import statistics of the U.S. Department of Commerce, accounted for over 90 percent of all imports of industrial phosphoric acid. <sup>73/</sup> The cumulative volume of imports from Belgium and Israel increased from 21.7 million pounds in 1984 to 47.6 million pounds in 1985, and increased to 53.6 million pounds in 1986. <sup>74/</sup> The market share of the cumulative volume of imports grew steadily during the period of investigation. As a percentage of total apparent domestic

---

<sup>72/</sup> See S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979).

<sup>73/</sup> Report at App. C, A-93. The data obtained in confidential Commission questionnaires shows a similar pattern. Id. at A-40.

<sup>74/</sup> Id. at App. C, A-93. (Official adjusted statistics of the Department of Commerce).

consumption, imports from Belgium and Israel increased from 0.9 percent in 1984 to 2.2 percent in 1985, to 2.5 percent in 1986. <sup>75/</sup> For the interim period January-March 1987, Commerce statistics show the ratio was 2.6 percent, as compared to 2.0 percent for the corresponding period in 1986. <sup>76/</sup> When the imports are compared to the volume of consumption in the open market, where the imports and domestic like product compete for sales, the trends are similar. According to adjusted official statistics of the Department of Commerce, imports from Belgium and Israel constituted 2.7 percent of open market consumption in 1984, 5.9 percent in 1985, and 7.0 percent in 1986. <sup>77/</sup> In interim 1987, the imports accounted for 6.9 percent of open market consumption as compared to 4.9 percent in interim 1986. <sup>78/</sup>

It is particularly significant that the sharpest increase in the absolute and in the relative volume of imports, as well as in the ratio of the value of imports to the value of total and open market domestic consumption, occurred in 1984-1985, when the performance of the domestic industry suffered a very marked decline. <sup>79/</sup>

Domestically produced industrial phosphoric acid and the imported

---

<sup>75/</sup> Report at App. C, A-94. Data obtained in confidential Commission questionnaires show a similar pattern. Id. at A-41.

<sup>76/</sup> Report at App. C, A-94. Confidential data obtained by the Commission show that the ratio of cumulated imports to apparent U.S. consumption was the same in interim 1987 as it was in interim 1986. Report at A-41.

<sup>77/</sup> Report at App. C, A-94.

<sup>78/</sup> Id. Data obtained in confidential Commission questionnaires show similar trends. Report at A-41.

<sup>79/</sup> Report at A-20, A-22, A-24, A-30-A-31, A-47; App. C, A-95.

industrial phosphoric acid are, for the most part, interchangeable. <sup>80/</sup>  
Price then becomes a major factor in the decision to purchase, and the data indicate that minor differences in price can influence purchasers to change suppliers. <sup>81/</sup>

Over the period of investigation, the prices of the imports from Belgium and Israel have generally been below those of the domestic industry. <sup>82/</sup>  
The Commission gathered quarterly price data for the sale of industrial phosphoric acid from the first quarter of 1984 through the first quarter of 1987. <sup>83/</sup> Domestic prices were generally stable during 1984 and 1985, yet they declined sharply over the period from the first quarter of 1986 through the first quarter of 1987. <sup>84/</sup> U.S. producer's technical grade prices were approximately four to nine percent lower in January-March 1987 than they were in 1984. <sup>85/</sup>

---

<sup>80/</sup> We note that there is evidence that some purchasers of industrial phosphoric acid do not care where the acid they buy originates, see Report at A-45, and that the imported and domestic products may even be mixed in the same storage tank. See Tr. at 25. See also, Tr. at 149-150.

<sup>81/</sup> Report at A-48.

<sup>82/</sup> Petitioners have argued that in a fungible commodity market such as industrial phosphoric acid which is characterized by extreme price sensitivity, a relatively small number of sales, or even offers to sell, at reduced prices can exert a strong depressive effect on market pricing. Tr. at 14-15, 17, 30-32.

<sup>83/</sup> Price questionnaires with usable data were received from five domestic producers, accounting for 100 percent of domestic shipments in 1986, and four importers of phosphoric acid, accounting for almost all imports from Belgium and Israel.

<sup>84/</sup> Report at A-49-A-54.

<sup>85/</sup> Id. at A-49.

With respect to the price trends for imports, <sup>86/</sup> to a certain extent, the data are mixed. In some quarters, imported acid from Belgium or from Israel was sold to end users or to distributors at prices higher than the prices charged by the domestic industry. <sup>87/</sup> Yet in the market for 75-percent assay technical grade acid, wherein the bulk of sales of both imported acid and domestic acid occurred, <sup>88/</sup> the data show a significant degree of underselling by importers; and in the market for 80-percent assay technical grade acid, there is even a greater degree of underselling. <sup>89/</sup> Further, to the extent there is evidence of overselling of the imported product, both the volumes of imported acid sold at such higher prices, and the number of transactions involved, were relatively small. <sup>90/ 91/</sup> In

---

<sup>86/</sup> Although the data obtained with respect to the weighted-average prices for sales by the importers to end users and distributors are business confidential, and therefore may only be discussed in general terms in the opinion, we may discuss the trends with respect to the data regarding underselling.

<sup>87/</sup> Report at A-50-A-53.

<sup>88/</sup> Id. at A-43, A-48.

<sup>89/</sup> Id. at A-50-A-53.

<sup>90/</sup> Id.

<sup>91/</sup> In most cases, overselling occurred in sales to end users. In instances where the volume of acid being purchased is small, the end user may have less leverage in negotiating a lower purchase price. There also is evidence, obtained in staff telephone conversations with domestic purchasers, that many of the sales of imported acid at prices higher than U.S. producers' average prices may be localized sales, wherein the domestic producers cannot effectively compete due to high freight costs. Domestic producers traditionally quote prices on an f.o.b. freight-equalized basis, whereby the customer pays only for the equivalent of the freight cost from the nearest production facility of any domestic supplier. Where the domestic seller's production facility is not the closest to the customer, the seller must pay the difference between freight charges from the nearest domestic production facility and its own, more distant, production facility. See Report at A-48.

assessing the impact of cumulated imports on prices in the U.S. market, we consider the volumes of the imported acid sold at specified average prices, the testimony of witnesses and other record evidence as to lost sales due to underselling by respondents, and the domestic industry's price reductions to meet the competition from the subject imports. <sup>92/</sup> We are persuaded that the presence of the lower priced LTFV and subsidized imports in the market has had a suppressive and depressive effect on prices. In our view, although there may be other causes contributing to the downturn in the domestic industry's performance, <sup>93/</sup> the suppressive and depressive effect of imports on domestic prices has been a significant cause of reduced profitability for the domestic industry.

Therefore, we determine that the domestic industry producing industrial phosphoric acid is materially injured by reason of imports from Belgium which are sold at LTFV and imports from Israel which are subsidized and sold at LTFV.

---

<sup>92/</sup> Tr. at 30-32, 42-43, 84-85; Report at A-57-A-59. Petitioners have also alleged that sales of industrial phosphoric acid by the domestic industry to agricultural users, at prices significantly lower than the prices prevailing in the industrial market, are further evidence of injury being inflicted on the domestic producers by the subject imports. Report at A-24, n.1. Although such sales may, as respondents allege, be due in part to producers' need to keep production facilities in operation, id., the presence of the imports in the industrial market certainly contribute to the oversupply, resulting in agricultural sales.

<sup>93/</sup> Such factors as the decline in exports by the domestic producers, and a decline in the demand for sodium phosphates and other downstream products produced by the domestic industry with phosphoric acid, may indeed, as argued by respondents, have adverse effects upon the domestic industry. See Posthearing Brief of Respondents Societe Chimique Prayon-Rupel S.A. and Nitron Chemical Corp., at 6-7; Post-Conference Brief on Behalf of Negev Phosphates, Ltd. of Israel, at 21-22.

## DISSENTING VIEWS OF CHAIRMAN LIEBELER

Industrial Phosphoric Acid  
from Belgium and Israel  
Invs. No. 731-TA-365-366, and 701-TA-286(Final)

August 12, 1987

I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of industrial phosphoric acid from Belgium and Israel which the Department of Commerce (Commerce) has determined are being sold at less than fair value. I also determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of industrial phosphoric acid from Israel which the Department of Commerce (Commerce) has determined are being subsidized.<sup>1/</sup>

I concur with the majority in their definition of the like product and the domestic industry. I concur with

---

<sup>1/</sup> Since there is an established domestic industry producing industrial phosphoric acid, material retardation was not an issue in these investigations and will not be discussed further.

Vice Chairman Brunsdale in her discussions of the captive and non captive producers, and the condition of the industry. My views on cumulation and causation follow.

Material Injury by Reason of Imports

In order for a domestic industry to prevail in a final investigation, the Commission must determine that the dumped or subsidized imports cause or threaten to cause material injury to the domestic industry producing the like product. Only if the Commission finds both injury and causation, will it make an affirmative determination in the investigation.

Before analyzing the data, however, the first question is whether the statute is clear or whether one must resort to the legislative history in order to interpret the relevant sections of the import relief law. In general, the accepted rule of statutory construction is that a statute, clear and unambiguous on its face, need not and cannot be interpreted using secondary sources. Only statutes that are of doubtful meaning are subject to such statutory interpretation.<sup>2/</sup>

---

<sup>2/</sup> C. Sands, Sutherland Statutory Construction §45.02 (4th ed., 1985).



The statutory language on causation, "by reason of," lends itself to no easy interpretation, and has been the subject of much debate by past and present commissioners. Clearly, well-informed persons may differ as to the interpretation of the causation section of Title VII. Therefore, the legislative history becomes helpful in interpreting Title VII.

The ambiguity arises in part because it is clear that the presence in the United States of additional foreign supply will always make the domestic industry worse off. Any time a foreign producer exports products to the United States, the increase in supply, ceteris paribus, must result in a lower price of the product than would otherwise prevail. If a downward effect on price, accompanied by a Department of Commerce dumping or subsidy finding and a Commission finding that financial indicators were down were all that were required for an affirmative determination, there would be no need to inquire further into causation.

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

[T]he ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports.<sup>3/</sup>

The Finance Committee emphasized the need for an exhaustive causation analysis, stating, "the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury."<sup>4/</sup>

The Senate Finance Committee acknowledged that the causation analysis would not be easy: "The determination of the ITC with respect to causation, is under current law, and will be, under section 735, complex and difficult, and is a matter for the judgment of the ITC."<sup>5/</sup> Since the domestic industry is no doubt worse off by the presence of any imports (whether LTFV or fairly traded) and Congress has directed that this is not enough upon which to base an affirmative determination, the Commission must delve further to find what condition Congress has attempted to remedy.

---

<sup>3/</sup> Report on the Trade Agreements Act of 1979, S. Rep. No. 249, 96th Cong. 1st Sess. 75 (1979).

<sup>4/</sup> Id.

<sup>5/</sup> Id.

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

This Act is not a 'protectionist' statute designed to bar or restrict U.S. imports; rather, it is a statute designed to free U.S. imports from unfair price discrimination practices. \* \* \* The Antidumping Act is designed to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry.<sup>6/</sup>

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

[T]he Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price.<sup>7/</sup>

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

---

<sup>6/</sup> Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

<sup>7/</sup> Id.

to maximize profits.<sup>8/</sup> Congress was obviously familiar with the economist's tools: "[I]mporters as prudent businessmen dealing fairly would be interested in maximizing profits by selling at prices as high as the U.S. market would bear."<sup>9/</sup>

An assertion of unfair price discrimination should be accompanied by a factual record that can support such a conclusion. In accord with economic theory and the legislative history, foreign firms should be presumed to behave rationally. Therefore, if the factual setting in which the unfair imports occur does not support any gain to be had by unfair price discrimination, it is reasonable to conclude that any injury or threat of injury to the domestic industry is not "by reason of" such imports.

In many cases unfair price discrimination by a competitor would be irrational. In general, it is not rational to charge a price below that necessary to sell one's product. In certain circumstances, a firm may try

---

<sup>8/</sup> See, e.g., P. Samuelson & W. Nordhaus, Economics 42-45 (12th ed. 1985); W. Nicholson, Intermediate Microeconomics and Its Application 7 (3d ed. 1983).

<sup>9/</sup> Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

to capture a sufficient market share to be able to raise its price in the future. To move from a position where the firm has no market power to a position where the firm has such power, the firm may lower its price below that which is necessary to meet competition. It is this condition which Congress must have meant when it charged us "to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry."<sup>10/</sup>

In Certain Red Raspberries from Canada, I set forth a framework for examining what factual setting would merit an affirmative finding under the law interpreted in light of the legislative history discussed above.<sup>11/</sup>

The stronger the evidence of the following . . . the more likely that an affirmative determination will be made: (1) large and increasing market share, (2) high dumping margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low elasticity of supply of other imports).<sup>12/</sup>

---

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

<sup>11/</sup> Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19 (1985) (Additional Views of Vice Chairman Liebeler).

<sup>12/</sup> Id. at 16.

The statute requires the Commission to examine the volume of imports, the effect of imports on prices, and the general impact of imports on domestic producers.<sup>13/</sup> The legislative history provides some guidance for applying these criteria. The factors incorporate both the statutory criteria and the guidance provided by the legislative history. Each of these factors is evaluated in turn after a discussion of cumulation.

#### Cumulation

I determine that the subject imports of industrial phosphoric acid from Belgium and Israel compete with each other and with the like products of the domestic industry.<sup>14/</sup> Therefore, I cumulate subsidized and dumped imports of industrial phosphoric acid from Belgium and Israel with dumped imports of industrial phosphoric acid from Belgium.

---

<sup>13/</sup> 19 U.S.C. § 1677(7)(B)-(C) (1980 & cum. supp. 1985).

<sup>14/</sup> The statute directs the Commission to "cumulatively assess the volume and effects of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market." 19 U.S.C. §1677(7)(c)(iv).

Causation analysis

The first factor in my causation analysis is the market share of the cumulated imports. Examining import penetration is important because unfair price discrimination has as its goal, and cannot take place in the absence of, market power. The market penetration of cumulated imports subject to investigation increased from 0.9 percent in 1984 to 2.2 percent in 1985 and 2.5 percent in 1986.<sup>15/</sup> Thus, cumulated imports represent a very small and stable market share. This factor is consistent with a negative determination.

---

<sup>15/</sup> Report at A-94 (Table C-3). The penetration figures presented here are measured on a quantity basis. On a value basis, similar cumulated imports accounted for 0.9 percent of consumption in 1984, 2.0 percent in 1985 and 2.4 in 1986. Report at A-95 (Table C-4). The subject imports accounted for 2.0 and 2.6 percent (by quantity) and 1.9 and 2.8 percent (by value) of apparent U.S. consumption in the first quarter of 1986 and 1987, respectively. Id. The import and market penetration data cited here are based on adjusted official statistics of the U.S. Department of Commerce because import statistics and market penetration data compiled from questionnaire responses are confidential. The data presented show similar trends to those of the confidential data.

The second factor is a high margin of dumping or subsidy. The higher the margin, ceteris paribus, the more likely it is that the product is being sold below the competitive price<sup>16/</sup> and the more likely it is that the domestic producers will be adversely affected. In these investigations, the weighted-average margin for Belgium is 14.67 percent and less than 7 percent for Israel.<sup>17/</sup> Using those margins, the quantity weighted-average margin is around 12 percent.<sup>18/</sup> These margins are low to moderate and are consistent with a negative determination.

---

<sup>16/</sup> See text accompanying note 9, supra.

<sup>17/</sup> The actual weighted-average margin for Israel is confidential as it would reveal confidential import volumes.

<sup>18/</sup> Report at A-11-13. This figure represents a weighted average of the dumping margin found by Commerce for imports of industrial phosphoric acid from Belgium (14.67 percent) and a weighted-average margin for imports from Israel. For Haifa, the margin used was the total subsidy found by Commerce for that company (19.46 percent), since that company's export subsidies were greater than its dumping margin. For all other producers/exporters, the margin used was the dumping margin found by Commerce for all imports from Israel (6.82 percent) plus the domestic subsidies found by Commerce for all companies other than Haifa (0.54 percent), since those companies' export subsidies were less than their dumping margins. Only domestic subsidies were included in the calculation because the export subsidy is reflected in the dumping margin ( 19 U.S.C. § 772(d)(1)(D). In all calculations, the weighting was based on the volume of exports to the United States during 1986.



The third factor is the homogeneity of the products. The more homogeneous the products, the greater will be the effect of any allegedly unfair practice on domestic producers. Evidence presented in the staff report indicates that purchasers find the quality of the domestic and imported products to be similar. Although there are certain quality variations among the domestic and imported product such as the level of impurities in the industrial phosphoric acid, and although it is true that imported Belgian and Israeli acid is manufactured by the "wet process" whereas the domestic product is manufactured by the "thermal" or "furnace" process, for most uses the domestic and imported product are highly substitutable.<sup>19/</sup> I find that the domestic and imported products are substitutable.

As to the fourth factor, evidence of declining domestic prices, ceteris paribus, might indicate that

---

<sup>19/</sup> Report at A-7, A-10-14. Industrial phosphoric acid is produced in several different grades, including technical grade acid, as well as purer forms of industrial phosphoric acid such as food grade acid, ACS-SEMI grade and polyphosphoric acid. In the technical grade acid, the bulk of the domestic and imported  
(Footnote continued on next page)

domestic producers were lowering their prices to maintain market share. Prices for the domestic product have declined during the period of investigation. U.S. producers' and importers' weighted-average f.o.b. prices for sales to distributors and end users declined slightly.<sup>20/</sup> This factor is consistent with an affirmative determination.

The fifth factor is foreign supply elasticity (barriers to entry). If there is low foreign elasticity of supply (or barriers to entry) it is more likely that a producer can gain market power. Imports of industrial phosphoric acid from countries other than Belgium and Israel have only accounted for a very small portion of domestic consumption over the period of

---

(Footnote continued from previous page)  
acid are basically substitutable. There is some substitution of the domestic for the imported product in food grade as well but none in the ACS-SEMI or polyphosphoric acid.

<sup>20/</sup> Report at A-48-A-57. The Commission requested all producers of phosphoric acid to provide price data for sales to distributors and end users. The information requested included quarterly price and shipment data for sales of 75-percent and 80-percent assay technical grade acid, and 75-percent assay food grade acid, plus information on any sales to the agricultural market regardless of assay level. Report at A-48.

investigation.<sup>21/</sup> However, there has been entry into the United States market by foreign producers.<sup>22/</sup> I conclude that barriers to entry are not high. This factor is consistent with a negative determination.

These factors must be considered in each case. The domestic and imported products are substitutable, domestic prices declined over the last year and a half. However, cumulated market share is very low, barriers to entry are not high, and the dumping and subsidy margins are low. on balance, these factors favor a negative determination.

#### Threat of Material Injury

As the instant investigations involve subsidies as well as dumping, the Commission must consider "the nature of the subsidy (particularly as to whether the subsidy is an export subsidy."<sup>23/</sup> In the countervailing duty investigation, the subsidy at issue is an export subsidy. However, other factors outweigh the fact that the subsidy is an export subsidy.

---

<sup>21/</sup> Report at A-41, Tables 20 and 21 and Report at A-94 and A-95, Tables C-3 and C-4.

<sup>22/</sup> For example, Brazil and Taiwan began exporting industrial phosphoric acid to the U.S. in 1986. Official Statistics of the U.S. Department of Commerce.

<sup>23/</sup> 19 U.S.C. 1677(7)(F)(i)(I).

Prayon, the sole Belgian producer of industrial phosphoric acid, operated at high levels of capacity utilization during the entire period of investigation, and at very high levels during 1986. Moreover, capacity utilization is projected by Prayon to continue at that very high level for 1987 and 1988. In addition, Prayon exports large amounts of industrial phosphoric acid to countries other than the United States. However, there is no information in the record which indicates that Prayon will increase its capacity or capacity utilization, or will divert exports from those other markets to the U.S. market.<sup>24/</sup>

There are two known Israeli producers of industrial phosphoric acid: Negev Phosphates, Ltd. (Negev) and Haifa Chemicals, Ltd. (Haifa). Haifa exported very small quantities of industrial phosphoric acid to the United States in 1985 and 1986.<sup>25/</sup> Negev operated at extremely high rates of capacity utilization throughout the period of investigation. Both producers have other export

---

<sup>24/</sup> Report at A-18 (Table 3) and A-20 (Table 5).

<sup>25/</sup> Report at A-18. The actual quantities are confidential.

markets for industrial phosphoric acid.<sup>26/</sup> This suggests that the Israeli producers could increase capacity or capacity utilization or divert exports from third markets and increase exports to the United States. However, there is no information in the record of these investigations which indicates that the Israeli producers will do so.

Therefore, I conclude that there is no threat of material injury by reason of dumped or subsidized imports of industrial phosphoric acid from Israel or dumped imports from Belgium.

#### Conclusion

Therefore, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of industrial phosphoric acid from Belgium which Commerce has determined are being sold at less than fair value. I also determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of industrial phosphoric acid from Israel which

---

<sup>26/</sup> The exact figures are confidential. Report at A-29 (Table 4).

the Department of Commerce has determined are being sold at less than fair value and are receiving benefit of subsidy.

## DISSENTING VIEWS OF VICE CHAIRMAN ANNE E. BRUNSDALE

Industrial Phosphoric Acid from Belgium and Israel  
Investigations No. 701-TA-286 and 731-TA-365 and 366 (Final)

August 12, 1987

Based on the record in these cases, I find that the domestic industrial phosphoric acid industry is not materially injured or threatened with material injury by reason of unfair imports from Belgium and Israel. I concur with the majority's definition of like product and with their reasoning on cumulation. I also agree with their definition of the domestic industry, although I have some additional views on the importance of captive markets in this case. I disagree with the majority's analysis of the domestic industry's condition and their conclusion that the domestic industry was injured by reason of unfair imports. Finally, I determine that the domestic industry is not threatened with material injury by reason of unfair imports. My views on those areas in which I disagree with the majority are set out below.

Captive Markets

Several times in recent years, the Commission has considered cases involving intermediate products such as industrial

phosphoric acid. In those cases, as here, the producers of the intermediate product sold a portion of it on the open market and consumed the rest "captively" -- in the production of other products by their subsidiaries or related companies. Producers in this case urged the Commission to consider the impact of unfair imports on only the open market segments of the industry.<sup>1</sup> I agree with the majority that the Commission should define the domestic industry to include captive transfers and open market shipments of the product. However, I disagree with the majority's suggestion that captive shipments should be treated differently from open market shipments for purposes of analyzing causation. I believe that an accurate analysis of causation requires the Commission to look at the captive and the open market segments of the industrial phosphoric acid industry as a whole.

Integrated firms producing an intermediate product that they then use to make an end product have simply decided to avoid participating in the open market for the intermediate product by investing downstream.<sup>2</sup> Nevertheless, their captive

---

1

See Petitioner's Prehearing Brief at 36-39.

2

Reasons for doing this may include efficiency,  
(Footnote continued on next page)



production is not shielded from the forces affecting the open market for that product. If the price of the intermediate product falls in the open market and end-users can purchase that product at a lower price, integrated producers will have to reduce the cost of their intermediate product; otherwise their end products will not be competitive. If the open market price of the intermediate product falls low enough, integrated producers may have to turn to the open market to keep the cost of their end products low.<sup>3</sup> Integrated producers must pay close attention to the market price of the intermediate product to ensure the competitiveness of their end products and to respond to opportunities for purchasing and selling the intermediate

---

(Footnote continued from previous page)  
 assurance of a reliable supply, quality control, and cost savings (e.g., savings on middleman fees, sales or marketing costs, promotional costs, or inspection fees). For a discussion of other reasons firms would choose to integrate vertically, see B. Klein, R. Crawford and A. Alchian, Vertical Integration, Appropriate Rents and the Competitive Contracting Process, 21 J. of Law & Econ. 297 (1978).

3  
 Conversely, if the price goes high enough, they will want to produce more for the open market. One limitation on the ability of producers to turn to the open market is the need to run their elemental phosphorous facilities (the primary input of industrial phosphoric acid). At some point, however, a low price for industrial phosphoric acid will make it uneconomical for producers to keep even their elemental phosphoric acid facilities running.

product in the open market. Clearly, transactions in the open market affect captive producers. Therefore, to gauge accurately the effects of dumped or subsidized imports on a domestic industry, the Commission must consider both captive and noncaptive production.

In Iron Ore Pellets from Brazil, the most recent Commission case involving captive and noncaptive markets, a unanimous Commission decided to consider the effect of dumped imports on both captive and noncaptive markets.<sup>4</sup> There, as in the present case, domestic firms produced an intermediate product, sold some of it in the open market, and consumed the rest captively. The Commission rejected the petitioner's request to analyze the effect of dumped imports on only the open market, stating that "since there is no statutory provision allowing the separation of captive and merchant producers in the domestic industry, we include both in the domestic industry."<sup>5</sup> In that

4

Iron Ore Pellets from Brazil, Inv. No. 701-TA-235 (Final), USITC Pub. 1880, at 6 (July 1986).

5

Id. This view is also cited in an earlier unanimous Commission decision. In Hydrogenated Castor Oil from Brazil, the Commission included in the domestic industry a producer that used a substantial portion of its hydrogenated castor oil captively. The Commission in that case noted the necessity of analyzing the impact of unfair  
(Footnote continued on next page)

case the Commission analyzed causation by looking at the captive and open markets as a whole.<sup>6</sup> Based on previous Commission decisions and the reality that open market transactions have an immediate impact on captive sales, I believe that to analyze the effect of the dumped imports correctly in these investigations, I must focus on the industry as a whole.

### Condition of the Industry

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic consumption and shipments, U.S. production, productive capacity, capacity utilization, inventories, employment, and financial performance.<sup>7</sup> Based on both value and quantity, apparent consumption declined from 1984 through 1986, and declined in the first quarter of 1987 when compared with the same period in

---

(Footnote continued from previous page)  
imports on the entire market, even if captive sales were a significant part of the market. See Hydrogenated Castor Oil from Brazil, Inv. No. 731-TA-236 (Final), USITC Pub. 1804, at 4 (January 1986).

<sup>6</sup> Iron Ore Pellets from Brazil, supra note 4, at 6.

<sup>7</sup> 19 U.S.C. 1677(7)(C)(iii).

8  
 1986. Domestic production of industrial phosphoric acid dropped from 2.4 to 2.1 billion pounds from 1984 through 1986, and the domestic industry's capacity to produce industrial phosphoric acid decreased from 4.0 to 3.5 billion pounds.<sup>9</sup> Capacity utilization edged up slightly, from 58.7 to 60.5 percent, apparently because capacity dropped more rapidly than production.<sup>10</sup> Inventories increased slightly between 1984 and 1986, from 54 to 55 million pounds,<sup>11</sup> but then dropped substantially in the first quarter of 1987 to 37 million pounds.<sup>12</sup>

The number of employees producing industrial phosphoric acid dropped from 227 to 196 employees from 1984 through 1986,<sup>13</sup> and

---

8  
See Staff Report at A-20 (Table 5) (confidential).

9  
See id. at A-22 (Table 6). Capacity to produce is an average of capacity over the period. Comparing the first quarters of 1987 and 1986, production declined and average capacity remained relatively stable. Id.

10  
See id. at A-21, A-22 (Table 6). Capacity utilization in the first quarter of 1987 was down slightly to 60.3 percent. Id.

11  
Id. at A-26 (Table 9).

12  
Id.

13  
Id. at A-27 (Table 10). In the first quarter of 1987, the number of production workers dropped further to 190. Id.

the hours worked by these employees fell from 487,000 to 431,000.<sup>14</sup> However, average hourly wage and hourly total compensation increased.<sup>15</sup> In addition, productivity in the industry increased, from 4,870 pounds an hour in 1984 to 4,932 pounds an hour in 1986.<sup>16</sup>

From 1984 through 1986, the financial data on the overall operations of businesses within which industrial phosphoric acid is produced show declines in net sales, gross profits, operating income, and net income before taxes.<sup>17</sup> None of the firms, however, reported operating losses from 1984 through the first quarter of 1987.<sup>18</sup> Therefore, even though profits are down

---

14

Id. The drop was also evident in a comparison between the first quarter of 1987 and 1986, when hours worked dropped from 113,000 to 103,000. Id.

15

Id. The hourly wage in 1984 was \$11.81 and in the first quarter of 1987 was \$13.13. Id. The hourly total compensation in 1984 was \$14.10 and in the first quarter of 1987 was \$16.00. Id.

16

Id. Productivity did increase in the first quarter of 1987 as well, to 5,145 pounds per hour; however, this amount was lower than the level reached in the first quarter of 1986 (5,242 pounds). Id.

17

See id. at A-29 (Table 11).

18

Id. In addition, comparisons with data for the manufacturers of both phosphate fertilizers and soaps and detergents reveal that the net income before taxes earned  
(Footnote continued on next page)

from very high levels, the current financial performance of this industry is very strong. I do not believe the evidence presented makes a clear case that the domestic industry is suffering material injury.

The Staff Report also presents data on operations producing industrial phosphoric acid. I am concerned that these financial statements may not give the Commission an accurate picture of the industry's true condition because they contain a preponderance of data relating to captive operations.<sup>19</sup> The financial data indicate that net profits before taxes were a much smaller percentage of net sales for these operations than for overall

---

(Footnote continued from previous page)  
by the industrial phosphoric acid industry in 1986 (the worst year in the reporting period) was still well above figures for net income in these other industries (the closest comparable industries cited by Robert Morris Associates). According to Robert Morris Associates, in 1986, soap and detergent manufacturers, on average, earned net income equal to 3.7 percent of net sales and fertilizer manufacturers, on average, earned net income equal to 1.4 percent of net sales, compared to 10.1 percent for industrial phosphoric acid producers. See Staff Report at A-29 (Table 11) (for industrial phosphoric acid), Robert Morris Associates, '86 Annual Statement Studies, Philadelphia: RMA 1986 at 63, 68 (for figures on other manufacturing operations). Thus, the performance of the industrial phosphoric acid industry is much stronger than that of closely related industries.

19

For example, in 1986, 62 percent of net sales were derived from captive market sales. See Staff Report at A-32 (Table 13).

operations.<sup>20</sup> The financial statements covering only sales of industrial phosphoric acid also indicate some net losses by as many as three of the five firms.<sup>21</sup>

In these statements, the "sales" made on captive transfers were valued at cost.<sup>22</sup> While this approach is certainly acceptable, it understates the revenue "earned" by the companies on their industrial phosphoric acid. If the acid had been transferred at market prices, net sales and operating income would have been much higher. This is evidenced by the fact that open market sales, constituting only 38 percent of net sales, provide almost all the operating income for the acid operations of these companies.<sup>23</sup> Over the period of investigation, the unit value of acid sold on the open market was approximately 3 cents (16 percent) higher than the unit value of acid captively consumed.<sup>24</sup>

Given these facts, I do not rely on these data in making my

---

<sup>20</sup> Compare id. at A-29 (Table 11) with id. at A-31 (Table 12).

<sup>21</sup> See id. at A-31 (Table 12).

<sup>22</sup> See id. at A-30.

<sup>23</sup> Compare id. at A-33 (Table 14) with id. at A-31 (Table 12).

<sup>24</sup> See id. at A-32 (Table 13).

25

determination on the condition of the domestic industry. Accordingly, I consider only the overall data for all operations of companies producing phosphoric acid. In doing so, I find that the data in the Staff Report and comparisons to related industries reveal that the industrial phosphoric acid industry is not injured. Assuming arguendo, however, that the industry is injured, I will consider the effects of unfair imports on the domestic industry.

#### Material Injury by Reason of Unfair Imports

I disagree with the majority's conclusion that unfair imports from Belgium and Israel have caused material injury to the U.S. industrial phosphoric acid industry. The evidence in these investigations indicates causes other than dumping and subsidies that explain any injury to the domestic industry.

To analyze the effect of unfair imports on the domestic industry, I believe it is necessary to consider, among other key

---

25

The costs of goods sold figure may also be understated in this statement due to the intermediate nature of the product under investigation. I believe this lends further credence to my assertion that this statement, by its nature, is unreliable and should not be considered by the Commission.



factors, the import penetration ratio for dumped imports and the dumping margin reported by the Department of Commerce.<sup>26</sup> The evidence available in these investigations, much of which is confidential, reveals that the effect of unfair imports was negligible. The unfair imports from the cumulated countries did increase from 1984 through 1986.<sup>27</sup> But even at their highest levels, the imports were roughly only 2.6 percent of U.S. consumption by quantity and 2.8 percent by value,<sup>28</sup> and they were only 2.7 percent of domestic output by quantity and 2.9 percent by value.<sup>29</sup>

The quantity-weighted average margin for the two countries is 12.4 percent.<sup>30</sup> As I have done in other recent opinions, I

---

26

For a discussion of the role of import penetration ratios and dumping margins in assessing harm to a domestic industry, see Memorandum from the Office of Economics, EC-J-010 (January 7, 1986), at 29-31.

27

See Staff Report at A-93 (Table C-2).

28

See id. at A-94 (Table C-3), A-95 (Table C-4). These figures are based on adjusted official statistics of the Department of Commerce. While these figures do not appear to be as accurate as those data obtained from Commission questionnaire responses, they reveal similar patterns.

29

See id. at A-20 (Table 5) and A-93 (Table C-2).

30

These figures are calculated using the margins found by the Department of Commerce in final countervailing duty  
(Footnote continued on next page)

assume for our purposes here that the entire margin was passed through to reduce the price of cumulated imports.<sup>31</sup> Thus, I assume that if importers had to pay a "fair" price for the unfair imports of industrial phosphoric acid, they would have had to pay in the aggregate at most 12.4 percent more for the imported product than they in fact paid.

It is obviously impossible to quantify exactly the volume, price and revenue impacts of cumulated imports that are unfairly traded. But we can make a reasonable estimate by using volume and pricing data for 1986 and assuming that the overall quantity of industrial phosphoric acid consumed domestically remains constant. At the most, approximately 50 million pounds of industrial phosphoric acid (the number of cumulated pounds

---

(Footnote continued from previous page)  
and dumping investigations. See Industrial Phosphoric Acid from Belgium; Final Determination of Sales at Less than Fair Value, 52 Fed. Reg. 25,436 (ITA July 7, 1987); Industrial Phosphoric Acid from Israel; Final Determination of Sales at Less than Fair Value, 52 Fed. Reg. 25,440 (ITA July 7, 1987); Industrial Phosphoric Acid from Israel; Final Affirmative Countervailing Duty Determination, 52 Fed. Reg. 25,447 (ITA July 7, 1987).

31

This assumption gives U.S. producers the full benefit of the doubt in this causation analysis. If, as is likely, the entire margin was not actually passed through to the purchasers of imported goods, then my analysis overstates the magnitude of adverse effects on the domestic industry caused by unfair imports.

actually sold in 1986) would have been sold at an average price of 24 cents a pound (the 1986 average price of 21 cents a pound, plus 12.4 percent).<sup>32</sup> At the least, sales of cumulated imports would have been zero if consumers abandoned these goods for available alternatives.<sup>33</sup>

To proceed with the analysis, I now assume that consumers decided to switch to available alternatives and that domestic

---

32

The Staff Report contained two types of price evidence in this case. The first type is reflected in the shipment information. See Staff Report at A-26 (Table 3), A-28, A-29 (Table 4), A-32 (Table 5). These tables, providing shipment information on both a quantity and value basis for both domestic and import products, are compiled from aggregate data reflecting virtually 100 percent of domestic and import shipments. Because of its high degree of coverage, this data can be used with confidence to compute average unit values that approximate relative domestic and import prices.

The second type of information, presented in the staff report under the heading "prices," is gathered from questionnaire responses reporting the unit prices involved in certain quarterly sales by domestic producers and importers who provided usable responses. This information is reported separately for different grades of product. It shows that for some grades imports tended to be cheaper than domestic product (underselling) and for other grades imports tended to be more expensive (overselling). See Staff Report at A-50 (Table 22), A-51 (Table 23), A-52 (Table 24), A-53 (Table 25), A-54 (Table 26). Because it does not offer the degree of coverage of the first source of price data, and because it does not provide aggregate price information for the industry as a whole, I do not use it further in my analysis.

33

The attractiveness of the imported goods in light of available alternatives for consumers would determine the quantity of import sales.

producers were the only other producers in the market.<sup>34</sup> I also assume that consumers would not have been willing to pay more than the "fair" price of the cumulated imports -- that is, 21 cents per pound plus 12.4 percent, which equals 24 cents -- to acquire the domestic industrial phosphoric acid.<sup>35</sup> At that price, if domestic producers had gained all the sales that formerly went instead to cumulated imports, they would have received approximately \$12 million in additional revenue.<sup>36</sup> That amount is only 3 percent of the value of the industry's net

---

34

This assumption also gives domestic producers the full benefit of the doubt. There is no evidence in the record to suggest that cumulated imports would disappear from the market. Moreover, the analysis ignores the growing presence of other importers in the U.S. market. These other importers captured 0.3 percent by quantity and 0.4 percent by value of the U.S. market in 1986 (compared to 2.6 and 2.8 percent for unfair imports, respectively). See Staff Report at A-94 (Table C-3), A-95 (Table C-4). Of these other importers selling in the United States in 1986, two were new to the market. Id.

35

Unless domestic industrial phosphoric acid is priced lower than imported acid priced at a "fair" level, there is no reason for customers already purchasing imported acid to switch to a domestic product. Fair pricing would not by itself eliminate the cumulated imports of industrial phosphoric acid from the market; it just means that the cumulated imports would be higher priced.

36

This revenue figure is derived by multiplying the per-unit average price and the number of pounds of cumulated imports sold in 1986.

sales from industrial phosphoric acid operations in 1986.<sup>37</sup> I do not believe a gross revenue loss of 3 percent to this industry is material injury within the meaning of the controlling statutes.

The gross revenue loss attributable to the cumulated imports could have been significantly higher than 3 percent only if domestic sales could have supplanted the cumulated imports at average prices significantly higher than 24 cents a pound. I believe that possibility is extremely unlikely. As stated in the Staff Report, competition for sales of industrial phosphoric acid is very strong and small price differences may influence a purchaser to change suppliers.<sup>38</sup> In this case, it is not realistic to expect that domestic producers could supplant sales of the cumulated imports if they priced their domestic industrial phosphoric acid substantially higher than the imported alternative.<sup>39</sup>

---

37  
See Staff Report at A-31 (Table 12).

38  
See id. at A-48.

39  
Furthermore, an expansion of domestic production by approximately 50 million pounds (an increase of only 2.4 percent over the 1986 production level) would not have had much effect on the price for industrial phosphoric acid supplied by the domestic industry. This is the case because the domestic supply curve is highly elastic regarding price increases. See Memorandum from the Office  
(Footnote continued on next page)

Based on the foregoing analysis, it is apparent that the adverse effect on the domestic industry caused by unfair imports from the cumulated countries was trivial. Therefore, I conclude that cumulated imports from Belgium and Israel were not a cause of material injury.

The above analysis focuses on and isolates the maximum possible effects of unfairly traded acid. I believe other factors explain any downturn in the domestic industrial phosphoric acid market. For example, a likely explanation for any reverses suffered by the domestic industry in this case is the declining demand for end products that use industrial phosphoric acid. Production of sodium tripolyphosphate, the primary end product containing industrial phosphoric acid, declined by 18 percent between 1975 and 1986.<sup>40</sup> This reduction in demand is due to increased environmental concerns about detergents with phosphates and changing consumer preferences in favor of liquid detergents that do not contain phosphates.<sup>41</sup> The decline in production of sodium tripolyphosphate was 8.5

---

(Footnote continued from previous page)  
of Economics EC-K-310, at 6 (July 31, 1987) (regarding the supply elasticity of domestic producers).

40

See Staff Report at A-6 (Table 1).

41

See id. at A-5.

percent, compared with an increase of unfair imports from 0.9 to 2.5 percent of the market.<sup>42</sup> This large decline appears to explain completely the difficulties the domestic industry may be suffering.

Threat of Material Injury. The Commission must consider a number of factors when determining whether imports threaten a domestic industry with material injury. These factors include increases in production capacity or existing unused capacity in the exporting country, rapid increases in U.S. market penetration by imports from the exporting country, the probability of price suppression or depression in the U.S. market caused by imports from the exporting country, substantial inventories of the product in the United States, and the potential for product-shifting in the exporting country.<sup>43</sup> Because the present case involves allegations of subsidies as well as dumping, the Commission must also consider whether this is an export subsidy.<sup>44</sup> In the present case, the domestic industry

---

42

See id. at A-6 (Table 1), A-94 (Table C-3).

43

See 19 U.S.C. 1677(7)(F)(i).

44

See 19 U.S.C. 1677(7)(F)(i)(I).

is not threatened with material injury by reason of imports from Belgium and Israel.

Taking the above factors in order, both the Belgian and Israeli industries were operating at extremely high production capacity levels in 1986.<sup>45</sup> The Staff Report did not reveal any plans by the exporting companies under investigation to increase their production facilities.<sup>46</sup> The rate of increase for the market penetration of cumulated imports has slowed down considerably over the period of investigation.<sup>47</sup> The Staff Report does not contain evidence that would lead me to conclude that the imports had the potential for causing price suppression or depression in the U.S. market. While declining over time, domestic prices have been relatively stable and do not appear to be subject to dramatic swings caused by low-priced imports.<sup>48</sup>

---

45

See Staff Report at A-18 (Table 3), A-19, A-19 (Table 4).

46

Id.

47

See id. at A-39-41, A-41 (Tables 20 and 21).

48

See id. at A-50 (Table 22), A-51 (Table 23), A-52 (Table 24), A-53 (Table 25), A-54 (Table 26).

49

See id. at A-38 (Table 18).



The level of import inventories rose substantially from 1983 to 1985, but then declined from 1985 to 1986.<sup>49</sup> Domestic producers' inventories fluctuated over the period, establishing no clear pattern.<sup>50</sup> The record in these investigations indicated no potential for product-shifting based upon outstanding dumping or countervailing duty orders. Finally, there are export subsidies being granted in this case by the Israeli government.<sup>51</sup> However, this factor is outweighed by the abundance of evidence pointing away from the threat of material injury, and I therefore determine that there is no threat of material injury in this case.

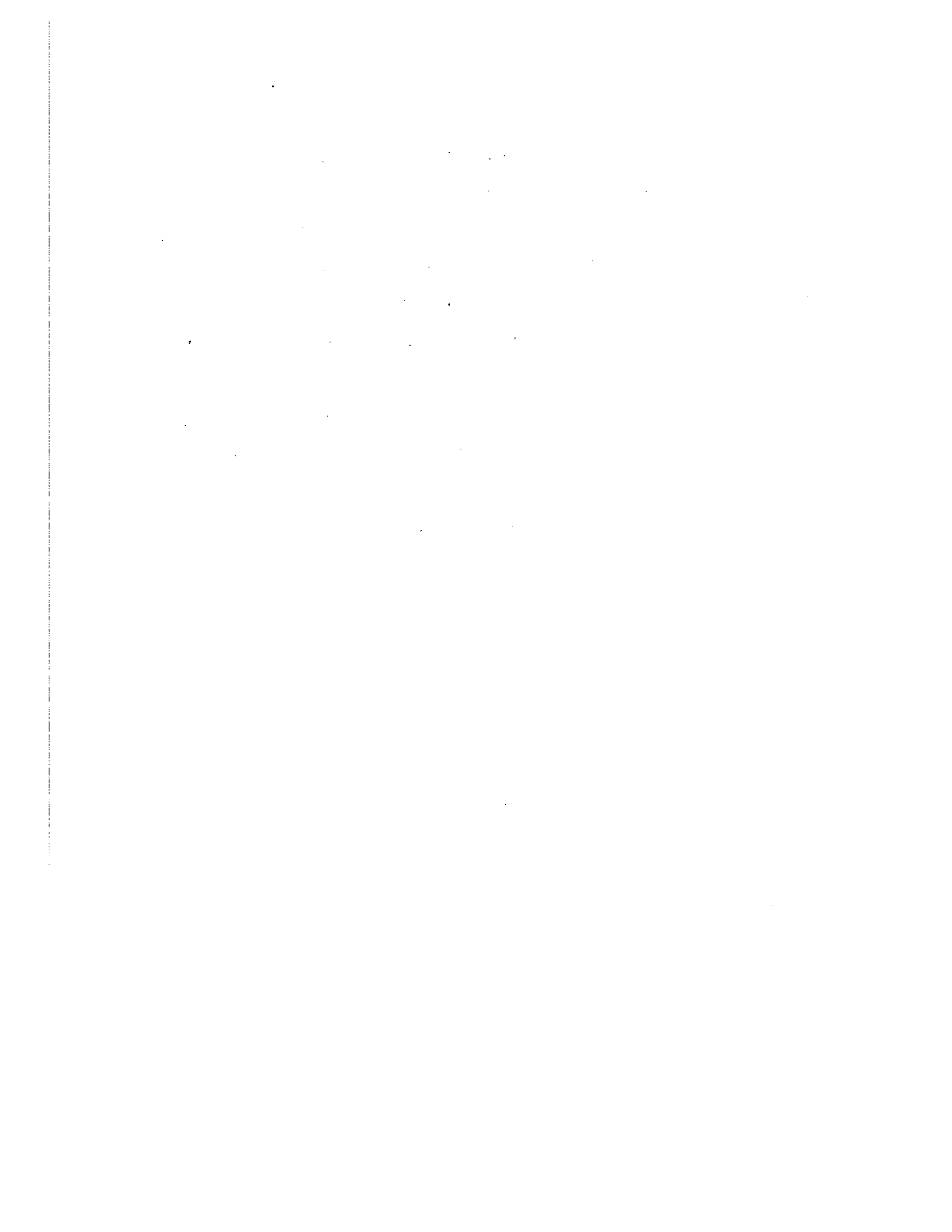
---

50

See id. at A-26 (Table 9).

51

See Industrial Phosphoric Acid from Israel; Final Affirmative Countervailing Duty Determination, 52 Fed. Reg. 25,447 (ITA July 7, 1987).



## INFORMATION OBTAINED IN THE INVESTIGATIONS

## Introduction

Following preliminary determinations by the U.S. Department of Commerce (Commerce) that benefits which constitute subsidies within the meaning of the countervailing duty (CVD) law are being provided to manufacturers, producers, or exporters in Belgium and Israel of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States (TSUS), the U.S. International Trade Commission (Commission), effective February 5, 1987, instituted final CVD investigations Nos. 701-TA-285 and 286 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports from Belgium and Israel. On February 20, 1987, at the request of petitioners, Commerce extended its deadline for the final CVD determinations to correspond with the final determinations in the antidumping investigations. 1/

Notice of the institution of the Commission's final CVD investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 4, 1987 (52 F.R. 6631). 2/ Notice of the Commission's hearing to be held in connection with the investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 13, 1987 (52 F.R. 18031). 3/

On July 7, 1987, Commerce published its final negative CVD determination concerning imports from Belgium. 4/ Accordingly, effective July 17, 1987, the Commission terminated final CVD investigation No. 701-TA-285. 5/

Following preliminary determinations by Commerce that industrial phosphoric acid from Belgium and Israel is being, or is likely to be, sold in the United States at less than fair value (LTFV), the Commission, effective April 20, 1987, instituted final antidumping investigations Nos. 731-TA-365 and 366 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports from Belgium and Israel.

Notice of the institution of the Commission's final antidumping investigations and the hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 29, 1987 (52 F.R. 15566). 6/

---

1/ The antidumping investigations are 731-TA-365 and 366 (Final).

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

3/ Ibid.

4/ A copy of Commerce's notice is presented in app. A.

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

6/ Ibid.

The Commission's hearing was held in Washington, DC, on July 7, 1987. 1/ The Commission's briefing and vote on investigation No. 701-TA-286 (Final) and investigations Nos. 731-TA-365 and 366 (Final) was held on August 3, 1987. The Commission will make its final determinations by August 12, 1987.

### Background

On November 5, 1986, petitions were filed with the Commission and Commerce by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO. 2/ The petitions allege that an industry in the United States is materially injured or threatened with material injury by reason of imports from Belgium and Israel of industrial phosphoric acid, which were alleged to be subsidized by the Governments of Belgium and Israel and which were allegedly being sold in the United States at LTFV. Accordingly, effective November 5, 1986, the Commission instituted preliminary CVD investigations under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) and preliminary antidumping investigations under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)).

On December 22, 1986, the Commission notified Commerce of its preliminary affirmative determinations that there was a reasonable indication that an industry in the United States is materially injured by reason of imports from Belgium and Israel of industrial phosphoric acid which were alleged to be subsidized by the Governments of Belgium and Israel and which were allegedly being sold in the United States at LTFV. 3/

### The Product

#### Description and uses

Industrial phosphoric acid ( $H_3PO_4$ ) is a colorless, odorless, sparkling liquid, or white crystalline solid, depending on its concentration and temperature. At 20 °C/68 °F, the 50- and 75-percent assays or concentrations are mobile liquids; the 85-percent concentration is a viscous, sirupy liquid; and the 100 percent acid is a clear cystalline solid. There are no universally accepted published standards for categorization of phosphoric acid as "industrial" phosphoric acid. Such characterization is generally based on impurity levels of less than 1 percent, in ranges of parts per million. 4/ Industrial phosphoric acid is classified in terms of

---

1/ A list of witnesses appearing at the hearing is presented in app. B.

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

3/ Chairman Liebeler and Vice Chairman Brunsdale dissenting. Former Commissioner Stern did not participate in these investigations.

4/ Agricultural phosphoric acid, which accounted for roughly 94 percent of all phosphoric acid produced in the United States in 1985, has impurity levels ranging from 5 to 15 percent. The purity levels of both industrial and agricultural phosphoric acid are predicated by intended end uses. For

phosphorus pentoxide (P<sub>2</sub>O<sub>5</sub>) content, measured in percent by weight. Industrial phosphoric acid is used principally as an intermediate in the captive manufacture of phosphate compounds. The major portion of U.S. industrial phosphoric acid production is used to produce sodium phosphates, which in turn are used in soaps, detergents, and water treatment. Industrial phosphoric acid is also used in the manufacture of calcium phosphate products used in food and industrial markets, and to produce potassium phosphates consumed in paper processing, antifreeze, and processing rubber. Industrial phosphoric acid is also used for several other miscellaneous direct merchant market applications such as in soft drinks, jams, jellies, dyes, catalysts, pharmaceuticals, laboratory reagents, phosphatic fertilizer solutions, and in electropolishing and the pickling and rustproofing of metals. <sup>1/</sup> The shares of industrial phosphoric acid production used in captive phosphate production and sold in the merchant market in 1986, as reported in questionnaire responses, are presented in the following tabulation (in percent):

<u>Market</u>	<u>Share</u>
Captive production of phosphates.....	66
Direct merchant applications.....	34
Total.....	100

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

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

<sup>1/</sup> Such as fire retardants, rubber processing, etc.

---

(footnote continued from the previous page)

example, the sodium level is important in aluminum bright dipping and semiconductor applications. The sodium level is also important in food applications, but for different reasons. In food applications, sodium additives are used to reduce arsenic levels. High levels of fluorine impurities also are of concern in food uses as well as in glass applications, since fluorine etches glass. Impurity levels of other heavy metals, such as lead or mercury, pose problems in food applications and in detergent builder uses. Iron and other trace metals can cause discoloration and staining in detergent applications. In actual practice, allowable impurity composition and levels are set by the customer or market end use.

<sup>1/</sup> Industrial phosphoric acid produced in the United States is also sold, \* \* \*, at reduced prices for use as phosphatic fertilizer solutions. \* \* \*.

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

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

In 1986, approximately \* \* \* percent of U.S. producers' domestic shipments was technical grade, \* \* \* percent was food grade, \* \* \* percent was ACS-SEMI grade, and \* \* \* percent was polyphosphoric acid. All six firms produce technical- and food-grade acids, whereas \* \* \* produce the ACS-SEMI grade and polyphosphoric acid.

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

One U.S. producer of industrial phosphates uses a modified agricultural grade phosphoric acid as a raw phosphate source starting material in the production of downstream phosphates. However, this agricultural acid undergoes rigorous chemical treatment, analogous to purification or impurity removal by precipitation, before it is suitable for industrial phosphate manufacture.

As noted previously, the major end use of industrial phosphoric acid is in the production of sodium phosphates, such as sodium tripolyphosphate (STPP), which are primarily used as builders in powdered laundry detergents. Domestic demand and production of sodium phosphates has steadily declined since concern over the effect of increased levels of phosphates on freshwater lakes and streams led to legislation restricting phosphate levels in detergents. From 1972 to the present, nine States and two major cities have passed such phosphate-restricting legislation. Recent increasing consumer preference for heavy-duty nonphosphate-containing liquid laundry detergents has also affected sodium phosphate demand and production. A comparison of yearly data for U.S. thermal phosphoric acid production and U.S. production of STPP shows similar and parallel trends, as presented in table 1 and figure 1.

### Production process

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

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

The elemental phosphorus ( $P_4$ ) needed to produce thermal or furnace process industrial phosphoric acid is produced by smelting phosphate rock with coke and silica in electric furnaces. In most cases, the phosphate rock is

---

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

Table 1.—U.S. production of thermal phosphoric acid and STPP, 1975–86

Year	(In thousands of short tons)	
	Thermal phosphoric acid production <u>1/</u> (100 percent P <sub>2</sub> O <sub>5</sub> )	STPP production <u>2/</u> (100 percent P <sub>2</sub> O <sub>5</sub> ) <u>3/</u>
1975.....	757	443
1976.....	723	416
1977.....	707	412
1978.....	745	425
1979.....	764	436
1980.....	697	418
1981.....	677	400
1982.....	609	374
1983.....	658	385
1984.....	679	398
1985.....	621	359
1986.....	623	364

1/ Production figures include all industrial phosphoric acid produced. It should be noted that approximately two-thirds of the industrial phosphoric acid produced is used in the captive production of phosphates, principally STPP.

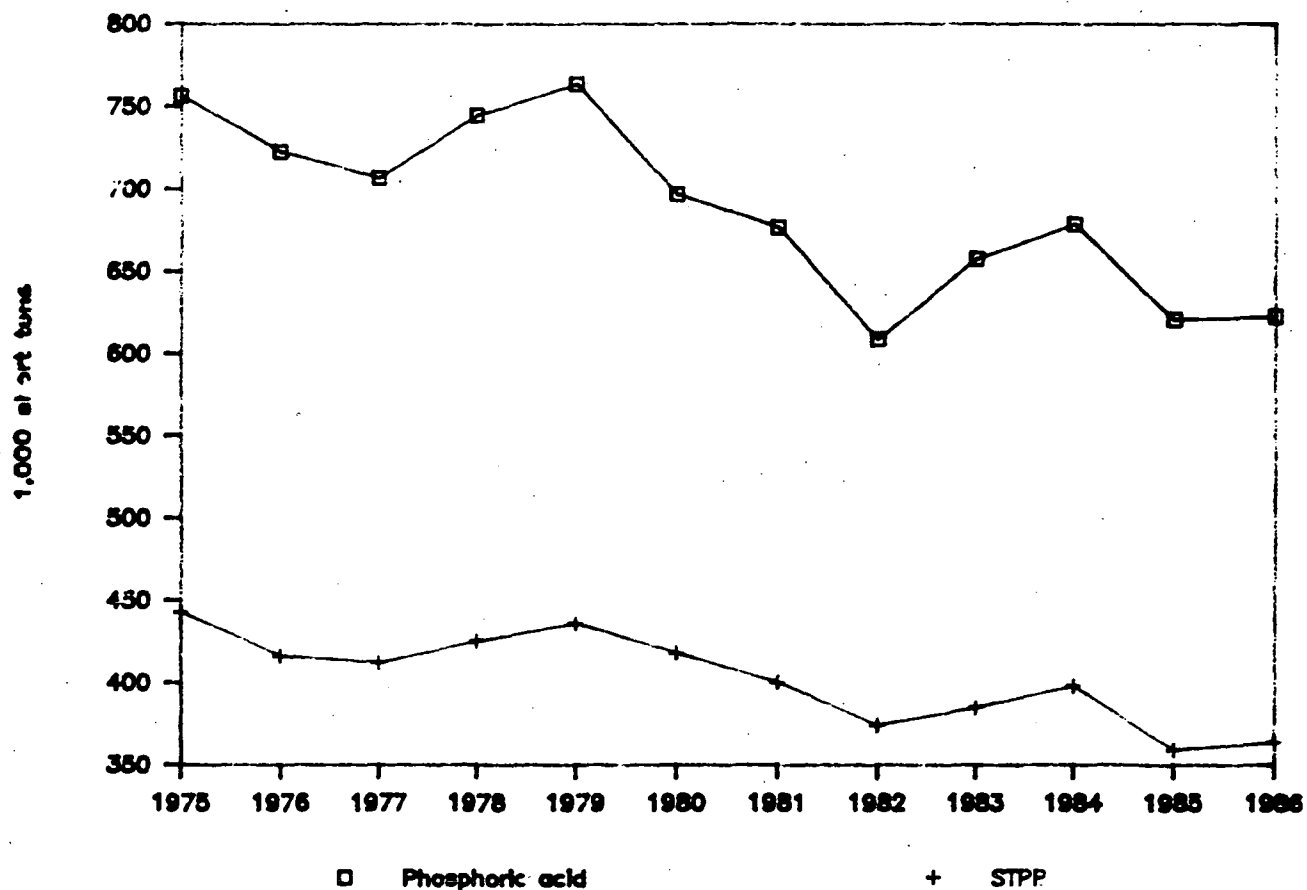
2/ Production figures include STPP made by alternate or substitute processes. For example, the figures include STPP \* \* \*.

3/ One unit of STPP contains approximately 0.575 units of P<sub>2</sub>O<sub>5</sub>. In order to present STPP production on the same basis as thermal phosphoric acid production (i.e., 100 percent P<sub>2</sub>O<sub>5</sub>), actual STPP production figures were multiplied by 0.575 to derive these figures.

Source: U.S. Department of Commerce, Bureau of the Census, Current Industrial Reports, Inorganic Fertilizer Materials and Related Products MA28B and Inorganic Chemicals MA28A.



Figure 1.—U.S. production of thermal phosphoric acid and STPP, 1975–86.

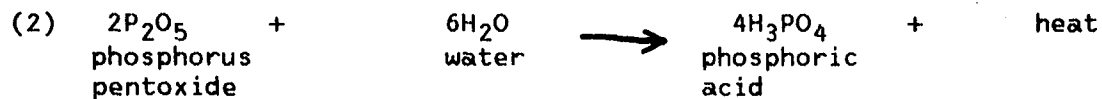
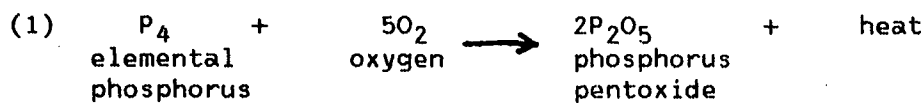


$r=0.97$

Source: U.S. Department of Commerce, Bureau of the Census, Current Industrial Reports, Inorganic Fertilizer Materials and Related Products MA28B and Inorganic Chemicals MA28A.

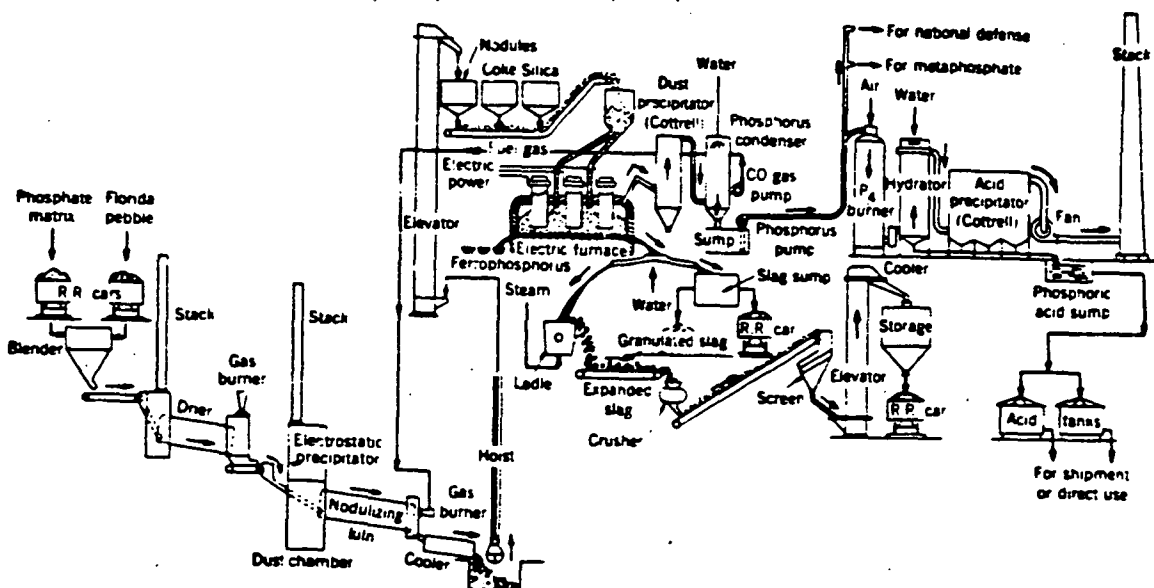
captively mined by phosphorus manufacturers. The conversion of elemental phosphorus to phosphoric acid is effected in two stages. First, the phosphorus is mixed with an excess of air and oxidized at a high temperature in a water-cooled cylindrical corrosion-resistant chamber to produce phosphorus pentoxide,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

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



Approximately 1 ton of elemental phosphorus is needed to produce 4 tons of 75 percent industrial phosphoric acid. There are many thermal process variations that may be used, depending on final product requirement, ore grades, raw materials ratios, energy requirements, and recovery and finishing parameters. A general diagram of an integrated plant for manufacturing phosphorus and phosphoric acid is shown in figure 2.

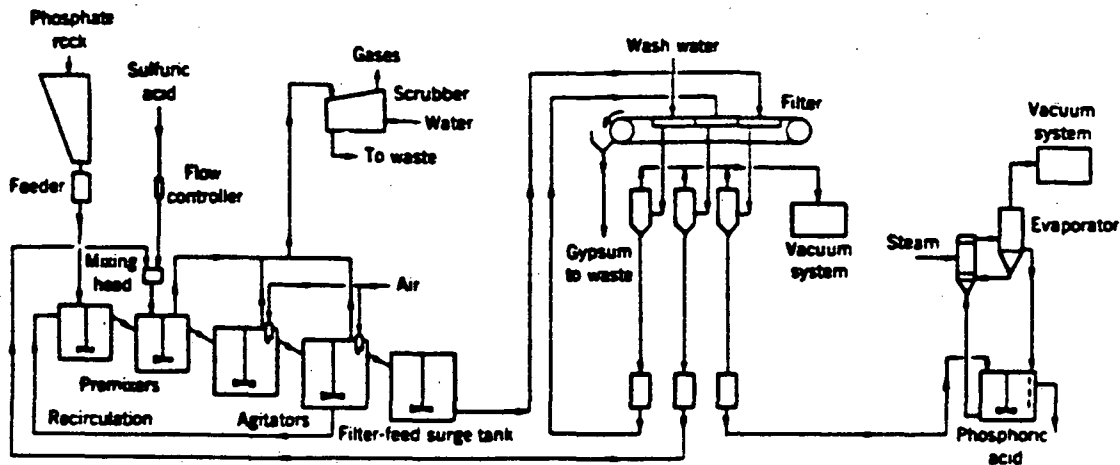
Figure 2.—Diagram of an integrated plant for manufacturing phosphorus and phosphoric acid.



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

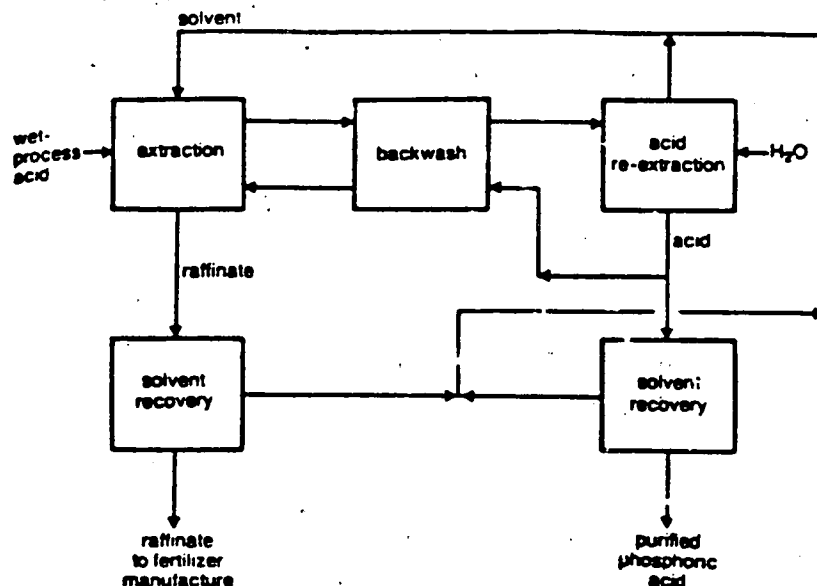
Industrial phosphoric acid may also be manufactured by purification of wet-process acid. In the wet process, a concentrated mineral acid is mixed with quantities of finely ground phosphate rock while being cooled by compressed air. The resulting phosphoric acid is separated from insoluble by-products and clarified by washing on vacuum filters to give impure (5 to 15 percent impurities) phosphoric acid. This impure acid is then concentrated and further purified by chemical precipitation, solvent extraction, or ion exchange resins to yield industrial purity phosphoric acid. Figure 3 presents a general diagram of wet-process phosphoric acid manufacture and figure 4 presents a process flowchart for the solvent extraction purification of wet-process phosphoric acid.

Figure 3.—Diagram of wet-process phosphoric acid manufacture.



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

Figure 4.—Process flowchart for purification of wet-process phosphoric acid by solvent extraction.



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

At its Green River, WY, plant, FMC produces industrial phosphates, such as STPP, from elemental phosphorus, utilizing a thermal process that may be substituted for the production of thermal phosphoric acid. As in the thermal phosphoric acid production process, \* \* \*. \* \* \*.

### World market

Trade flow data that would delineate worldwide exporters of industrial phosphoric acid, product destination, quantity, price, or unit value are not available from international data collection trade associations, Government agencies, or known private consultants.

There are approximately 24 companies worldwide that produce industrial phosphoric acid in less than 12 countries. <sup>1/</sup> These companies operate approximately 14 thermal production facilities and approximately 13 wet-process-purification production facilities for industrial phosphoric acid. All industrial phosphoric acid plant locations are in industrialized countries, such as the United States, Canada, Japan, Belgium, France, the Federal Republic of Germany, Italy, the Netherlands, Spain, and England.

---

<sup>1/</sup> Compiled from staff telephone conversations with industry experts, international trade associations, Government agency personnel, and private consultants.

Most industrial phosphoric acid produced outside the United States is consumed captively. A country will generally develop domestic industrial phosphoric acid capacity in response to significant local demand. Industrial phosphoric acid production and trade statistics are not separately collected or reported and are almost always combined with eclipsing agricultural phosphoric acid statistics.

Data concerning a homogeneous world market or world price for industrial phosphoric acid are not available from any known international market intelligence organizations, data collection trade associations, Government agencies, or private consultants. World price information was not provided by either petitioners or respondents. Petitioners assert that a world market and, consequently, a world price do not exist. Respondents also acknowledged that there is no world price for industrial phosphoric acid. Respondents did cite generally declining industrial phosphoric acid prices in Europe since 1985.

#### U.S. tariff treatment

Industrial phosphoric acid covered by these investigations is classified in TSUS item 416.30. Since January 1, 1987, the most-favored-nation (MFN) column 1 rate of duty has been "free." 1/ This rate represents the last in a series of eight staged reductions granted in the Tokyo Round of the Multilateral Trade Negotiations (MTN).

Imports of industrial phosphoric acid were previously eligible for duty-free entry under the Generalized System of Preferences (GSP) from January 1, 1976, to December 31, 1986. 2/ Products of Israel received such GSP treatment, prior to the granting of duty-free entry under the United States-Israel Free Trade Area Implementation Act of 1985.

#### Nature and Extent of Israeli Subsidies

In its final determination, Commerce estimated that net subsidies of 19.46 percent ad valorem for Haifa Chemicals, Ltd., and 6.02 percent ad valorem for Negev Phosphates, Ltd., and for all other manufacturers, producers, or exporters of industrial phosphoric acid in Israel were being provided during the period of review, April 1, 1985, through March 31, 1986. 3/ Commerce found that the following programs confer subsidies: the

---

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

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

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

Encouragement of Capital Investments Law (ECIL) grants, long-term industrial development loans, and Encouragement of Research and Development Law (ERDL) grants. Commerce also found that three export credit funds administered by the Bank of Israel and the Exchange Rate Risk Insurance Scheme operated by the Israel Foreign Trade Risk Insurance Corp., Ltd., confer subsidies on industrial phosphoric acid production in Israel. An analysis of the programs is discussed in detail in Commerce's notice of its final CVD determination, which is presented in appendix A.

Commerce determined that critical circumstances did not exist because there was no reason to believe or suspect that imports of industrial phosphoric acid had been massive over a relatively short period.

Since Commerce cannot impose a suspension of liquidation for more than 120 days without the issuance of final affirmative determinations of both subsidization and injury, on June 3, 1987, Commerce instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after June 5, 1987, but to continue the suspension of liquidation of all entries or withdrawals from warehouse, for consumption, of the subject merchandise entered between February 5, 1987, and June 4, 1987. If the Commission issues a final affirmative injury determination, Commerce will reinstate the suspension of liquidation under section 703(d) of the Tariff Act of 1930, and require cash deposits on all entries of the subject merchandise at a rate of 15.11 percent ad valorem for Haifa Chemicals Ltd., and 5.36 percent ad valorem for all other manufacturers, producers, or exporters (including Negev) of industrial phosphoric acid from Israel.

#### Nature and Extent of LTFV Sales

##### Belgium

Commerce's final weighted-average margin was 14.67 percent for Prayon and for all other manufacturers, producers, or exporters in Belgium of industrial phosphoric acid. <sup>1/</sup> In its final determination, Commerce compared the U.S. price with the foreign market value for Prayon on virtually all of the sales of the product during the period of investigation, June 1, 1986, through November 30, 1986. Commerce used purchase prices, adjusted for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and unloading costs, to represent the U.S. price when the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. Commerce used exporter's sales prices, adjusted for foreign inland freight, ocean freight, marine insurance, U.S. duty, truck loading and overtime unloading charges, U.S. inland freight, U.S. inland insurance, U.S. indirect selling expenses, U.S. commissions, U.S. discounts, and U.S. credit expenses, to represent the U.S. price for merchandise sold to unrelated purchasers after importation into the United States. Commerce based foreign-market value on sales in the home market, adjusted for inland freight, truck loading, prompt-payment discounts, packing costs, commissions, indirect selling expenses, and credit expenses.

---

<sup>1/</sup> A copy of Commerce's notice is presented in app. A.

In its final determination, Commerce found that critical circumstances did not exist because there was no reasonable basis to believe or suspect that imports of industrial phosphoric acid from Belgium had been massive over a relatively short period.

In accordance with section 733(d) of the Tariff Act of 1930, Commerce directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial phosphoric acid from Belgium entered or withdrawn from warehouse, for consumption, on or after April 22, 1987, and to require a cash deposit, or the posting of a bond equal to the weighted-average amount by which the foreign-market value exceeds the U.S. price.

### Israel

In its final determination, Commerce found the weighted-average margin to be 6.82 percent for Negev Phosphates, Ltd., and for all other manufacturers, producers, or exporters of industrial phosphoric acid in Israel. <sup>1/</sup> Commerce made fair-value comparisons on all sales of industrial phosphoric acid to the United States by Negev during June 1, 1986, through November 30, 1986. Commerce used the purchase price, adjusted for foreign inland freight, certain terminal expenses, ocean freight, and certain directly related shipping charges, to represent the U.S. price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. Commerce based the foreign-market value on home-market sales, adjusted for inland freight, certain terminal expenses, a freight-related charge, packing, and quantity rebates. Commerce made a circumstance-of-sale adjustment for differences in credit expenses incurred in both markets. As discussed in detail in its determination, Commerce disallowed certain adjustments claimed by Negev.

Commerce also determined that critical circumstances did not exist because there was no reasonable basis to believe or suspect that imports of the subject merchandise from Israel had been massive over a relatively short period.

In accordance with section 733(d) of the Tariff Act of 1930, Commerce directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial phosphoric acid from Israel entered or withdrawn from warehouse, for consumption, on or after April 20, 1987, and to require a cash deposit, or the posting of a bond. The bonding rate, which is reduced by the rate attributable to the export subsidies found in the corresponding final CVD determination, is 1.77 percent for Negev and for all other manufacturers, producers, and exporters of industrial phosphoric acid from Israel.

---

<sup>1/</sup> A copy of Commerce's notice is presented in app. A.

## The U.S. Industry

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

U.S. producers make industrial phosphoric acid from elemental phosphorus produced by their affiliates. 6/ According to industry sources, the phosphorus production operations of domestic producers were \* \* \*. 7/ \* \* \* produces elemental phosphorus in \* \* \*, and \* \* \* produces phosphorus in \* \* \*. \* \* \* produce elemental phosphorus in \* \* \*. Until recently, \* \* \* also produced phosphorus in \* \* \*. \* \* \*. \* \* \* is the \* \* \* firm to produce elemental phosphorus outside the United States for U.S. production of

---

1/ On May 1, 1985, the former Industrials Chemicals Group of Mobil Mining and Minerals Corp. was sold to Tenneco, Inc., and now forms the basis for Albright & Wilson, Inc.

2/ An affiliated company, Albright & Wilson, Ltd., West Midlands, United Kingdom, produces industrial phosphoric acid throughout the world, including Australia, Canada, Europe, and the Far East.

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

4/ \* \* \*.

5/ In January 1986, Monsanto closed its industrial phosphoric acid plant in Kearny, NJ. \* \* \*. Monsanto do Brazil, S.A., a wholly owned subsidiary, and Industrias Resistol, S.A., an affiliated company in Mexico, produce industrial phosphoric acid, among other products. Monsanto also participates in a joint venture in Brazil, Fosbrazil Industria Brasileira de Acido Fostorico Ltd., which plans to commence production of industrial phosphoric acid in October 1987.

6/ \* \* \* of the elemental phosphorus produced in the United States is dedicated to the production of industrial phosphoric acid that is both captively consumed and sold on the merchant market. \* \* \*.

Respondents argue that the domestic industry developed principally for the purpose of manufacturing downstream phosphates (phosphate salts) and depends on its ability to sell in downstream markets the phosphorus that it produces. Respondents allege that any injury the domestic industry has suffered resulted from the erosion of its principal market for phosphate salts and the rise in production costs for phosphorus. Transcript of the conference in the preliminary investigations, pp. 122-123.

7/ \* \* \*.



industrial phosphoric acid. \* \* \*. As shown in the tabulation below, production of elemental phosphorus by the \* \* \* firms' U.S. affiliates declined irregularly from 1984 to 1986 and continued to decline during January-March 1987, compared with such production during the corresponding period of 1986 (in thousands of pounds converted to a 75-percent-assay basis):

<u>Period</u>	<u>Production of elemental phosphorus</u>
1984.....	709,629
1985.....	622,501
1986.....	666,384
January-March—	
1986.....	169,344
1987.....	157,566

The shares of U.S. production and apparent U.S. consumption of industrial phosphoric acid accounted for by each firm are presented in table 2. \* \* \* were the two largest producers, together accounting for \* \* \* percent of U.S. production in 1986.

Table 2.—Industrial phosphoric acid: U.S. producers' shares of U.S. production and apparent U.S. consumption, by firms, 1986

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

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

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

U.S. Importers

Belgium

Nitron Chemical Corp. is the \* \* \* importer of industrial phosphoric acid produced in Belgium, accounting for roughly \* \* \* percent of 1986 imports from Belgium. 1/ The \* \* \* importers of industrial phosphoric acid from Belgium are \* \* \*. 2/

Israel

HCI Chemicals U.S.A., Inc., the largest importer of industrial phosphoric acid produced in Israel, accounted for roughly \* \* \* percent of 1986 imports from Israel. Other known importers are \* \* \*; and Holchem, Inc., Orange, CA. 3/

The Foreign Industries

Belgium 4/

Prayon is the sole Belgian producer of industrial phosphoric acid. 5/ The firm has phosphoric acid purification facilities at two locations, in

---

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

2/ According to the U.S. Customs Service net import file, there were \* \* \* additional importers of industrial phosphoric acid from Belgium during the period of investigation. \* \* \*.

3/ According to the U.S. Customs Service net import file, there were \* \* \* importers of industrial phosphoric acid from Israel during the period of investigation. \* \* \*.

4/ These data were provided by Prayon's counsel. In addition, the Commission requested specific information on Prayon's plans to open a plant in the United States, as mentioned in the preliminary investigations. In their prehearing brief, respondents stated, "Although negotiations with one prospective U.S. partner that were well advanced late in 1986 have not progressed since then, Prayon is continuing actively to pursue negotiations with others regarding arrangements for establishing a U.S. purification facility." (Prehearing brief of Belgian respondents, p. 63.) Testifying at the hearing, Mr. Flausch, deputy general manager of Prayon, reaffirmed these plans. He stated that Prayon's "plans are still the same, . . . We think we have a very cost-efficient process, and we have negotiation [sic] underway now with potential U.S. partners." (Transcript of the hearing, p. 144.)

5/ Both petitioners and respondents stated the Prayon was the sole producer of industrial phosphoric acid in Belgium. However, in response to a request by the Commission for data on the industry in Belgium, the U.S. Embassy in

(footnote continued on the following page)

Puurs and Engis. <sup>1/</sup> It is only at the Puurs plant that Prayon produces the industrial grade phosphoric acid, which meets certain purity levels and which is exported to the United States. By contrast, the phosphoric acid produced in Engis, which is used only for captive consumption by Prayon in the downstream production of phosphate salts, has significantly higher levels of impurities and lower assays, does not meet U.S. customers' specifications for industrial phosphoric acid, and is not the product under investigation. Data on the industrial phosphoric acid produced by Prayon are presented in table 3.

Prayon's production of industrial phosphoric acid \* \* \*. \* \* \*.  
Prayon's capacity to produce industrial phosphoric acid \* \* \*. The firm's capacity utilization was \* \* \*. \* \* \*.

Prayon's total sales of industrial phosphoric acid, all of which is produced at the Puurs plant, \* \* \*. \* \* \*.

---

(footnote continued from the previous page)

Brussels named three additional producers of industrial phosphoric acid in Belgium: C.D.F. Chemie-AZF N.V., Badische Aniline Soda Fabriek N.V. (B.A.S.F.), and Union Chimique Belge (U.C.B.) S.A. In a letter to the Commission staff dated July 16, 1987, counsel for the respondents cited a portion of the Government of Belgium's response to Commerce's questionnaire in the countervailing duty investigation regarding industrial phosphoric acid from Belgium that confirms that these firms are not producers of industrial phosphoric acid. C.D.F. Chemie-AZF and B.A.S.F. produce phosphoric acid grades that are suitable for the fertilizer industry and which are not further purified. Similarly, the same is true for U.C.B., which produces solely for captive uses phosphoric acid that it "cleans up" to some extent and uses in the manufacture of certain phosphate salts. This acid does not go through a solvent extraction process and is not of a purity level sufficient to qualify as industrial phosphoric acid. On July 17, 1987, the Commission received a telegram from the Embassy in Brussels that confirmed that Prayon is the sole producer of industrial phosphoric acid in Belgium.

<sup>1/</sup> Respondents emphasize that the Engis plant is not capable of producing the more highly purified, higher assay acid because it lacks the necessary evaporation, defluorination, and decolorization equipment, and is not equipped to store or well-sited to ship phosphoric acid. In its final negative countervailing duty determination, Commerce stated that "Verified documentation on the record shows that all of the acid produced at Engis is for captive use only (i.e., it is consumed internally by the Engis plant to manufacture other products). The documentation further shows that this acid contains impurities at a level that is not marketable in the United States and that the necessary modifications at Engis to further purify the acid would require substantial investments." Commerce determined that benefits received by the Engis plant do not constitute subsidies because they do not benefit the production of the industrial phosphoric acid that is sold in the United States. (See copy of Commerce's final countervailing duty determination in app. A.)

Table 3.—Industrial phosphoric acid: Prayon's production, average-for-period capacity, capacity utilization, home-market sales, export sales, and end-of-period inventories, 1984-88

\* \* \* \* \*

Prayon's export sales in the United States, accounting for \* \* \* percent of the firm's total export sales in 1986, \* \* \*. 1/ \* \* \*. Export sales to all other countries \* \* \*. The firm's home-market sales \* \* \*. \* \* \*. Prayon's end-of-period inventories of industrial phosphoric acid \* \* \*. 2/

### Israel 3/

There are two known Israeli producers of industrial phosphoric acid: Haifa Chemicals, Ltd., and Negev Phosphates, Ltd. 4/ Haifa Chemicals exported \* \* \* of industrial phosphoric acid in 1985 and \* \* \*, valued at \* \* \*, in 1986. The acid was \* \* \*. 5/ Data on Negev Phosphates, Ltd., are presented in table 4.

---

1/ In response to Chairman Liebler's question posed at the hearing, Prayon stated that it is not in a position to divert exports from third country markets to the United States because "first, it would be very damaging to Prayon's customer relationships to abandon established customers in order to increase sales volumes in the United States...Second, Prayon's third country export markets consist almost entirely of markets in Europe (which for a Belgian firm is the equivalent of a domestic market), sales to which offer numerous advantages over export sales to the United States. These include: proximity of the customer's location to Prayon's plant, with resulting low transportation costs and absence of storage expense; location where Prayon has trading subsidiaries that can respond efficiently to clients' requirements; sales made in European currencies, which because of the European monetary system are subject to less fluctuation than the dollar, enabling development of longer term marketing strategies; and more attractive prices than elsewhere, because of the strength of the European currencies." (Posthearing brief of Belgian respondents, attachment 2, pp. 8-9.)

2/ Excludes end-of-period inventories held in the United States. Such inventories are included in importers' inventories, as presented in the section of this report entitled "Consideration of Alleged Threat of Material Injury."

3/ These data were provided by Negev's counsel. The Commission also requested data concerning the foreign industry via a State Department telegram, but has not received a response to that request.

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

5/ Haifa Chemicals, Ltd. \* \* \*. \* \* \*. See postconference brief of Negev Phosphates, Ltd., in the preliminary investigations, attachment 10. Haifa Chemicals did not respond to Commerce's questionnaire in the countervailing duty investigation.

Table 4.—Industrial phosphoric acid: Negev's production, capacity, capacity utilization, home-market sales, export sales, and end-of-period inventories, 1984-88

\* \* \* \* \*

As shown, Negev's production \* \* \*. \* \* \*. Negev's capacity to produce industrial phosphoric acid \* \* \*. 1/ Capacity utilization \* \* \*. \* \* \*.

Negev's total sales \* \* \*. \* \* \*.

Negev's export sales, which accounted for \* \* \* percent of the firm's total sales during 1984-86, \* \* \*. \* \* \*.

Negev started exporting industrial phosphoric acid to the United States in 1985. Exports to the United States accounted for \* \* \* of the firm's total export sales during 1985-86. 2/ \* \* \*.

#### Apparent U.S. Consumption

Apparent U.S. consumption of industrial phosphoric acid in terms of quantity fell by \* \* \* percent from 1984 to 1986 \* \* \* (table 5). 3/ \* \* \*.

---

1/ \* \* \*.

2/ In response to Commissioner Eckes' question posed at the hearing, Negev stated that it is not in a position to increase its exports to the United States by shifting them from other export buyers. Negev stated that "it has no plans to abandon, or even diminish, its presence in Europe." The company noted that Europe is a large market which is geographically close to Israel and Negev has set up an extensive marketing network in Europe (including an agent and distributors, three terminals, and an office in Paris), a long-term supply contract directly with a major European company, and a \* \* \* contract with a shipping company to ship in bulk to Western Europe that includes a minimum quantity stipulation. Negev further explained that "in contrast to the favorable European logistics, Negev has limited possibilities with shipping companies to ship to the United States. When it began selling to the United States in 1985, (after being approached by HCI), Negev was able to get limited space on a ship that leaves around five times a year for the Southeastern U.S. The space allocated to Negev is approximately \* \* \* metric tons of acid." (Posthearing brief of Israeli respondents, attachment 4, pp. 2-3.)

3/ Apparent U.S. consumption as presented in this section is calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers, domestic shipments of imports from Belgium and Israel as reported in response to the Commission's questionnaires, and adjusted official import statistics for imports from all other countries.

Since the data on imports as reported in response to the Commission's questionnaires are confidential, apparent U.S. consumption calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers to official import statistics, adjusted for misclassifications and converted to a 75-percent-assay basis, are presented in app. C. These data reflect the same general trends as those presented in this section.

Table 5.—Industrial phosphoric acid: U.S.-produced domestic shipments and intracompany or intercompany transfers, 1/ U.S. shipments of imports from Belgium and Israel, 1/ imports for consumption from all other countries, 2/ apparent U.S. consumption, and U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987

Source	1984	1985	1986	January-March—	
				1986	1987
Quantity (1,000 pounds)					
U.S.-produced 1/—					
Domestic shipments..	782,198	752,727	705,025	221,254	191,929
Intracompany or					
intercompany					
transfers.....	1,546,144	1,374,987	1,383,678	360,562	346,747
Total.....	2,328,342	2,127,714	2,088,703	581,816	538,676
Imports from—					
Belgium 1/.....	***	***	***	***	***
Israel 1/.....	***	***	***	***	***
All other 2/.....	2,030	1,766	7,470	5,017	1,109
Total.....	***	***	***	***	***
Apparent U.S.					
consumption.....	***	***	***	***	***
U.S. open-market					
consumption.....	***	***	***	***	***
Value (1,000 dollars)					
U.S.-produced—					
Domestic shipments..	164,812	156,818	142,313	40,737	36,762
Intracompany or					
intercompany					
transfers.....	263,238	240,218	237,717	63,261	57,196
Total.....	428,050	397,036	380,030	103,998	93,958
Imports from—					
Belgium.....	***	***	***	***	***
Israel.....	***	***	***	***	***
All other 3/.....	240	1,181	1,621	1,048	267
Total.....	***	***	***	***	***
Apparent U.S.					
consumption.....	***	***	***	***	***
U.S. open-market					
consumption.....	***	***	***	***	***

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

2/ Compiled from official import statistics of the U.S. Department of Commerce for TSUS item 416.30. Imports were adjusted for known misclassifications. Imports from the United Kingdom were converted from an \* \* \*-percent assay to a 75-percent assay. Imports from all other countries are assumed to have entered on a 75-percent-assay basis.

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

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

Apparent U.S. consumption continued to decline, by \* \* \* percent, during January-March 1987, compared with consumption during the corresponding period of 1986. U.S. open-market consumption fell \* \* \* from 1984 to 1986, declining by \* \* \* percent from 1984 to 1985 and by \* \* \* percent from 1985 to 1986. U.S. open-market consumption continued to fall, by \* \* \* percent, during January-March 1987, compared with such consumption during January-March 1986, \* \* \*.

U.S. apparent consumption in terms of value followed the same pattern during the period of investigation.

#### Consideration of Alleged Material Injury

In order to evaluate the condition of the U.S. industry producing industrial phosphoric acid, the Commission surveyed all known U.S. producers of the product. These producers are the six firms discussed above in the section entitled "The U.S. Industry." <sup>1/</sup> The following information in all of the sections describing the condition of this industry includes data relating to industrial phosphoric acid produced in the United States for all six firms, except as noted.

#### U.S. production, capacity, and capacity utilization

U.S. production of industrial phosphoric acid declined steadily from 1984 to 1986, by 10 percent from 1984 to 1985 and by 1 percent from 1985 to 1986 (table 6). During January-March 1987, production fell by 11 percent, compared with production during the corresponding period of 1986.

Average-for-period capacity to produce industrial phosphoric acid also fell steadily from 1984 to 1986. From 1984 to 1985, average-for-period capacity declined by 6 percent, largely because \* \* \*. During this period, \* \* \*. From 1985 to 1986, average-for-period capacity to produce industrial phosphoric acid fell by 8 percent, principally because \* \* \*. Average-for-period capacity remained relatively stable during January-March 1987, compared with such capacity during January-March 1986. End-of-period capacity followed the same trend as average-for-period capacity.

Capacity utilization declined from 58.7 percent in 1984 to 56.3 percent in 1985, because production fell at a faster rate than capacity. Capacity utilization rose to 60.5 percent in 1986, because capacity fell more rapidly

---

<sup>1/</sup> In a letter to the Commission dated June 3, 1987, counsel for respondents alleged that additional companies should be included as producers of the like product or as producers that utilize substitute processes.

Counsel for respondents alleged that Texasgulf Chemicals Co., Arcadian Corp., and Farmland Industries "purify (or clean up) some of their wet process acid and sell it for industrial applications." These allegations were investigated by the Commission staff through telephone conversations with representatives of the above companies.

\* \* \* \* \*

Table 6.—Industrial phosphoric acid: U.S. production, average-for-period capacity, end-of-period capacity, and capacity utilization, 1/ 1984-86, January-March 1986, and January-March 1987

Item	1984	1985	1986	January-March—	
				1986	1987
Production...1,000 pounds..	2,371,479	2,144,350	2,125,794	592,381	529,915
Average-for-period capacity...1,000 pounds..	4,037,962	3,812,097	3,512,802	878,221	878,458
End-of-period capacity...1,000 pounds..	4,049,186	3,740,362	3,518,312	879,578	879,578
Capacity utilization 1/ percent..	58.7	56.3	60.5	67.5	60.3

1/ Based on production and average-for-period capacity.

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

than production. Capacity utilization declined from 67.5 percent during January-March 1986 to 60.3 percent during January-March 1987 because capacity to produce industrial phosphoric acid remained relatively stable, and production dropped by more than 10 percent.

#### U.S. producers' shipments

U.S. producers' total shipments of industrial phosphoric acid declined steadily from 1984 to 1986, falling by 9 percent from 1984 to 1985 and by 2 percent from 1985 to 1986 (table 7). Total shipments continued to fall, by 7 percent, during January-March 1987, compared with such shipments during the corresponding period of 1986.

Intracompany or intercompany transfers, which are captively consumed in the production of downstream phosphates and which accounted for roughly 65 percent of total shipments, declined by 11 percent from 1984 to 1985 and remained relatively stable, increasing by 1 percent, from 1985 to 1986. Such transfers fell by 4 percent during January-March 1987, compared with transfers during January-March 1986.

U.S. producers' domestic shipments, which are sold in the open market, fell steadily from 1984 to 1986, by 4 percent from 1984 to 1985 and by 6 percent from 1985 to 1986. Domestic shipments continued to fall, by 13 percent, during January-March 1987, compared with such shipments during the corresponding period of 1986.

As shown in table 8, between \* \* \* and \* \* \* percent of U.S. producers' domestic shipments were sold for industrial uses during the period of investigation. Shipments to industrial users fell irregularly from 1984 to 1986, dropping by 10 percent from 1984 to 1985 and rising by 2 percent from 1985 to 1986. Shipments to such users \* \* \* during January-March 1987, compared with such shipments during January-March 1986. The unit value of shipments to industrial users was stable from 1984 to 1985 and \* \* \*.



Table 7.—Industrial phosphoric acid: U.S.-produced intracompany or intercompany transfers, domestic shipments, export shipments, and total shipments, 1984-86, January-March 1986, and January-March 1987

Item	1984	1985	1986	January-March—	
				1986	1987
<u>Quantity (1,000 pounds)</u>					
Intracompany or inter-					
company transfers.....	1,546,144	1,374,987	1,383,678	360,562	346,747
Domestic shipments.....	782,198	752,727	705,025	221,254	191,929
Export shipments.....	30,470	27,271	23,231	3,884	5,593
Total shipments.....	<u>2,358,812</u>	<u>2,154,985</u>	<u>2,111,934</u>	<u>585,700</u>	<u>544,269</u>
<u>Value (1,000 dollars)</u>					
Intracompany or inter-					
company transfers.....	263,238	240,218	237,717	63,261	57,196
Domestic shipments.....	164,812	156,818	142,313	40,737	36,762
Export shipments.....	5,666	4,824	4,414	724	833
Total shipments.....	<u>433,716</u>	<u>401,860</u>	<u>384,444</u>	<u>104,722</u>	<u>94,791</u>
<u>Unit value (per pound)</u>					
Intracompany or inter-					
company transfers.....	\$0.17	\$0.17	\$0.17	\$0.18	\$0.16
Domestic shipments.....	.21	.21	.20	.18	.19
Export shipments.....	.19	.18	.19	.19	.15
Total shipments.....	<u>.18</u>	<u>.19</u>	<u>.18</u>	<u>.18</u>	<u>.17</u>

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

Table 8.—Industrial phosphoric acid: U.S.-produced domestic shipments, by uses, 1984-86, January-March 1986, and January-March 1987

Item	1984	1985	1986	January-March—	
				1986	1987
Quantity (1,000 pounds)					
Industrial uses.....	578,084	520,321	532,157	***	***
Agricultural uses.....	204,114	232,406	172,868	***	***
Total.....	782,198	752,727	705,025	221,254	191,929
Value (1,000 dollars)					
Industrial uses.....	137,740	127,219	121,392	***	***
Agricultural uses.....	27,072	29,599	20,921	***	***
Total.....	164,812	156,818	142,313	40,737	36,762
Unit value (per pound)					
Industrial uses.....	\$0.24	\$0.24	\$0.23	\$***	\$***
Agricultural uses.....	.13	.13	.12	***	***
Average.....	.21	.21	.20	.18	.19

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

Shipments for agricultural uses also declined irregularly from 1984 to 1986, but showed a reverse pattern, rising by 14 percent from 1984 to 1985 and dropping by 26 percent from 1985 to 1986. <sup>1/</sup> Shipments to agricultural users \* \* \*, during January-March 1987, compared with such shipments during the corresponding period of 1986. The unit values of shipments sold for agricultural uses were \* \* \* below the unit values of shipments sold for industrial uses.

<sup>1/</sup> Petitioners allege that sales to agricultural users "are clearly a further indication of the injury being inflicted on the domestic producers by the Belgian and Israel imports." (Petitioners' postconference brief in the preliminary investigations, p. 13.) Testifying at the preliminary conference about FMC's sales into the agricultural market, Mr. Furman, marketing manager of the phosphorus chemicals division at FMC Corp., stated: "We do it when the levels of imports, imported industrial phosphoric acid, increase to the stage where we can't sell as much into the industrial market. We will therefore sell it into the ag market. When the import levels go up, we basically have two choices: we have a choice of not producing the phosphoric acid and shutting down plants or production, or selling it into the agricultural market at a contribution margin basis." (Transcript of the conference to the preliminary investigations, pp. 24-25.)

Respondents counterargue that the U.S. producers' "need to operate the phosphorus plants also has contributed to the gross oversupply in the phosphoric acid market. The domestic industry has had to produce phosphoric acid to

(footnote continued on the following page)

U.S. producers' export shipments, accounting for 1 percent of total shipments, fell by 10 percent from 1984 to 1985 and by 15 percent from 1985 to 1986. Export shipments rose by 44 percent during January-March 1987, compared with exports during the corresponding period of 1986. The principal export markets identified by U.S. producers include \* \* \*.

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

#### U.S. producers' inventories

During 1983-86, end-of-period inventories held by domestic producers fluctuated both in nominal terms and as a percent of their total shipments of U.S.-produced industrial phosphoric acid (table 9). End-of-period inventories rose by 35 percent from 1983 to 1984, dropped by 25 percent from 1984 to 1985, and increased by 35 percent from 1985 to 1986. The 1986 level was 38 percent higher than the level of end-of-period inventories in 1983. As of March 31, 1987, end-of-period inventories fell by 18 percent, compared with the level of

---

(footnote continued from the previous page)

consume the captively-produced elemental phosphorus. This supply pressure is so great that, when STPP consumption is down, domestic producers have had to dump large quantities of excess industrial-grade acid on the agricultural market as PFS at extremely low prices." (Postconference brief of Belgian respondents in the preliminary investigations, p. 29.) Respondents emphasize that selling industrial phosphoric acid to agricultural markets has been practiced for a long period of time, and that such use predates the accused imports by decades. (Letter of counsel for Nitron Chemical Corp. to the Commission, June 3, 1987, p. 2.) Respondents further allege that some of the industrial acid sold to agricultural users is resold to industrial users.

Petitioners acknowledge that "such agricultural sales were more widespread in the 1950's and 1960's, when the price differential between industrial and agricultural acid was not so great; in today's markets, agricultural sales of industrial acid return only approximately one-half of the market value of the acid and, to some extent, are an outlet for production originally planned for accounts in the industrial market that imports have taken away." (Petitioners' prehearing brief, p. 23.)

According to data submitted in response to the Commission's questionnaires and adjusted official U.S. import statistics, the ratio of imports from all countries to U.S. producers' shipments to agricultural users ranged from \* \* \* to \* \* \* percent during the period of investigation. An analysis of the contribution margin of agricultural sales is presented in the section of this report entitled "Financial experience of U.S. producers." In short, although these sales may make a positive contribution to the combined elemental phosphorus and phosphoric acid operations, since 1984 they have made a negative contribution toward industrial phosphoric acid operations considered in isolation. The Commission contacted \* \* \* that buy acid in the agricultural market. \* \* \*.

Table 9.—Industrial phosphoric acid: U.S.-produced end-of-period inventories, 1983-86, January-March 1986, and January-March 1987

Item	1983	1984	1985	1986	January-March—	
					1986	1987
End-of-period inventories 1,000 pounds..	39,865	53,966	40,623	54,815	44,500	36,688
Ratio of such inventories to total shipments percent..	<u>1/</u>	2.3	1.9	2.6	7.6	6.7

1/ Not available.

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

inventories held as of March 31, 1986. The ratio of such end-of-period inventories to total shipments of U.S.-produced industrial phosphoric acid was relatively low, because U.S. producers normally hold inventories of elemental phosphorus rather than industrial phosphoric acid.

#### U.S. producers' imports and domestic purchases

During the period covered by these investigations, \* \* \* imported industrial phosphoric acid from \* \* \*. \* \* \*. \* \* \* reported purchases of \* \* \* of domestically produced industrial phosphoric acid in \* \* \*.

#### Employment and wages

The average number of all employees in the establishments in which industrial phosphoric acid is produced declined steadily from 1984 to 1986 (table 10). The number of all employees continued to decline, by 4 percent, during January-March 1987, compared with the number during the corresponding period of 1986. The number of production and related workers producing industrial phosphoric acid, accounting for roughly 6 percent of all establishment employees during the period of investigation, also declined steadily, by 14 percent, from 1984 to 1986. The number of such production and related workers continued to fall, by 5 percent, during January-March 1987, compared with the number during January-March 1986. Hours worked by production and related workers producing industrial phosphoric acid followed the same pattern, declining steadily throughout the period.

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

Table 10.—Industrial phosphoric acid: Average number of employees in producing establishments, number of production and related workers producing all products and industrial phosphoric acid, average hours worked, wages and total compensation paid, average hourly wages and total compensation paid, and productivity of production and related workers producing industrial phosphoric acid, 1984–86, January–March 1986, and January–March 1987

Item	1984	1985	1986	January–March—	
				1986	1987
All employees.....	3,500	3,404	3,174	3,235	3,108
Production and related workers producing—					
All products.....	2,277	2,201	2,073	2,135	2,036
Industrial phosphoric acid.....	227	210	196	200	190
Hours worked—					
All products					
1,000 hours..	4,987	4,772	4,546	1,085	1,104
Industrial phosphoric acid...1,000 hours..	487	453	431	113	103
Wages paid—					
All products					
1,000 dollars..	63,859	65,480	62,106	15,294	15,375
Industrial phosphoric acid.1,000 dollars..	5,753	5,632	5,481	1,312	1,352
Total compensation paid—					
All products					
1,000 dollars..	78,362	80,092	74,725	18,514	18,607
Industrial phosphoric acid.1,000 dollars..	6,869	6,761	6,528	1,617	1,648
Average hourly wages paid—					
All products.....	\$12.81	\$13.72	\$13.66	\$14.10	\$13.93
Industrial phosphoric acid.....	\$11.81	\$12.43	\$12.72	\$11.61	\$13.13
Average hourly total compensation paid—					
All products.....	\$15.71	\$16.78	\$16.43	\$17.06	\$16.85
Industrial phosphoric acid.....	\$14.10	\$14.92	\$15.15	\$14.31	\$16.00
Productivity of production and related workers producing industrial phosphoric acid					
pounds per hour..	4,870	4,734	4,932	5,242	5,145

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

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

Wages paid to production and related workers producing industrial phosphoric acid fell by 2 percent from 1984 to 1985 and by 3 percent from 1985 to 1986. During January-March 1987, wages paid to such workers rose by 3 percent, compared with wages paid during the corresponding period of 1986. Total compensation paid to such production and related workers followed a similar pattern, declining steadily from 1984 to 1986 and rising during January-March 1987, compared with total compensation paid during January-March 1986. Both average hourly wages paid and compensation paid to workers producing industrial phosphoric acid increased steadily throughout the period of investigation.

The productivity of production and related workers producing industrial phosphoric acid increased irregularly, by 1 percent, from 1984 to 1986. Productivity declined by 2 percent during January-March 1987, compared with the period's peak level of productivity during January-March 1986.

#### Financial experience of U.S. producers

Five firms 1/ provided usable income-and-loss data on the overall operations of their establishments within which industrial phosphoric acid is produced, 2/ as well as on their operations producing only industrial phosphoric acid. The five firms accounted for \* \* \* percent of aggregate U.S. production of industrial phosphoric acid in 1986.

Overall establishment operations.—Aggregate income-and-loss data on overall establishment operations, which include downstream phosphates and a number of different products, 3/ are presented in table 11. Overall establishment sales of the five firms declined steadily during 1984-86, from \$997.7 million in 1984 to \$957.2 million in 1985, representing a decrease of 4 percent, and then to \$927.3 million in 1986, or by 3 percent.

Aggregate operating income followed a similar, but much more pronounced, pattern to net sales, declining from \$196.6 million in 1984 to \$165.8 million in 1985, or by 16 percent, and then to \$139.0 million in 1986, a decline of 16 percent. The operating margins for the firms during the 1984-86 period were 19.7 percent, 17.3 percent, and 15.0 percent, respectively. None of the producers experienced operating losses during 1984, 1985, or 1986.

---

1/ The firms are FMC Corp., Monsanto Co., Stauffer Chemical Co., Occidental Chemical Corp., and Albright & Wilson, Inc.

2/ \* \* \*.

3/ Petitioners point out that the Belgian respondents' erroneously characterized the overall establishment data as relating to only industrial phosphoric acid and downstream phosphate operations. (Transcript of the hearing, p. 21.) In their posthearing brief, petitioners describe some of the other products produced at the establishments within which industrial phosphoric acid is produced. These other products include \* \* \*. (See petitioners' posthearing brief, p. 10.)

Table 11.—Industrial phosphoric acid: Income and loss experience of 5 U.S. firms <sup>1/</sup> on the overall operations of their establishments within which industrial phosphoric acid is produced, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987

Item	1984	1985	1986	Interim period ended Mar. 31— <sup>2/</sup>	
				1986	1987
Net sales.....1,000 dollars..	997,730	957,172	927,293	244,143	241,887
Cost of goods sold.....do....	745,421	735,857	731,215	188,346	190,139
Gross profit.....do....	252,309	221,315	196,078	55,797	51,748
General, selling, and admin- istrative expenses 1,000 dollars..	55,686	55,534	3/ 57,070	14,961	16,452
Operating income.....do....	196,623	165,781	139,008	40,836	35,296
Interest expense.....do....	***	***	***	***	***
Other income or (expense), net.....1,000 dollars..	***	***	***	***	***
Net income before income taxes.....1,000 dollars..	180,909	148,234	93,480	32,055	22,154
Depreciation and amortization expense included above 1,000 dollars..	30,710	32,842	34,952	9,064	8,789
Cashflow.....do....	211,619	181,076	128,432	41,119	30,943
As a share of net sales:					
Cost of goods sold..percent..	74.7	76.9	78.9	77.1	78.6
Gross profit.....do....	25.3	23.1	21.1	22.9	21.4
General, selling, and administrative expenses percent..	5.6	5.8	3/ 6.2	6.1	6.8
Operating income.....do....	19.7	17.3	15.0	16.7	14.6
Net income before income taxes.....percent..	18.1	15.5	10.1	13.1	9.2
Number of firms reporting operating losses.....	0	0	0	0	0
Number of firms reporting.....	5	5	5	5	5

<sup>1/</sup> The firms are FMC Corp., Monsanto Co., Stauffer Chemical Co., Occidental Chemical Corp., and Albright & Wilson, Inc.

<sup>2/</sup> All 5 firms reported 3 months interim data.

<sup>3/</sup> A company official at \* \* \*.

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

During the interim period ended March 31, 1987, aggregate net sales totaled \$241.9 million, down 1 percent from net sales of \$244.1 million reported during interim 1986. Aggregate operating income of the five firms declined from \$40.8 million during interim 1986 to \$35.3 million during interim 1987, or by 14 percent. The operating margins for the 1986 and 1987 interim periods were 16.7 percent and 14.6 percent, respectively. None of the firms reported operating losses during the interim periods.

Operations producing industrial phosphoric acid.—Sales of industrial phosphoric acid accounted for 41.5 percent of the five U.S. producers' overall establishment sales in 1986.

Aggregate income—and-loss data for the five firms on their operations producing industrial phosphoric acid are presented in table 12. \* \* \*

Net sales of industrial phosphoric acid declined from \$433.7 million in 1984 to \$401.9 million in 1985, or by 7 percent, then fell further to \$384.4 million in 1986, or by 4 percent. Operating income also declined, from \$20.2 million in 1984 to \$14.5 million in 1985, or by 29 percent, then fell sharply to \$5.5 million in 1986, a decline of 62 percent. The operating margins during 1984–86 were as follows: 4.7 percent, 3.6 percent, and 1.4 percent, respectively. None of the firms reported operating losses in 1984 or 1985, but one firm experienced an operating loss in 1986.

During interim periods 1986 and 1987, net sales fell from \$104.7 million to \$94.8 million, declining by 9 percent. Operating income declined significantly from \$2.1 million during interim 1986 to \$782,000 during interim 1987, or by 63 percent. The operating margins for the 1986 and 1987 interim periods were 2.0 percent and 0.8 percent, respectively. Two firms reported operating losses during interim 1986 and three firms experienced operating losses during interim 1987.

Net sales, operating income, and operating margin data for industrial phosphoric acid followed the same trends displayed in overall establishment operations. However, operations on industrial phosphoric acid (which accounted for 41.5 percent of 1986 overall establishment sales value) showed much lower operating margins in all the periods surveyed.

The 1986 aggregate value of intracompany transfers (which were transferred at cost, rather than at market) accounted for approximately 62 percent of the total sales reported by the five producers. Table 13 breaks out aggregate trade sales and intracompany transfers and shows the resulting aggregate unit values of phosphoric acid at cost (intracompany) and at market (trade).



Table 12.—Income and loss experience of 5 U.S. firms <sup>1/</sup> on their operations producing industrial phosphoric acid, accounting years 1984-86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987

Item	1984	1985	1986	Interim period ended Mar. 31— <sup>2/</sup>	
				1986	1987
Net sales.....1,000 dollars..	433,715	401,860	384,444	104,722	94,791
Cost of goods sold.....do....	400,563	374,381	365,263	3/98,865	90,494
Gross profit.....do....	33,152	27,479	19,181	4/ 5,857	4,297
General, selling, and admin- istrative expenses 1,000 dollars..	12,904	13,006	5/13,702	3,743	3,515
Operating income.....do....	20,248	14,473	5,479	2,114	782
Interest expense.....do....	***	***	***	***	***
Other income or (expense), net.....1,000 dollars..	***	***	***	***	***
Net income or (loss) before income taxes..1,000 dollars..	18,503	10,424	(6,039)	(557)	(2,503)
Depreciation and amortization expense included above 1,000 dollars..	4,095	4,674	4,394	1,268	2,493
Cashflow.....do....	22,598	15,098	(1,645)	711	(10)
As a share of net sales:					
Cost of goods sold..percent..	92.4	93.2	95.0	3/ 94.4	95.5
Gross profit.....do....	7.6	6.8	5.0	4/ 5.6	4.5
General, selling, and administrative expenses percent..	3.0	3.2	5/ 3.6	3.6	3.7
Operating income.....do....	4.7	3.6	1.4	2.0	0.8
Net income or (loss) before income taxes.....percent..	4.3	2.6	(1.6)	(0.5)	(2.6)
Number of firms reporting operating losses.....	0	0	1	2	3
Number of firms reporting.....	5	5	5	5	5

<sup>1/</sup> The firms are FMC Corp., Monsanto Co., Stauffer Chemical Co., Occidental Chemical Corp., and Albright & Wilson, Inc.

<sup>2/</sup> All 5 firms reported 3 months interim data.

<sup>3/</sup> \* \* \*.

<sup>4/</sup> \* \* \*.

<sup>5/</sup> A company official at \* \* \*.

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

Table 13.—Industrial phosphoric acid: Trade sales and intracompany transfers of 5 U.S. producers, 1/ accounting years 1984–86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987

Item	1984	1985	1986	Interim period ended Mar. 31— <u>2/</u>	
				1986	1987
Value (1,000 dollars)					
Trade <u>3/</u> .....	170,478	161,642	146,727	41,461	37,595
Intracompany.....	263,237	240,218	237,717	63,261	57,196
Total.....	433,715	401,860	384,444	104,722	94,791
Quantity (1,000 pounds)					
Trade <u>3/</u> .....	812,668	779,998	728,256	225,138	197,522
Intracompany.....	1,546,144	1,374,987	1,383,678	360,562	346,747
Total.....	2,358,812	2,154,985	2,111,934	585,700	544,269
Unit value (cents per pound)					
Trade.....	20.98	20.72	20.15	18.42	19.03
Intracompany.....	17.03	17.47	17.18	17.55	16.50
Average.....	18.39	18.65	18.20	17.88	17.42

1/ The firms are FMC Corp., Monsanto Co., Stauffer Chemical Co., Occidental Chemical Corp., and Albright & Wilson, Inc.

2/ All 5 firms reported 3 months interim data.

3/ \* \* \*.

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

Due to the large volume of intracompany transfers and their effects on income, separate financial data relating to trade sales (various variable and fixed expenses) were requested from all U.S. producers. A contribution margin analysis of the trade sales is provided in table 14.

The operating income margins relating to trade sales only are higher than the levels experienced by aggregate industrial phosphoric acid operations as presented in table 12, but follow the same declining trends from year to year. It should be noted that this analysis (which was constructed from market-priced trade sales only) cannot be assumed to represent all industrial phosphoric acid sales.

Table 14.—Industrial phosphoric acid: Contribution margin analysis of trade sales of 5 U.S. producers, 1/ accounting years 1984–86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987

Item	1984	1985	1986	Interim period ended Mar. 31—2/	
				1986	1987
	Value (1,000 dollars)				
Net trade sales.....	170,478	161,642	146,727	41,461	37,595
Variable manufacturing expenses.....	114,357	111,474	103,071	30,034	27,273
Variable general, selling, and administrative expenses <u>3/</u> .....	2,708	2,507	2,907	799	788
Contribution margin <u>4/</u> toward fixed expenses..	53,413	47,661	40,749	10,628	9,534
Fixed manufacturing expenses.....	22,993	24,224	25,076	5,723	6,063
Fixed selling expenses <u>5/</u>	1,566	1,739	1,721	445	444
Fixed general and admini- strative expenses <u>6/</u> ...	8,609	8,573	8,923	2,459	2,245
Operating income.....	20,245	13,125	5,029	2,001	782
As a share of net sales:	Percent of total				
Variable expenses.....	68.7	70.5	72.2	74.4	74.6
Contribution margin....	31.3	29.5	27.8	25.6	25.4
Fixed expenses.....	19.4	21.4	24.3	20.8	23.3
Operating income.....	11.9	8.1	3.4	4.8	2.1

1/ The firms are FMC Corp., Monsanto Co., Stauffer Chemical Co., Occidental Chemical Corp., and Albright & Wilson, Inc.

2/ All 5 firms reported 3 months interim data.

3/ \* \* \*

4/ Excess of sales value over variable expenses. Also called marginal income.

5/ \* \* \*

6/ \* \* \*

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

A share, roughly 27 percent during 1984–86 in terms of quantity, of industrial phosphoric acid trade sales are made to agricultural markets. One producer, \* \* \*, that sells to agricultural markets reports that although the prices it receives for such sales are lower than its prices for sales to industrial markets, the agricultural sales make a positive contribution toward the company's fixed and semi-variable expenses. 1/ Although agricultural sales may make a positive contribution toward a firm's overall fixed costs (i.e., combined operations in producing elemental phosphorus, industrial phosphoric acid, and downstream products made from industrial phosphoric

1/ \* \* \*

acid), since 1984, such sales have made a negative contribution toward industrial phosphoric acid operations considered in isolation. <sup>1/</sup> U.S. producers' aggregate trade and agricultural sales of industrial phosphoric acid, on a unit value basis, are shown in table 15.

Table 15.—Industrial phosphoric acid: Unit analysis of all trade sales and agricultural sales of 5 U.S. producers, <sup>1/</sup> accounting years 1984–86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987

Item	(In cents per pound)				
	1984	1985	1986	Interim period ended Mar. 31— <sup>2/</sup> 1986      1987	
All trade sales:					
Unit sales price.....	20.98	20.72	20.15	18.42	19.03
Unit variable costs .....	14.41	14.61	14.55	13.70	14.21
Unit contribution margin <sup>3/</sup> toward fixed expenses.....	6.57	6.11	5.60	4.72	4.82
Unit fixed costs.....	4.08	4.43	4.90	3.83	4.43
Unit operating margin....	2.49	1.68	0.70	0.89	0.39
Agricultural sales: <sup>4/</sup>					
Unit sales price <sup>4/</sup> .....	13.26	12.74	12.10	10.46	11.97
Unit variable costs <sup>4/</sup> ....	13.19	13.18	13.03	11.66	13.70
Unit contribution (loss) margin toward fixed expenses <sup>3/</sup> .....	.07	(0.44)	(0.93)	(1.20)	(1.73)
Unit fixed costs <sup>4/</sup> .....	3.62	4.10	4.93	3.28	4.18
Unit operating (loss) margin.....	(3.55)	(4.54)	(5.86)	(4.48)	(5.91)

<sup>1/</sup> The firms are FMC Corp., Monsanto Co., Stauffer Chemical Co., Occidental Chemical Corp., and Albright & Wilson, Inc.

<sup>2/</sup> All 5 firms reported 3 months interim data.

<sup>3/</sup> Excess of unit sales value over unit variable expenses. Also called unit marginal income.

<sup>4/</sup> All agricultural unit values (sales price, variable costs, and fixed costs) were weighted (on the basis of quantity) by each producer's share of total agricultural sales in each period. If any producer(s) did not sell to agricultural markets in a particular period, no data for that producer were included in the computation.

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

<sup>1/</sup> The contribution margins, in cents per pound, for FMC, which petitioners allege to be a low cost producer, were \* \* \*. \* \* \*.

Value of plant, property, and equipment.—The data provided by the five firms on their end-of-period investment in productive facilities in which phosphoric acid is produced are shown in table 16. The aggregate investment in productive facilities for industrial phosphoric acid, valued at cost, increased from \$74.8 million in 1985 to \$77.0 million in 1986. The book value of such assets declined from \$36.4 million in 1985 to \$34.5 million in 1986. The asset value, at original cost, remained steady at approximately \$77.0 million as of March 31, 1986, and March 31, 1987. The book value of such assets declined from \$36.3 million at the end of interim 1986 to \$33.0 million at the end of interim 1987.

Table 16.—Industrial phosphoric acid: Value of property, plant, and equipment of 5 U.S. producers, accounting years 1984–86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987

Item	1984 2/	1985	1986	Interim period ended Mar. 31—1/	
				1986	1987
<b>All products of establishment:</b>					
Original cost..1,000 dollars..	478,377	524,389	539,168	532,262	547,211
Book value.....do....	217,759	237,174	231,546	236,195	230,521
Number of firms reporting.....	4	5	5	5	5
<b>Industrial phosphoric acid:</b>					
Original cost..1,000 dollars..	62,442	74,791	76,999	76,937	76,763
Book value.....do....	29,110	36,417	34,531	36,314	32,987
Number of firms reporting.....	4	5	5	5	5

1/ All 5 firms reported 3 months interim data.

2/ \* \* \*.

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

Capital expenditures.—The data provided by the five firms relative to their capital expenditures for land, buildings, and machinery and equipment used in the manufacture of industrial phosphoric acid are shown in table 17. Capital expenditures relating to industrial phosphoric acid increased from \$6.1 million in 1984 to \$\* \* \* million in 1985, then declined to \$4.6 million in 1986. 1/ Total capital expenditures relating to industrial phosphoric acid declined from \$770,000 during the interim period ended March 31, 1986, to \$436,000 during interim 1987.

1/ Petitioners assert that an examination of capital expenditures shows that they should not be interpreted as an indication of the health of the industrial phosphoric acid industry. In their prehearing brief, petitioners point out that "\* \* \*." (Petitioners' prehearing brief, pp. 72–73.)

Table 17.—Industrial phosphoric acid: Capital expenditures by 5 U.S. producers, accounting years 1984–86, and interim periods ended Mar. 31, 1986, and Mar. 31, 1987

Item	1984	1985	1986	Interim period ended Mar. 31—1/	
				1986	1987
All products of the establishments:					
Land and land improvements 1,000 dollars..	***	***	***	***	***
Building or leasehold improvements 1,000 dollars..	***	***	***	***	***
Machinery, equipment, and fixtures 1,000 dollars..	27,751	35,892	35,535	4,898	4,835
Total.....do....	30,035	36,888	36,632	5,054	4,877
Number of firms reporting..	5	5	5	5	5
Industrial phosphoric acid:					
Land and land improvements 1,000 dollars..	***	***	***	***	***
Building or leasehold improvements 1,000 dollars..	***	***	***	***	***
Machinery, equipment, and fixtures 1,000 dollars..	***	***	***	***	***
Total.....do....	6,129	***	4,558	770	436
Number of firms reporting..	5	5	5	5	5

1/ All 5 firms reported 3 months interim data.

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

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

<u>Period</u>	<u>Research and development expenses</u>
1984.....	1,366
1985.....	1,471
1986.....	1,522
January–March—	
1986.....	370
1987.....	144

Consideration of Alleged Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that—

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors 1/—

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, and

---

1/ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation.

The available information on the nature of the subsidies found by the Department of Commerce (item (I) above) is presented in the section of this report entitled "Nature and Extent of Subsidies"; the available data on foreign producers' operations (items (II) and (VI) above) are presented in the section entitled "The Foreign Industries"; and information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between Alleged Material Injury or the Threat Thereof and Imports Subsidized and Sold at LTFV." The potential for "product-shifting" (item VIII) is not an issue in these investigations since there are no products subject to investigation(s) or to final orders that use production facilities that can be shifted to produce industrial phosphoric acid. The available information on U.S. inventories (item V) of imported industrial phosphoric acid from Belgium and Israel follows.

#### Belgium

\* \* \* importers, 1/ accounting for \* \* \* imports from Belgium, provided data on inventories of industrial phosphoric acid. Reported end-of-period inventories \* \* \* (table 18). \* \* \*.

#### Israel

\* \* \* importers, 2/ which account for \* \* \* imports of industrial phosphoric acid from Israel, provided data on inventories; however, \* \* \*. \* \* \*.

Table 18.—Industrial phosphoric acid: End-of-period inventories of Belgian and Israeli imports held in the United States, 1983-86, January-March 1986, and January-March 1987

\* \* \* \* \*

---

1/ These firms are \* \* \*. \* \* \*.

2/ These firms are \* \* \*.



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

U.S. imports 1/

U.S. shipments of imports from Belgium, accounting for \* \* \* of all imports of industrial phosphoric acid during the period of investigation, increased by \* \* \* percent from 1984 to 1985 and were relatively stable, increasing by \* \* \* percent, from 1985 to 1986 (table 19). During January-March 1987, such imports from Belgium, which accounted for \* \* \* percent of all imports, dropped by \* \* \* percent, compared with such imports during the corresponding period of 1986. U.S. shipments of imports of industrial phosphoric acid from Israel increased from \* \* \* in 1984 to \* \* \* in 1985. Imports from Israel increased by \* \* \* percent from 1985 to 1986. During January-March 1987, Israeli imports of industrial phosphoric acid decreased by \* \* \* percent, compared with such imports during the corresponding period of 1986. Imports from Israel accounted for \* \* \* percent of all imports of industrial phosphoric acid during January-March 1986 and for \* \* \* percent during January-March 1987.

Market penetration of imports 2/

U.S.-produced domestic shipments and intracompany and intercompany transfers of industrial phosphoric acid accounted for \* \* \* percent of total

---

1/ Data on U.S. imports of industrial phosphoric acid as presented in this section are U.S. shipments of imports from Belgium and Israel compiled from responses to questionnaires of the U.S. International Trade Commission and adjusted official import statistics for imports from all other countries. Data on imports from Belgium and Israel reflect only U.S. shipments of imports and thus account for any inventory changes and export shipments. Actual imports from Belgium (as reported in questionnaire responses) were \* \* \*. Export shipments of such imports from Belgium were \* \* \*. Actual imports from Israel (as reported in questionnaire responses) were \* \* \*. Inventories of imports from Belgium and Israel are presented in the section of this report entitled "Consideration of Alleged Threat of Material Injury."

Since these data, as reported in response to the Commission's questionnaires, are confidential, data on U.S. imports from Belgium and Israel, as compiled from official import statistics, adjusted for misclassifications and converted to a 75-percent-assay basis, are presented in app. C.

2/ The market penetration of imports in this section is based on apparent U.S. consumption calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers, domestic shipments of imports from Belgium and Israel as reported in response to the Commission's questionnaires, and adjusted official import statistics for imports from all other countries.

Since the data as reported in response to the Commission's questionnaires are confidential, the market penetration of imports based on apparent U.S. consumption calculated by adding U.S.-produced domestic shipments and intracompany or intercompany transfers to official import statistics, adjusted for misclassifications and converted to a 75-percent-assay basis, is presented in app. C.

Table 19.—Industrial phosphoric acid: U.S. shipments of imports from Belgium and Israel, 1/ and U.S. imports for consumption from all other countries, 2/ 1984-86, January-March 1986, and January-March 1987

Source	1984	1985	1986	January-March—	
				1986	1987
Quantity (1,000 pounds)					
Belgium.....	***	***	***	***	***
Israel.....	***	***	***	***	***
All other <u>3/</u> .....	2,030	1,766	7,470	5,017	1,109
Total.....	***	***	***	***	***
Value (1,000 dollars) <u>4/</u>					
Belgium.....	***	***	***	***	***
Israel.....	***	***	***	***	***
All other.....	240	1,181	1,621	1,048	267
Total.....	***	***	***	***	***
Unit value (per pound)					
Belgium.....	\$***	\$***	\$***	\$***	\$***
Israel.....	***	***	***	***	***
All other.....	.12	.67	.22	.21	.24
Average.....	***	***	***	***	***
Percent of total quantity					
Belgium.....	***	***	***	***	***
Israel.....	***	***	***	***	***
All other.....	***	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0

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

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

3/ Imports from the United Kingdom include imports of \* \* \*. Imports from the United Kingdom were converted from an \* \* \*-percent assay to a 75-percent assay. Imports from West Germany were adjusted to include \* \* \*. Imports from West Germany and imports from all other countries are assumed to have entered on a 75-percent-assay basis.

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

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

apparent U.S. consumption throughout the period of investigation. On the basis of quantity, the market penetration of imports from Belgium increased from \* \* \* percent in 1984 to \* \* \* percent in 1985 and remained \* \* \* in 1986 (table 20). During January-March 1987, the ratio of imports from Belgium to total apparent U.S. consumption fell \* \* \*, compared with the ratio during the corresponding period of 1986. The share of the U.S. merchant market held by imports from Belgium rose from \* \* \* percent in 1984 to \* \* \* percent in 1986. During January-March 1987, the ratio of imports from Belgium to U.S. open-market consumption was \* \* \* percent, up from \* \* \* percent during January-March 1986. The ratio of imports from Israel to total apparent U.S. consumption of industrial phosphoric acid was \* \* \* percent in 1985 and rose to \* \* \* percent in 1986. The ratio of Israeli imports to total apparent U.S. consumption was \* \* \* percent during January-March 1987, compared with \* \* \* percent during the corresponding period of 1986. The share of the U.S. merchant market held by imports from Israel was \* \* \* percent in 1985 and \* \* \* percent in 1986. During January-March 1987, the ratio of imports from Israel to open-market consumption rose to \* \* \* percent, compared with \* \* \* percent during January-March 1986.

The ratios of imports to apparent U.S. consumption and U.S. open-market consumption based on value are presented in table 21.

Table 20.—Industrial phosphoric acid: Ratios of the quantity of U.S. shipments of imports from Belgium and Israel and U.S. imports for consumption from all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987

\* \* \* \* \*

Table 21.—Industrial phosphoric acid: Ratios of the value of U.S. shipments of imports from Belgium and Israel and U.S. imports for consumption from all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987

\* \* \* \* \*

### Channels of distribution

Domestic producers captively consume about 65 percent of their production of phosphoric acid. The remaining share of the domestic product and all of the imports from Belgium and Israel are sold into the merchant market. Distribution of industrial phosphoric acid in the merchant market takes place through either direct sales to end users or sales to distributors.

Approximately \* \* \* percent of domestic producers' sales of industrial phosphoric acid in the merchant market are to distributors. The remaining \* \* \* percent of the merchant market sales are sold to end users for either industrial uses, \* \* \* percent, or to agricultural customers, \* \* \* percent. \* \* \* produces \* \* \* of the acid destined for the agricultural market. Shipments of 75-percent assay technical-grade acid constitute the largest segment of the merchant market. Domestic acid sales, for industrial uses, are almost equally split between end users and distributors (figure 5). About \* \* \* percent of \* \* \* 's shipments to industrial end users are third-party shipments. These are sales to distributors that are shipped directly from the plant or from terminal facilities to the end-user customers. In these cases, the distributor functions essentially as a broker although the distributor does take title to the merchandise.

Approximately \* \* \* percent of imported industrial phosphoric acid from Belgium is sold to distributors, whereas \* \* \* percent of the product imported from Israel is sold to distributors. Of the shipments to end users, most of the imported product is sold as 75-percent assay technical-grade acid (figure 5). <sup>1/</sup>

Domestic producers ship industrial phosphoric acid directly from their production facilities, or from terminal storage facilities located throughout the United States. \* \* \*.

Nitron, the \* \* \* importer of industrial phosphoric acid from Belgium, leases two terminal storage facilities, in Bayonne, NJ, and near Houston, TX.

Industrial phosphoric acid is usually transported by truck, with a tank truck load as the standard shipment size. Some acid is shipped by rail to large distributors and end users, and some is shipped in drums, usually by distributors to small customers. Both domestic producers and importers generally ship to customers within 500 miles of their production facility or holding terminal. U.S. producers have geographically dispersed production facilities located close to most of their customers. Nitron, which imports acid from Belgium, identified \* \* \* as its principal geographic market. HCl

---

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

Respondents testified at the preliminary conference that 100 percent of the imported product is sold for industrial use.

Figure 5.— Channels of distribution for domestic and imported phosphoric acid.

\* \* \* \* \*

Chemicals, the largest Israeli importer, reported that \* \* \* were its principal geographic markets. Holchem, the other importer of Israeli acid, reported that its sales were \* \* \*. <sup>1/</sup> Average shipping costs are typically 1-1/2 to 2 cents per pound (roughly 5 to 10 percent of the delivered price).

#### Competition between imports

Both Belgian and Israeli respondents argue that imports from Belgium and Israel do not compete with each other, and thus should not be cumulated, because such imports entered different geographic markets and have not coincided in entry or trend during the period of investigation. Respondents stress that most of the imported product is distributed within a 500-mile radius of the importers' terminals (because of shipping costs and service considerations) and that the only geographic overlap consists of a narrow band in North Carolina and southern Virginia, and an even smaller band in eastern Louisiana and western Alabama. Respondents emphasize that, outside the 500-mile radius of their terminals, only a small volume of intermittent sales are made, involving disparate distribution systems and different classes of customers. <sup>2/</sup> By contrast, petitioners allege that Belgian and Israeli imports have competed with each other as well as with the domestic product during the period of investigation. Petitioners assert that this competition has been in the form of actual sales transactions and offers of sales in the same geographical markets, at the same time, via similar channels of distribution.

---

<sup>1/</sup> During 1986, 80 percent of the imports reported from Belgium entered the United States through New York, NY, 9 percent through Houston, TX, and 9 percent through Savannah, GA. During the same period, 77 percent of the imports reported from Israel entered the United States through Savannah, GA, and 18 percent through Los Angeles, CA. During January-March 1987, 71 percent of the imports reported from Belgium entered through New York, NY, and 29 percent through Houston, TX. During this period, 60 percent of the imports reported from Israel entered through Los Angeles, CA, and 40 percent through Savannah, GA.

<sup>2/</sup> In their prehearing brief, Belgian respondents allege that Prayon imported phosphoric acid at Savannah, GA, only in 1985 and 1986; such imports consisted of a single sale and a single bulk shipment in each year to a single customer. These shipments were transferred at pier side from ship to rail tank cars, in which the acid was transported to the purchaser in Charleston, SC. Prayon also made some sales to a customer in Georgia prior to the establishment of terminal facilities for industrial phosphoric acid from Israel, but reportedly has not made any sales to that customer since imports from Israel entered the market in 1985. (See prehearing brief of Belgian respondents, pp. 30-31.)

In response to the Commission's requests, Nitron identified the States outside the 500-mile radii of its terminals to which it made deliveries of industrial phosphoric acid during January-June 1987. 1/ These States are \* \* \*. 2/ Respondents further allege that the preponderance of Nitron's shipments to locations more than 500 miles from its terminals do not represent sales in the areas concerned because Nitron, in order to serve customers with a number of different locations in the United States, must ship to distant locations as well as to the more desirable locations near its leased tanks. 3/ Respondents acknowledge that Nitron's sales agents "have encountered reports of sales of Israeli acid," but, to the best of their knowledge, have not found themselves in head-to-head competition with Israeli acid.

Similarly, in response to the Commission's requests, HCI Chemicals identified sales outside the 500-mile radius of its Savannah terminal. HCI reportedly \* \* \*. 4/ In \* \* \*, HCI \* \* \*. 5/ HCI Chemicals \* \* \*. 6/

\* \* \* of HCI's \* \* \*. 7/ \* \* \*. In \* \* \*, HCI \* \* \*. 8/

Another Israeli importer, Holchem, reportedly \* \* \*. Holchem \* \* \*. 9/

Petitioners provided the Commission with a list of \* \* \* end users to whom both Belgian and Israeli acid has been offered or sold and \* \* \* distributors which offered or sold both Belgian and Israeli acid during the period of investigation. In addition, petitioners named \* \* \* end users to whom Belgian or Israeli acid has been offered or sold and whose delivery distance was more than 500 miles from the importers' terminals, and \* \* \*

---

1/ The Belgian respondents provided data only for January-June 1987. At the request of the Commission's staff, in a letter dated July 24, 1987, they provided similar data for June-December 1985 and June-December 1986.

2/ Respondents stress that "\* \* \*." (See posthearing brief of Belgian respondents, attachment 2, p. 10.)

During June-December 1985, Nitron made sales outside the 500-mile radii of its terminals to \* \* \*. Respondents note, in addition, that \* \* \*. \* \* \*.

3/ Respondents note, "For example, one of Nitron's principal customers has facilities in \* \* \*, which Nitron serves respectively from the Bayonne and Houston terminals. That customer also has facilities in \* \* \*, however, and deliveries to that facility account for all of Nitron's deliveries in that state. Another customer has a plant in New Jersey, but a second location that Nitron must also serve, \* \* \*. This customer also directed Nitron to ship \* \* \* in January 1987. A third such customer is responsible for the \* \* \* deliveries in the period, which it directed (although Nitron ordinarily would not serve that location, because of the high delivery cost)." (See posthearing brief of Belgian respondents, attachment 2, p. 11.)

4/ Staff conversation with \* \* \*.

5/ \* \* \*.

6/ Staff conversation with \* \* \*.

7/ Respondents \* \* \*. (See posthearing brief of Israeli respondents, attachment 2, p. 2.)

8/ Staff conversations with \* \* \*.

9/ Posthearing brief of Israeli respondents, attachment 3.

distributors that offered or sold Belgian or Israeli acid outside the 500-mile radii of the importers' terminals. In an effort to examine the extent to which imports from Belgium and Israeli compete with each other, the Commission staff contacted \* \* \* firms from the petitioners' list. At \* \* \* of the firms, no one knowledgeable about phosphoric acid purchases was available, and, at \* \* \* of the firms contacted, purchasers were unwilling to discuss their sources of supply or sales. Staff conversations with the remaining \* \* \* firms contacted are summarized below.

\* \* \* stated that since \* \* \*, \* \* \* has purchased a total of perhaps as much as \* \* \* of imported industrial phosphoric acid, \* \* \* percent of which was purchased from \* \* \* and \* \* \* percent from \* \* \*. He added that the prices quoted for acid from each country were very competitive, and \* \* \* continues to receive offers to sell acid from both \* \* \* and \* \* \*. According to \* \* \*, the acid purchased has been resold in \* \* \*. \* \* \* stated that \* \* \* purchases a total of roughly \* \* \* of phosphoric acid from all sources per year.

\* \* \* stated that from \* \* \* through \* \* \*, \* \* \* purchased imported acid of an unknown origin from a broker (\* \* \*) located in \* \* \*. Between \* \* \*, and \* \* \*, \* \* \* purchased \* \* \* of 85-percent assay acid, and between \* \* \*, and \* \* \*, \* \* \* purchased \* \* \* of 75-percent assay acid, from \* \* \*. This acid was resold by \* \* \* within a 75-mile radius of \* \* \*. According to \* \* \*, the firm has imported acid from Belgium (and other countries) but has not imported any acid from Israel.

\* \* \* stated that, nationally, \* \* \* purchased \* \* \* of Belgian acid in \* \* \* from \* \* \*. The acid purchased is in turn sold to buyers in \* \* \*. \* \* \* added that \* \* \* received an offer from \* \* \* to sell Israeli acid in \* \* \*, but that \* \* \* was satisfied with its sources of supply and the discussions never got around to pricing.

\* \* \* has been buying Belgian acid since \* \* \* from \* \* \*. From \* \* \* until \* \* \*, \* \* \* purchased a monthly average of \* \* \* from \* \* \*; since then, \* \* \* has been purchasing approximately \* \* \* per month. \* \* \* presently sells the Belgian acid, in the following volumes, to accounts that have been in place since \* \* \*, in the following locations: \* \* \* in \* \* \*, \* \* \* in \* \* \*, \* \* \* in \* \* \*, \* \* \* in \* \* \*, and \* \* \* in \* \* \*.

\* \* \* stated that since \* \* \*, the firm has purchased only domestic acid. However, in \* \* \*, \* \* \* bought \* \* \* of what \* \* \* thought was Belgian acid (75-percent assay from \* \* \*). \* \* \* stated that in \* \* \*, \* \* \* purchased Israeli acid (\* \* \*) from \* \* \*. The acid from both suppliers was delivered in \* \* \*, and the price quotes were competitive. Throughout \* \* \*, \* \* \* has received only offers of Israeli acid, but has not even discussed price because the firm is committed to domestic suppliers.

\* \* \* stated that \* \* \* buys domestically produced acid and also has been buying acid from \* \* \* at the rate of \* \* \*. \* \* \*. According to \* \* \*, \* \* \* "doesn't care" where the acid it buys comes from.

\* \* \* stated that in \* \* \*, \* \* \* bought \* \* \* of Israeli acid from \* \* \*. The acid was shipped \* \* \*. \* \* \* stated that in \* \* \*, \* \* \* received an offer to sell "off-spec" (i.e., slightly contaminated phosphoric acid with phenol) Belgian acid from a local distributor whose name he cannot remember.

\* \* \* said that \* \* \* has made no purchases of imported phosphoric acid. \* \* \* added that he cannot recall having received offers to sell imported technical-grade acid. He believes, however, that both Belgian and Israeli acid is being sold in the \* \* \* market, principally by \* \* \*. \* \* \* claimed that the firm buys, \* \* \*, only U.S. acid. \* \* \* stated that \* \* \* does not deal in large quantities of phosphoric acid (\* \* \*) and that \* \* \* receives \* \* \* of its supply from \* \* \* and \* \* \* from \* \* \*. \* \* \* declined to discuss whether or not his firm deals in imported acid.

\* \* \* stated that \* \* \* has not purchased imported acid during the period of investigation. According to \* \* \*, \* \* \* did make an offer to sell Israeli (\* \* \*) acid in \* \* \* at a price \* \* \* to the prices offered by \* \* \*'s domestic suppliers. \* \* \* added that \* \* \* is a major competitor of \* \* \* in \* \* \* and is the local distributor of Belgian acid.

\* \* \* stated that over the past \* \* \* years, \* \* \* has been buying \* \* \* of its supply from domestic producers and \* \* \* from \* \* \*. He declined to discuss the volume of his purchases. \* \* \* said that, approximately \* \* \* years ago, \* \* \* was contacted by \* \* \*, which offered to sell Belgian acid, and \* \* \* may have in fact purchased acid from \* \* \*. The acid that \* \* \* purchases from \* \* \* and domestic producers is resold in the \* \* \* areas.

\* \* \* stated that, since \* \* \*, \* \* \* has been buying \* \* \* of its acid (\* \* \*) from \* \* \* (Belgian acid) and \* \* \* from domestic producers. \* \* \* does not recall having been contacted by anyone offering to sell Israeli acid.

\* \* \* stated that since \* \* \*, \* \* \* has been buying all of its acid from domestic producers. \* \* \* does not recall any sales contacts from distributors of either Israeli or Belgian acid. He added that he has heard of purchases of Israeli and Belgian acid in the \* \* \* area.

\* \* \* said that \* \* \* in \* \* \* has bought only domestic acid since \* \* \*. \* \* \* is having difficulty, however, in matching the prices at which Belgian acid is being sold in the \* \* \* region. According to \* \* \*, in \* \* \* he received an offer from \* \* \* to sell Israeli acid for delivery in \* \* \*, but the offer was not competitive with the prices being offered in that region for Belgian acid from the \* \* \* area.

\* \* \* stated that from \* \* \*, \* \* \* has bought Belgian acid from \* \* \* in \* \* \*. According to \* \* \*, the volume has remained fairly constant at approximately \* \* \*, representing roughly \* \* \* of his firm's purchases. The remaining \* \* \* is being supplied by domestic manufacturers. \* \* \* said that, in \* \* \*, however, an \* \* \* salesman from \* \* \* advised \* \* \* that \* \* \* was selling \* \* \* acid as well, and \* \* \* estimates that perhaps \* \* \* of acid purchased in \* \* \* from \* \* \* were actually \* \* \* acid, priced very competitively with the \* \* \* acid. In \* \* \*, all the purchases of imported acid by \* \* \* have been \* \* \* acid. \* \* \* has a sales region covering \* \* \*.



\*\*\* stated that \*\*\* has purchased imported acid \*\*\* during the period of investigation. Over a \*\*\*-month period from \*\*\* into early \*\*\*, \*\*\* purchased \*\*\* of Belgian acid from \*\*\*, representing \*\*\* percent of the \*\*\*'s total purchases during that period. Just prior to that time, in \*\*\*, \*\*\* bought \*\*\* of \*\*\* acid from \*\*\*, which was sold at "fire sale" prices because \*\*\*. According to \*\*\*, since \*\*\*, \*\*\* has received offers of sale from \*\*\*, but not from \*\*\*. \*\*\* resells acid in the \*\*\* areas. According to \*\*\*, in that \*\*\* market, Belgian acid predominates, because \*\*\*. \*\*\* added that, at the present time, there is "very little" \*\*\* acid in that region.

\*\*\* said that for the period \*\*\* through \*\*\*, \*\*\* purchased roughly \*\*\* of acid from \*\*\*. The bulk of the acid was delivered to \*\*\* customers located in \*\*\*. However, during the same period, from \*\*\* were delivered to \*\*\* different accounts in \*\*\*. \*\*\* added that \*\*\* now is buying very little acid, since it has had \*\*\* of technical-grade phosphoric acid in \*\*\*.

\*\*\* stated that since \*\*\*, the firm has been buying through a distributor only domestic acid produced by \*\*\*. \*\*\* stated that, in \*\*\*, he bought \*\*\* material through the distributor \*\*\*. He said that, to the best of his knowledge, he has never purchased the Israeli product. \*\*\* added that, although he does not specifically recall having been offered the Israeli product, he would not "be surprised" if he has been offered some product from Israel.

\*\*\* could not identify the origin of the acid she buys. She stated that \*\*\* buys its acid from a distributor, \*\*\*, in \*\*\*. No one knowledgeable about phosphoric acid at \*\*\* was available.

\*\*\* stated that he believed \*\*\* purchased some Belgian acid in \*\*\* from another distributor, \*\*\*, in \*\*\*. According to \*\*\*, \*\*\* currently sells only domestically produced acid, mostly to metal treatment compounders in the \*\*\* area. \*\*\* stated that he is not aware of ever having been offered the Israeli product and believes that there is no Israeli material in the \*\*\* area.

\*\*\* stated that his firm received offers from \*\*\*. He was offered both Israeli and Belgian product during \*\*\* for delivery in \*\*\*. \*\*\* added that prices for imported product were considerably lower than those for domestically produced acid.

\*\*\* stated that his firm only purchases small quantities of domestic phosphoric acid a few times a year. \*\*\* added that he has had no contact with representatives selling imported acid.

\*\*\* stated that his firm usually buys acid through \*\*\*, but buys some acid from \*\*\* when the acid is unavailable from \*\*\*. \*\*\* was unable to identify the origin of the acid he purchases. No one knowledgeable about phosphoric acid was available at \*\*\*.

Petitioners indicated that \*\*\* purchased Belgian acid in \*\*\* through \*\*\*. \*\*\* stated that \*\*\* purchased about \*\*\* of Belgian acid from \*\*\* in \*\*\*. The acid was delivered to \*\*\*. According to \*\*\*, \*\*\* has not purchased, or received offers for, Israeli acid.

## Prices

Prices of industrial phosphoric acid are quoted on a per-pound or per-hundredweight (cwt) basis to firms that purchase from domestic producers and importers. Prices for industrial phosphoric acid have traditionally been quoted on an f.o.b. freight-equalized basis. With freight-equalized pricing, a customer only pays for the equivalent of the freight cost from the nearest production facility of any supplier. 1/ The producer pays the difference when its own plant is not the one closest to the customer.

Competition for sales of industrial phosphoric acid is very strong. Price differentials of less than \* \* \* percent may influence a purchaser to change suppliers. \* \* \* report that in the past they extensively used price lists but now, because of discounting necessitated by competition, less than \* \* \* percent of all sales are made at list prices.

The Commission requested producers and importers of phosphoric acid to provide price data for sales to distributors and end users. F.o.b. selling prices, shipping costs, and discounts were requested for sales to the firm's best customers during January 1984-March 1987. The information requested included quarterly price and shipment data for sales of 75-percent and 80-percent assay technical-grade acid and 75-percent assay food-grade acid. Respondents were also asked to provide information on any sales to the agricultural markets, regardless of the assay level of the acid. 2/

Questionnaires with usable data were received from five domestic producers, accounting for 100 percent of domestic shipments in 1986, and four importers of phosphoric acid, accounting for almost all imports from Belgium and Israel in 1986. Domestic producers provided complete price series for all of the product categories. The 1986 quarterly shipment data indicated that sales of technical-grade 75-percent assay acid represented the largest market segment for individual firms. \* \* \* sold \* \* \* quantities to the agricultural market segment; \* \* \* of these sales were concentrated in \* \* \* and their price was \* \* \*.

Imported acid sales, like domestic, were concentrated in the 75-percent assay technical-grade market. \* \* \* percent of the Belgian acid was 75-percent technical grade. The remaining \* \* \* percent was 80-percent technical grade. \* \* \* percent of the Israeli acid was 75-percent technical grade, \* \* \* percent was 80-percent technical grade, and the remaining \* \* \* percent consisted of other acid types, mainly \* \* \* (figure 5). Importers reported no prices for sales of food grade acid or acid sold to agricultural accounts. Sales of acid produced in Israel were only reported for the period January 1985-March 1987.

---

1/ \* \* \*.

2/ Producers and importers were also requested to provide data on sales of ACS-SEMI, and poly or super grade acids. \* \* \* was the only firm to provide prices for both the ACS-SEMI and super grades, while \* \* \* provided prices for the ACS-SEMI grade.

Price trends.—Prices for domestic technical- and food-grade acid and Belgian technical-grade phosphoric acid followed similar trends (tables 22 to 26). Prices were generally stable during 1984 and 1985, then began to decline during 1986. Nearly every acid product examined showed a price drop in January-March 1987 from the prevailing price level in 1986. \* \* \*.

Domestic technical-grade acid prices were approximately 4 to 9 percent lower in January-March 1987 than they were during 1984. Food-grade acid prices were down 16 percent over the same period. Imports of 75-percent assay acid from Belgium were priced between \* \* \* in 1987 than in 1984, depending upon the customer. Prices of 80-percent assay acid were \* \* \* during the same time period. Prices received for acid produced in Israel showed mixed results, however, these trends were based on a limited amount of data.

U.S. producers' prices of 75-percent technical-grade acid sold to distributors were generally higher than prices to end users, reflecting the greater market power of the large end users, and the strong degree of competition for their accounts.

Price comparisons.—Belgian 75-percent assay phosphoric acid sold to distributors was \* \* \* the domestic product. Margins of \* \* \* ranged from \* \* \* percent for the Belgian product, but such imports were usually priced \* \* \* the U.S. acid. During April-June 1985 to January-March 1986, phosphoric acid from Israel was priced \* \* \* the U.S. price. However, when the Commission received data from \* \* \*, another importer from Israel, for the period April-June 1986 to January-March 1987, the weighted-average price of Israeli imports was \* \* \* the U.S. price. Margins of \* \* \* (table 22).

The largest segment of the merchant market, 75-percent assay technical-grade acid sold to end users, showed different results. Belgian acid was priced \* \* \*. The phosphoric acid from Israel was priced \* \* \* than the domestic product, with the margins of \* \* \* (table 23).

The distributor market for 80-percent assay acid was similar to the distributor market for the 75-percent assay. Import prices were \* \* \* than the U.S. prices (table 24). Import prices to the end-user market for 80-percent assay acid were \* \* \* than the domestic price. However, the number of transactions reported was very low, and thus, the results may not accurately reflect market trends (table 25).

Importers did not report prices for sales of 75-percent and 80-percent assay food-grade acid or acid sold into the agricultural market. Domestic prices for these markets are presented in table 26 to show the general trend in prices for these markets.

Purchasers' responses.—The Commission requested information from 26 industrial purchasers and 7 agricultural purchasers of phosphoric acid. Eight firms that purchase acid for industrial uses responded with price information. These data generally confirmed the price information that was provided by producers and importers. Prices fell slightly over the period of investigation, with prices during January-March 1987 being 5 to 15 percent

Table 22.—Industrial phosphoric acid, 75-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to distributors, by quarters, January 1984–March 1987

Period	U.S. producers'		Belgian importers'			Israeli importers'		
	Quantity	Weighted-	Quantity	Weighted-	Margins of	Quantity	Weighted-	Margins of
		average		average			underselling	
	1,000	price	1,000	price	(overselling)	1,000	price	(overselli
	pounds	Per pound	pounds	Per pound	Percent	pounds	Per pound	Percent
1984:								
Jan.–Mar.....	3,700	\$0.23	***	\$***	***	1/	1/	–
Apr.–June.....	4,773	.22	***	***	***	1/	1/	–
July–Sept.....	4,770	.23	***	***	***	1/	1/	–
Oct.–Dec.....	4,951	.23	***	***	***	1/	1/	–
1985:								
Jan.–Mar.....	2,768	.22	***	***	***	***	\$***	***
Apr.–June.....	4,337	.23	***	***	***	***	***	***
July–Sept.....	4,375	.23	***	***	***	***	***	***
Oct.–Dec.....	3,951	.23	***	***	***	***	***	***
1986:								
Jan.–Mar.....	3,771	.22	***	***	***	***	***	***
Apr.–June.....	3,943	.22	***	***	***	***	***	***
July–Sept.....	4,151	.22	***	***	***	***	***	***
Oct.–Dec.....	3,933	.22	***	***	***	***	***	***
1987:								
Jan.–Mar.....	3,668	.21	***	***	***	***	***	***

1/ Data not available.

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

Table 23.—Industrial phosphoric acid, 75-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to end users, by quarters, January 1984-March 1987

Period	U.S. producers'		Belgian importers'			Israeli importers'		
	Quantity <u>1,000</u> pounds	Weighted- average price	Quantity <u>1,000</u> pounds	Weighted- average price	Margins of underselling (overselling)	Quantity <u>1,000</u> pounds	Weighted- average price	Margins of underselling (overselling)
		Per pound		Per pound	Percent		Per pound	Percent
1984:								
Jan.-Mar.....	15,859	\$0.19	***	\$***	***	1/	1/	-
Apr.-June.....	16,205	.20	***	***	***	1/	1/	-
July-Sept.....	18,391	.20	***	***	***	1/	1/	-
Oct.-Dec.....	22,152	.20	***	***	***	1/	1/	-
1985:								
Jan.-Mar.....	17,745	.20	***	***	***	***	\$***	***
Apr.-June.....	17,119	.20	***	***	***	***	***	***
July-Sept.....	18,923	.20	***	***	***	***	***	***
Oct.-Dec.....	17,112	.20	***	***	***	***	***	***
1986:								
Jan.-Mar.....	16,401	.19	***	***	***	***	***	***
Apr.-June.....	18,844	.19	***	***	***	***	***	***
July-Sept.....	18,278	.19	***	***	***	***	***	***
Oct.-Dec.....	18,058	.19	***	***	***	***	***	***
1987:								
Jan.-Mar.....	17,205	.18	***	***	***	***	***	***

1/ Data not available.

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

Table 24.—Industrial phosphoric acid, 80-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to distributors, by quarters, January 1984-March 1987

Period	U.S. producers'		Belgian importers'			Israeli importers'		
	Quantity	Weighted-	Quantity	Weighted-	Margins of	Quantity	Weighted-	Margins of
		average		average			underselling	average
	1,000	price	1,000	price	(overselling)	1,000	price	(overselling)
	pounds	Per pound	pounds	Per pound	Percent	pounds	Per pound	Percent
1984:								
Jan.-Mar.....	3,328	\$0.23	***	\$***	***	1/	1/	-
Apr.-June.....	3,861	.23	***	***	***	1/	1/	-
July-Sept.....	3,369	.23	***	***	***	1/	1/	-
Oct.-Dec.....	5,450	.25	***	***	***	1/	1/	-
1985:								
Jan.-Mar.....	3,600	.23	***	***	***	***	\$***	***
Apr.-June.....	3,977	.23	***	***	***	***	***	***
July-Sept.....	3,631	.23	***	***	***	***	***	***
Oct.-Dec.....	5,343	.24	***	***	***	***	***	***
1986:								
Jan.-Mar.....	5,317	.23	***	***	***	***	***	***
Apr.-June.....	4,769	.23	***	***	***	***	***	***
July-Sept.....	3,425	.23	***	***	***	***	***	***
Oct.-Dec.....	3,279	.22	***	***	***	***	***	***
1987:								
Jan.-Mar.....	2,908	.22	***	***	***	***	***	***

1/ Data not available.

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

Table 25.—Industrial phosphoric acid, 80-percent assay technical grade: U.S. producers' and importers' f.o.b. prices for sales to end users, by quarters, January 1984–March 1987

Period	U.S. producers'		Belgian importers'			Israeli importers'		
	Quantity	Weighted-	Quantity	Weighted-	Margins of	Quantity	Weighted-	Margins of
		average		average			underselling	average
<u>1,000</u>	price	<u>1,000</u>	price	(overselling)	<u>1,000</u>	price	(overselling)	
	<u>pounds</u>	<u>Per pound</u>	<u>pounds</u>	<u>Per pound</u>	<u>Percent</u>	<u>pounds</u>	<u>Per pound</u>	<u>Percent</u>
1984:								
Jan.-Mar.....	4,247	\$0.23	1/	1/	-	1/	1/	-
Apr.-June.....	3,779	.24	1/	1/	-	1/	1/	-
July-Sept.....	3,647	.24	1/	1/	-	1/	1/	-
Oct.-Dec.....	6,596	.26	1/	1/	-	1/	1/	-
1985:								
Jan.-Mar.....	4,614	.25	1/	1/	-	***	\$***	***
Apr.-June.....	3,464	.24	1/	1/	-	***	***	***
July-Sept.....	4,504	.24	1/	1/	-	***	***	***
Oct.-Dec.....	4,929	.26	***	\$***	***	***	***	***
1986:								
Jan.-Mar.....	4,657	.23	***	***	***	***	***	***
Apr.-June.....	4,958	.21	***	***	***	***	***	***
July-Sept.....	4,733	.21	***	***	***	***	***	***
Oct.-Dec.....	3,897	.22	***	***	***	***	***	***
1987:								
Jan.-Mar.....	3,834	.21	***	***	***	***	***	***

1/ Data not available.

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

Table 26.—Industrial phosphoric acid, 75-percent assay food grade and agricultural grade:  
U.S. producers' f.o.b. prices for sales to distributors and end users, by quarters,  
January 1984–March 1987

Period	75-percent assay food grade to—				Agricultural grade	
	Distributors		End users		Quantity <u>1,000</u> pounds	Weighted- average price
	Quantity <u>1,000</u> pounds	Weighted- average price Per pound	Quantity <u>1,000</u> pounds	Weighted- average price Per pound		
<b>1984:</b>						
Jan.—Mar.....	2,478	\$0.25	4,697	\$0.25	***	\$***
Apr.—June.....	2,076	.24	4,838	.25	***	***
July—Sept.....	1,989	.24	4,535	.25	***	***
Oct.—Dec.....	3,053	.26	10,196	.26	***	***
<b>1985:</b>						
Jan.—Mar.....	2,016	.25	5,260	.25	***	***
Apr.—June.....	2,713	.23	4,341	.25	***	***
July—Sept.....	2,796	.25	4,006	.24	***	***
Oct.—Dec.....	2,805	.24	5,742	.25	***	***
<b>1986:</b>						
Jan.—Mar.....	2,375	.24	5,109	.24	***	***
Apr.—June.....	2,273	.23	6,199	.23	***	***
July—Sept.....	1,767	.22	5,135	.23	***	***
Oct.—Dec.....	1,896	.23	4,346	.22	***	***
<b>1987:</b>						
Jan.—Mar.....	1,943	.21	3,849	.21	***	***

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



below prices that existed in the beginning of 1985. Import prices and domestic producers' prices for 75-percent assay technical-grade acid were usually within a 5 percent differential of each other. An examination of the 75-percent assay market showed that the Belgian product was the lowest priced on four occasions. In the 80-percent assay market the Israeli product was generally the lowest priced (table 27).

Three purchasers of phosphoric acid for agricultural uses also responded to the purchaser questionnaire. Although the weighted-average price for these purchasers showed a somewhat declining trend, the prices to individual firms were stable during the period of investigation (table 27).

Other price factors.—There are a number of other market factors that may be affecting the price of phosphoric acid. Respondents claim that because 66 percent of domestic phosphoric acid is captively consumed, factors affecting the production of downstream products may have a negative affect on the market for phosphoric acid. Reduced demand for products produced with the captively consumed phosphoric acid, most notably STPP, may have caused domestic producers to aggressively market the excess phosphoric acid to offset any decline in downstream revenues.

As indicated earlier in figure 1, the production of STPP is highly correlated with the production of phosphoric acid. STPP is a phosphate additive primarily used in detergents. Detergents, soaps, and cleaners are the ultimate use for more than 50 percent of the industrial phosphoric acid produced. As noted earlier, the production of STPP declined by roughly 8 percent from 1984 to 1986.

One reason for the decline in STPP production is the ban on phosphate detergents issued by a number of States and municipalities. Detergent use is heavily related to population trends. Thus, measuring the population of States enacting phosphate bans should give an adequate measure of the decline in STPP production that can be attributed to this source. Prior to 1984, seven States had phosphate bans in effect. 1/ The total population of these States was approximately 17 percent of the total U.S. population. 2/ During the period of investigation, Wisconsin, North Carolina, and Virginia also enacted phosphate bans. The effective date of Wisconsin's ban was January 1, 1984, and the bans in North Carolina and Virginia will not become effective until January 1, 1988. With the inclusion of these three States, 24 percent of U.S. population will be covered by a ban on detergents containing STPP.

Another factor that may contribute to reduced demand for domestic phosphate salts is the increase in imported phosphate salts. \* \* \* purchases both phosphoric acid and phosphate salts for \* \* \* located \* \* \*. He stated that he has experienced increased import competition for sales of phosphate salts. 3/ Because STPP and other phosphate salts enter the United States in a basket category, the staff was unable to confirm any reports of higher imports.

---

1/ These States are Indiana, Maryland, Minnesota, Michigan, New York, Vermont, and Wisconsin.

2/ This percentage may be understated since many local governments have enacted bans. Estimates of the population affected by municipal bans were unavailable.

3/ Telephone conversation with \* \* \*.

Table 27.—Phosphoric acid: U.S. producers' and importers' delivered prices for 75-percent and 80-percent assay technical grade and U.S. producers' delivered prices for product for agricultural uses as reported by purchasers, by quarters, January 1985-March 1987

Period	75-percent assay			80-percent assay			Agricultural uses U.S. weighted- average price
	U.S. weighted- average price	Belgian weighted- average price	Israeli weighted- average price	U.S. weighted- average price	Belgian weighted- average price	Israeli weighted- average price	
Dollars per pound							
1985:							
Jan.-Mar.....	0.21	0.21	0.21	0.26	***	0.22	0.18
Apr.-June.....	.21	.20	.21	.26	***	.23	.16
July-Sept.....	.21	.20	.22	.26	***	.23	.18
Oct.-Dec.....	.21	.20	.22	.27	1/	.23	.18
1986:							
Jan.-Mar.....	.21	.21	.22	.21	1/	.23	.14
Apr.-June.....	.20	.22	.21	.21	1/	.22	.11
July-Sept.....	.20	.21	.20	.22	1/	.21	.16
Oct.-Dec.....	.20	.19	.20	.22	1/	.21	.16
1987:							
Jan.-Mar.....	.20	.20	.19	.22	1/	.21	.15

1/ Data not available.

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

Finally, the introduction and acceptance of new products has also contributed to the decline in demand for phosphates. Liquid detergents and gel toothpaste have replaced, to some extent, the more traditional forms of these products. These new product forms do not contain phosphates.

#### Lost sales and lost revenue

Domestic producers were asked to furnish the Commission with customer names, quantities, and dates relating to any sales of or revenue from industrial phosphoric acid that have been lost since January 1984 to imports of industrial phosphoric acid from Belgium and Israel. Four producers provided quantifiable allegations of lost revenue on sales, totaling 103,391 short tons valued at \$3.9 million, and lost sales, totaling 31,483 tons valued at \$15.9 million. Twenty-six of the firms listed in the allegations were contacted by the Commission's staff. At \*\*\* of the firms contacted, no one knowledgeable about phosphoric acid purchases was available, and at \*\*\* of the firms contacted, purchasers were unwilling to discuss the allegations. The remaining allegations investigated are summarized below.

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

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

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

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

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

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

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

\* \* \* alleged \* \* \* lost sales and \* \* \* instances of lost revenue in transactions with \* \* \*. The lost sales, all of which involved 75-percent assay technical-grade phosphoric acid, allegedly occurred in \* \* \* 1985 and totaled \* \* \*. \* \* \* also reported reducing its price on phosphoric acid sales in \* \* \* 1984 by \$\* \* \* on a sale of \* \* \*, and in \* \* \* 1987 by \$\* \* \* on a sale of \* \* \*. \* \* \* denied all of the above allegations, stating that although \* \* \* purchases both domestic and imported phosphoric acid, they have never purchased quantities that large, either on an individual purchase basis, or in an annual contract.

\* \* \* alleged lost revenues because of price competition from Belgian phosphoric acid in \* \* \* separate instances on sales of 75-percent assay technical-grade phosphoric acid to \* \* \*. The sales, all of which were reported to total \* \* \*, occurred in \* \* \* 1985, and involved a loss of approximately \$\* \* \*. \* \* \* commented that he purchased a total of \* \* \* of phosphoric acid in 1985, at a value of \$\* \* \*. Approximately \* \* \* percent of these purchases were of imported phosphoric acid, including the Belgian product.

\* \* \* cited a lost sale of \$\* \* \* and lost revenues of \$\* \* \*, to \* \* \*, allegedly purchased from Belgian suppliers in \* \* \* 1986. \* \* \* allegations involved 75-percent assay technical-grade phosphoric acid; with the lost sale involving \* \* \* and the lost revenue involving \* \* \*. \* \* \* stated that the company does purchase both domestic and imported phosphoric acid and uses the acid to make \* \* \*. \* \* \* explained that his company must have a contract with a firm price established by \* \* \* for their selling season, which begins in \* \* \*; therefore, it is the first supplier with the best offer that is

awarded the contract for that year. According to \* \* \*, in 1986, it was the supplier of Belgian acid that made the first and best offer. \* \* \* reported that the company bases its purchasing decisions on price, quality, and service, and he has found that these three factors have been the same for domestic and Belgian phosphoric acid.

\* \* \* was named by \* \* \* in a lost sales allegation, which involved \* \* \* of 85-percent assay technical-grade phosphoric acid allegedly purchased from Belgian suppliers in \* \* \* 1985. \* \* \* stated that his company purchases both domestic and Belgian acid, and he could not verify this specific incident. \* \* \* stated that \* \* \* had been approached by other suppliers but that the prices offered were higher than those that were being paid to the current domestic and Belgian suppliers. \* \* \* commented that the company has always purchased from both domestic and imported sources and that the prices of domestic and Belgian acid have been about the same for the past couple of years. \* \* \* added that price, quality, and service are the main factors in the company's purchasing decisions.

#### Exchange rates

Exchange rate indices of the Belgian franc and the Israeli sheqalim, presented in table 28, indicate that, during the interval January 1984 through March 1987, the quarterly nominal value of the Belgian franc advanced sharply by 47.3 percent against the U.S. dollar, whereas the value of the Israeli currency depreciated 91.8 percent relative to the dollar. Because the level of inflation in Belgium was similar to that in the United States over the 13-quarter period for which data were collected, changes in the real value of the franc were approximately the same as differences in the nominal value.

In contrast, the very high rate of inflation in Israel relative to that in the United States over the same period moderated much of the export price advantage gained through currency depreciation. The value of the Israeli sheqalim adjusted for differences in relative inflation rates decreased during January 1984 through September 1985 and then increased irregularly from October-December 1985 through January-March 1987. By January-March 1987, the Israeli real exchange rate had achieved a level that was 7.3 percent above its January-March 1984 level.

Table 28.—Exchange rates: 1/ Nominal-exchange-rate equivalents of the Belgian franc and the Israeli sheqalim in U.S. dollars, real-exchange-rate equivalents, and producer price indicators in Belgium and Israel, 2/ indexed by quarters, January 1984–March 1987

Period	U.S.	Belgium		Israel			
	Pro- ducer Price Index	Pro- ducer Price Index	Nominal- exchange- rate index	Real- exchange- rate index 3/	Pro- ducer Price Index	Nominal- exchange- rate index	Real- exchange- rate index 3/
			—US dollars/franc—			—US dollars/sheqalim—	
1984:							
Jan.—Mar...	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.—June..	100.7	101.6	100.9	101.8	146.6	67.9	98.9
July—Sept..	100.4	101.1	95.3	96.0	232.5	42.0	97.1
Oct.—Dec...	100.2	101.2	91.7	92.6	390.3	24.2	94.5
1985:							
Jan.—Mar...	100.0	102.5	86.5	88.7	498.0	17.8	88.7
Apr.—June..	100.1	102.1	90.9	92.7	676.8	12.9	87.0
July—Sept..	99.4	100.5	97.8	98.9	971.3	8.8	85.9
Oct.—Dec...	100.0	99.0	107.7	106.6	1,044.0	8.8	92.1
1986:							
Jan.—Mar...	98.5	96.9	116.8	114.9	1,090.6	8.8	97.3
Apr.—June..	96.6	94.6	122.9	120.4	1,142.9	8.8	104.0
July—Sept..	96.2	93.3	130.6	126.7	1,180.7	8.8	107.6
Oct.—Dec...	96.5	93.1	135.2	130.4	1,214.9	8.8	110.4
1987: Jan.—							
Mar 4/.....	97.7	92.7	147.3	139.8	1,285.4	8.2	107.3

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

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

3/ The indexed real exchange rate represents the nominal exchange rate adjusted for the relative economic movement of each currency as measured here by the Producer Price Index in the United States and the respective foreign country. Producer prices in the United States decreased 2.3 percent during the interval January 1984–March 1987 compared with a 7.3-percent decrease in Belgium during the same period. In contrast, producer prices in Israel increased 1,185.4 percent during the period under investigation.

4/ The real Belgian exchange rate for January–March 1987, the last quarter of the interval under investigation, is derived from the Belgian Producer Price Index reported for January only.

Source: International Monetary Fund, International Financial Statistics, May 1987.

Note.—January–March 1984=100.0.

APPENDIX A

FEDERAL REGISTER NOTICES

207, Subpart A and C (19 CFR Part 207) and Part 201, Subpart: A through E (19 CFR Part 201)

**EFFECTIVE DATE:** February 5, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bob Eninger (202-523-0312), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

**SUPPLEMENTARY INFORMATION:**

**Background**

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Belgium and Israel of industrial phosphoric acid. The investigations were requested in a petition filed on November 5, 1986, by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO. In response to that petition the Commission conducted preliminary countervailing duty investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 612, January 7, 1987).

**Participation in the Investigations**

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service List**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)) the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations

upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3) each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list) and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Hearing, Staff Report, and Written Submissions**

The Commission will hold a hearing in connection with these investigations at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC; the time and date of the hearing will be announced at a later date. A public version of the prehearing staff report in these investigations will be placed in the public record prior to the hearing, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21). The dates for filing prehearing and posthearing briefs and the date for filing other written submissions will also be announced at a later date.

**Authority**

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued February 28, 1987.

By order of the Commission

Kenneth R. Mason,

Secretary

[FR Doc 87-4541 Filed 3-3-87, 8:45 am.]

BILLING CODE 7020-02-0

**INTERNATIONAL TRADE COMMISSION**

(Investigations Nos. 701-TA-285 and 286 (Final))

**Industrial Phosphoric Acid From Belgium and Israel**

**AGENCY:** International Trade Commission.

**ACTION:** Institution of final countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701-TA-285 and 286 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce, in preliminary determinations, to be subsidized by the Governments of Belgium and Israel. Unless these investigations are extended, Commerce will make its final subsidy determinations on or before April 14, 1987, and the Commission will make its final injury determinations by June 5, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part



---

**(Investigations Nos. 731-TA-365 and 366  
(Final))**

**Industrial Phosphoric Acid From  
Belgium and Israel**

**AGENCY:** International Trade  
Commission.

**ACTION:** Institution of final antidumping  
investigations and scheduling of a  
hearing to be held in connection with  
the investigations.

---

**SUMMARY:** The Commission hereby gives  
notice of the institution of final  
antidumping investigations Nos. 731-  
TA-365 and 366 (Final) under section  
735(b) of the Tariff Act of 1930 (19 U.S.C.

1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in item 418.30 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before June 29, 1987 and the Commission will make its final injury determinations by August 12, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))). The Commission is conducting concurrently final or intervening duty investigations on the subject merchandise from Belgium and Israel.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Irene Hersher (202-523-4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

**SUPPLEMENTARY INFORMATION:**  
**Background**

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of industrial phosphoric acid from Belgium and Israel are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on November 5, 1986, by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO. In response to that petition the Commission conducted preliminary antidumping

investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 612, Jan. 7, 1987).

**Participation in the investigations**

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service List**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Staff Report**

A public version of the prehearing staff report in these investigations will be placed in the public record on June 17, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing**

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on July 7, 1987 at the U.S. International Trade Commission Building, 701 E Street NW, Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 29, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 30, 1987 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 30, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.8(b)(2) of the Commission's rules (19 CFR 201.8(b)(2))).

**Written Submissions**

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 14, 1987. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 14, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.8 of the Commission's rules (19 CFR 201.8).

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: April 24, 1987.

By order of the Commission:  
Kenneth E. Mason,  
Secretary.

[FR Doc. 87-8700 Filed 4-28-87; 8:45 am]  
BILLING CODE 7030-02-8

establishing its schedule in the investigations to conform with Commerce's new schedule.

The Commission's schedule for the investigations is as follows: A public version of the prehearing staff report will be placed on the public record on June 17, 1987; requests to appear at the hearing must be filed with the Secretary of the Commission not later than June 29, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on June 30, 1987; the deadline for filing prehearing briefs is June 30, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on July 7, 1987; the deadline for filing all other written submissions, including posthearing briefs, is July 14, 1987; and the Commission will make its final injury determinations by August 12, 1987.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201 Subpart A through E (19 CFR Part 201).

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

**Kenneth R. Mason,**  
*Secretary.*

Issued: May 4, 1987.

[FR Doc. 87-10928 Filed 5-12-87; 8:45 am]

BILLING CODE 7030-02-01

(Investigations Nos 701-TA-285, and 286 (Final))

**Industrial Phosphoric Acid From Belgium and Israel**

**AGENCY:** United States International Trade Commission.

**ACTION:** Schedule for the subject investigation.

**FOR FURTHER INFORMATION CONTACT:** Ilene Hersher (202-523-4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0181.

**SUPPLEMENTARY INFORMATION:** Effective February 5, 1987, the Commission instituted the subject investigations and gave notice that a schedule for their conduct would be announced at a later date (52 FR 6631, March 4, 1987). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from April 14, 1987, to June 29, 1987 (52 FR 5324, February 20, 1987). The Commission, therefore, is

---

**International Trade Administration****[A-423-602]****Final Determination of Sales at Less Than Fair Value; Industrial Phosphoric Acid From Belgium****AGENCY:** International Trade Administration, Import Administration, Commerce.**ACTION:** Notice.

---

**SUMMARY:** We determine that industrial phosphoric acid (IPA) from Belgium is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of IPA from Belgium. We have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.**EFFECTIVE DATE:** July 7, 1987.**FOR FURTHER INFORMATION:** Contact Mary Martin, Jessica Wasserman, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830, 377-1442 or 377-2438.**SUPPLEMENTARY INFORMATION:****Final Determination**

We determine that IPA from Belgium is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of IPA to the

United States by the respondent during the period of investigation, June 1, 1986, through November 30, 1986. The weighted-average margin is shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances do not exist with respect to imports of IPA from Belgium.

#### Case History

Since the last Federal Register publication pertaining to this case (the preliminary determination of sales at less than fair value (52 FR 13263, April 22, 1987)), the following events have occurred. We conducted verification in Belgium from May 4 through 8, 1987, of the questionnaire response of Societe Chimique Prayon-Rupel (SCPR). On May 13, 1987, we verified the information provided by SCPR's independent selling agent, Nitron Chemical Corp. (Nitron), at Greenwich, Connecticut.

Petitioners and respondent filed initial briefs on June 5 and rebuttal briefs on June 9, 1987, and they waived their respective rights to a hearing in this case. Comments on the verification reports were submitted by each party on June 18, 1987.

#### Scope of Investigation

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

#### Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for the company under investigation as specified below. We made comparisons on virtually all of the sales of the product during the period of investigation, June 1 through November 30, 1986.

#### United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price when the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on either packed or unpacked c.i.f. prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance and unloading costs.

As provided in section 772(c) of the Act, we used the exporter's sales price, where appropriate, to represent the United States price for merchandise sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the unpacked f.o.b. or c.i.f. price at SCPR's leased storage tanks in Bayonne, New Jersey, or Houston, Texas. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, truck loading, overtime unloading charges, U.S. inland freight, U.S. inland insurance, U.S. indirect selling expenses (including the cost of leasing storage tanks, sampling and testing the merchandise, indirect selling expenses in Belgium for U.S. sales and U.S. inventory carrying costs), U.S. commissions to unrelated selling agents, U.S. discounts and U.S. credit expenses.

#### Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IPA on sales in the home market. When comparing foreign market value to purchase price sales, we made deductions, where appropriate, from the home market price for inland freight, truck loading and prompt payment discounts. We added U.S. packing costs and commissions paid to unrelated selling agents in the U.S. market where appropriate. We allowed an offset for indirect selling expenses in the home market (which includes the cost of administrative indirect selling expenses, SCPR's and SCPR's related selling agent's (i.e. Zinchem-Benelux) indirect selling expenses, expenses for sampling and testing the merchandise, and home market inventory carrying costs) up to the amount of the commissions in the U.S. market in accordance with § 353.15(c) of the Commerce Regulations. We have made an adjustment under § 353.15(a) of the Commerce Regulations for differences in circumstances of sales for credit expenses in the United States and home market.

When comparing foreign market value to U.S. exporter's sales prices, we made deductions, where appropriate, from the home market price for inland freight, truck loading costs, credit expense, and prompt payment discounts. We allowed an offset for indirect selling expenses incurred on home market sales up to the amount of the indirect selling expenses plus commissions incurred for sales in the U.S. market, in accordance with § 353.15(c) of the Commerce Regulations.

We disallowed the following adjustments claimed by SCPR. SCPR

claimed a circumstance of sale adjustment for "commissions" it pays on home market sales to its related selling agent Zinchem-Benelux, S.A. Alternatively, SCPR claimed that the full amount of the "commissions" should be allowed as an indirect selling expense. Pursuant to § 353.15 of our regulations, we have disallowed this deduction because SCPR did not establish that the "commissions" paid to its subsidiary are arms-length transactions. We have allowed a deduction for that portion of Zinchem-Benelux's "commissions" that are indirect selling expenses but only to the extent that we were able to verify such expenses.

Respondent also claimed a circumstance of sale adjustment on home market sales for water dilution costs. Because SCPR adds water to 80 percent assay IPA to produce 75 percent assay in both Belgium and the U.S., it is essential to the manufacture of 75 percent assay IPA. Therefore, we consider the cost of water dilution to be a production cost rather than a selling expense and no adjustment was allowed.

Finally, SCPR has withdrawn its claim, which we disallowed in the preliminary determination, for a level of trade adjustment based upon the difference in size between the U.S. and the Belgian markets.

#### Currency Conversion

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Belgian francs to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York. For comparisons involving exporter's sales price transactions, we used the official exchange rate for the date of purchase pursuant to section 615 of the Trade and Tariff Act of 1984. We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of the Commerce Regulations, as it supersedes that section of the Regulations.

#### Negative Determination of Critical Circumstances

Petitioners alleged that critical circumstances exist within the meaning of section 735(a)(3) of the Act, with respect to imports of IPA from Belgium. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind or merchandise which is the subject of the investigation over a relatively short period.

In determining whether imports have been massive over a relative short period of time, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of import statistics, we find that there is no reasonable basis to conclude that imports of IPA from Belgium have been massive over a relatively short period. Accordingly, we do not have to consider whether section 735(a)(3) of the Act applies to this case. Therefore, we have determined that critical circumstances do not exist with respect to imports of IPA from Belgium. We have notified the ITC of this determination.

#### Petitioners' Comments

*Comment 1:* Petitioners contend that the Department's final determination should include a deduction in the exporter's sales price to reflect indirect selling expenses incurred in Belgium in connection with SPCR's sales to the United States.

*DOC Position:* We agree. During verification, we gathered and verified information on SPCR's expenses in Belgium for the U.S. sales. These expenses have been included in U.S. indirect selling expenses as described in the "United States Price" section of this notice.

*Comment 2:* Petitioners argue that adjustments for credit expenses should be made on a transaction basis for the final determination.

*DOC Position:* After the preliminary determination, we obtained and verified the amount of days credit was outstanding on a transaction basis, and this information has been used for the final determination.

*Comment 3:* Petitioners contend that Zinchem-Benelux's expenses in seeking new customers and markets should be deleted from any adjustment that is allowed for indirect selling expenses in the home market.

*DOC Position:* We disagree. Seeking new customers and markets is part of the sales-related activities of a sales department. To the extent that such activities are not tied to a particular sale made during the period of investigation,

as required by 19 CFR 353.15, they are indirect selling expenses.

*Comment 4:* Petitioners argue that storage tank depreciation and maintenance costs, which were claimed by respondent as indirect selling expenses in the home market, should be treated at least in part as manufacturing costs since these tanks are integral to the manufacturing process. Petitioners also contend that if tanks located in Belgium are used for IPA that is exported, a portion of the tanks' costs should be allocated as indirect selling expenses to export sales and be taken as a deduction from exporter's sales price.

*DOC Position:* We disagree. During verification, we found no evidence that the storage tanks are part of the manufacturing process. The storage tanks that are at issue did not, any time, hold raw material or any other substance other than fully-manufactured IPA. Therefore, we have no basis in law or fact for considering expenses associated with these tanks as production costs. With respect to the possible treatment of certain storage tank costs as U.S. indirect selling expenses, petitioners first raised this issue in their written brief of June 5, 1987—nearly a month after we had completed verification. During verification, we investigated numerous instances of indirect selling expenses incurred in Belgium on U.S. sales. We did not, however, receive information nor verify the nature and extent of storage tank costs incurred in Belgium on U.S. sales. Therefore, no such costs were included in the indirect selling expenses for U.S. sales.

*Comment 5:* Petitioners claim that the cost of preparing sales and shipping invoices in connection with home-market sales should be treated as overhead and not as a direct selling expense.

*DOC Position:* We agree that these administrative selling expenses are not direct expenses. They were not tied to, nor directly contingent upon, individual sales of IPA in the home market. However, we do not agree that these expenses are overhead. We verified that these costs were actually incurred and that they were indirectly related to home market sales of IPA. Therefore, as set out in the "Foreign Market Value" section of this notice, we have treated these items as indirect selling expenses.

*Comment 6:* Petitioners contend that an adjustment should be made for quality control costs on exporter's sales price transactions involving IPA at the Houston terminal. In its response, respondent acknowledged that it incurred an expense for sampling and

testing IPA at the time the barges containing the imported acid are unloaded into the tank facilities. However, during verification, respondent maintained that no quality control expenses were incurred at the Houston terminal during the period of investigation. Accordingly, the Department should, on the basis of best information available, make an adjustment for quality control costs at the Houston terminal.

*DOC Position:* We disagree. We verified that respondent incurred no quality control costs at the Houston terminal for the period of investigation. It is not unusual to modify the response as a result of information gathered at verification. As the Act requires, we rely on verified information for our final determination.

#### Respondent's Comments

*Comment 1:* Respondent argues that the deduction made by the Department for inventory carrying costs in determining exporter's sales price is not authorized by law. Respondent contends that the inventory carrying cost deduction is not authorized by 19 U.S.C. 1677a(c) since it does not fall within the listed categories of expenses. Respondent further argues that the deduction is not authorized by 19 U.S.C. 1677a(d)(2)(A) which allows a deduction for costs that are "incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States." Respondent further contends that the inventory carrying costs deduction is not authorized by 19 U.S.C. 1677b(a)(4) which states that due allowance may be made for "differences in circumstances of sale" because the Department's regulations require that the cost adjusted for must "bear a direct relationship to the sales which are under consideration" 19 CFR 353.15(a). Inventory carrying costs are not tied to a particular sale but rather are components of overhead.

*DOC Position:* We disagree. The Department has developed an established policy for taking into account inventory carrying costs in cases involving exporter's sales price transactions. See *Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Final Results of Antidumping Duty Administrative Review*, (51 FR 43230, December 1, 1986) (*Replacement Parts*). The authority for this policy is derived from 19 U.S.C. 1677a(e)(2) and § 353.10(e)(2) of the Commerce Regulations. In imputing inventory carrying costs as part of exporter's sales price, the Department

recognizes that the opportunity cost of holding inventory is a real expense that can be considered part of the company's sales operation rather than the production operation. Furthermore, it is an indirect selling expense rather than a direct selling expense because it is not tied directly to particular sales.

*Comment 2:* Respondent contends that if the Department makes an adjustment for inventory carrying costs as a circumstance of sale adjustment for exporter's sale price transactions, any excess of such cost in the U.S. market over the comparable Belgian market cost should be added to the foreign market value rather than subtracted from United States price.

*DOC Position:* We disagree. We have deducted Belgian inventory carrying costs from foreign market value, and U.S. inventory carrying cost from U.S. price as set out in the "Foreign Market Value" and the "United States Price" section of this notice, in accordance with sections 772(e)(2) and 773(a)(4)(B) of the Act.

*Comment 3:* Respondent argues that if an adjustment or deduction is made for inventory carrying costs, the period used for computing the cost for sales to the United States should be the period from exportation from Belgium to sale in the United States. The period used for computing inventory carrying costs with respect to exporter's sales price transactions should not include the average period the merchandise was in inventory in Belgium prior to exportation. Respondent further contends that in computing inventory carrying costs, the Department should consider SCPR's incremental cost of producing the merchandise concerned rather than the gross unit U.S. sales price minus freight charges, which was used in the preliminary determination. Respondent argues that fixed costs are not a proper element of inventory valuation for cost accounting purposes and that the Department recognized this principle in *Replacement Parts*.

Respondent also argues that in the event the Department makes a deduction for inventory carrying costs and uses the methodology for assigning inventory carrying costs adopted in the preliminary determination, it should subtract marine insurance and all commissions and other direct and indirect expenses in the United States. All of these costs are incurred after production of the merchandise concerned and therefore cannot be considered elements of inventory value.

*DOC Position:* We disagree. Inventory is held from the time of production to sale. Accordingly, it is appropriate to

calculate the inventory carrying costs from the date of production. Respondent refused to provide information regarding its average cost of inventory.

Instead it simply provided information on its raw materials and energy costs. Therefore, for this final determination we have calculated inventory carrying costs on the basis of best information available and have based our calculation on gross unit price less freight.

*Comment 4:* Respondent argues that for the purpose of computing imputed U.S. credit expenses, the Department should not include the commissions paid U.S. selling agents in the amount theoretically financed, since commissions owed U.S. selling agents are not paid until payment is received by SCPR. In these circumstances, it is clear that the amount of the commissions is not a cost that SCPR must finance in the period between shipment and payment.

*DOC Position:* We disagree. SCPR's credit is an imputed cost, and the date of payment for any particular cost of producing and selling the IPA is not material to our calculation of the credit expense. We have followed our standard methodology for calculating imputed credit expense, multiplying gross unit price, by the short-term interest rate, and by the days credit was outstanding between shipment and payment for each transaction.

*Comment 5:* Respondent argues that in computing foreign market value, the Department should make a circumstance of sale adjustment for the direct selling expenses incurred by SCPR for the commissions it pays on home market sales to its related selling agent, Zinchem-Benelux, S.A. Respondent contends that if it is shown that the parties dealt with each other as if at arm's-length or that the commissions are directly related to particular sales, a circumstance of sale adjustment for commissions should be made. As evidence that the transactions between SCPR and Zinchem-Benelux are at arms-length, respondent states that the commission paid to Zinchem-Benelux is equal to or less than the commissions that SCPR pays to agents (some of which were unrelated to SCPR) in third country markets. Furthermore, respondent points out that Zinchem-Benelux has its own offices, financial statements, operational management and staff, and that the relationship between SCPR and Zinchem-Benelux is governed by a formal, written contract. Respondent contends that the facts establish that Zinchem-Benelux operates as an unrelated agent, and that

the commissions directly relate to particular sales in the Belgian market.

*DOC Position:* We disagree. In general, the Department regards payments to related parties as merely intracompany transfers of funds. As such, these payments are considered to be part of the general expenses of the company, and not costs directly related to particular sales as required by 19 CFR 353.15. Furthermore, the level of commissions paid to agents in other markets is not determinative of whether commissions paid to related agents are reflective of arms-length transactions.

*Comment 6:* Respondent argues that if commissions paid to Zinchem-Benelux are not allowed as a circumstance of sale adjustment, then the full amount of the commissions (subject to the appropriate cap) should be allowed as an indirect selling expense.

*DOC Position:* We have treated Zinchem-Benelux's actual selling costs as indirect selling expenses as set out in the "Foreign Market Value" section of this notice. To the extent that the full amount of the commissions paid by SCPR exceeds the actual selling costs of Zinchem-Benelux, the additional amount is simply an intracompany transfer.

*Comment 7:* Respondent argues that circumstances of sale adjustments on home market sales should be made for: (a) Sales and shipping invoice preparation costs, (b) truck loading costs, and (c) water dilution costs. These were claimed as direct selling expenses in the response, but were not taken into account in the preliminary determination. They should be allowed—at the least—as indirect selling expenses in the Belgian market. Parallel treatment should be accorded the same expenses in the U.S. and Belgian markets.

*DOC Position:* We agree that parallel treatment should be accorded these expenses in both markets. We have allowed sales and shipping invoice preparation costs as indirect selling expenses. Truck loading costs are being allowed as direct charges, and the water dilution costs are considered to be part of the cost of production.

*Comment 8:* Respondent argues that the Department should take account of equalized rather than actual freight costs on U.S. sales. The amount included in the price to the purchaser in the United States was the equalized freight; therefore, it is that amount that should be deducted.

*DOC Position:* We disagree. Although the response stated that equalized freight (the cost of freight from the closest U.S. production facility) was

used in some transactions, information concerning the cost of such equalized freight was not supplied. Instead actual freight costs were provided and verified. Moreover, respondent did not provide any information on equalized freight at the verification. Since we are required to use verified information for our final determination, respondent's request in its post-verification brief is untimely.

**Comment & Respondent** argues that indirect selling expenses incurred in Belgium relating to SCPR's U.S. sales are below the *de minimis* level set by § 353.23 of the Department's regulations and should be disregarded.

**DOC Position:** We disagree. We gathered and verified information concerning SCPR's indirect expenses incurred in Belgium on U.S. sales. There is nothing in the regulation cited by respondent which prevents the Department from taking into account verified expenses.

**Comment 10:** Respondent argues that the deduction for quality control costs on exporter's sales price transactions from the Houston, Texas terminal should be zero since the Department verified that neither SCPR nor Nitron was charged or paid for sampling of IPA at the Houston terminal.

**DOC Position:** We agree. (See DOC Position to Petitioners' Comment 8).

**Comment 11:** Respondent points out that several currency conversion exchange rates used in the preliminary determination were other than those specified in the Customs Bulletin.

**DOC Position:** We have used the statutory exchange rates as described in the "Currency Conversion" section of this notice.

#### Verification

We verified the information used in making our final determination in accordance with section 776(a) of the Act. During verification we used standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

#### Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Belgium that are entered or withdrawn from warehouse, for consumption, on or after April 22, 1987, the date of publication of our affirmative preliminary determination notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the

foreign market value of IPA from Belgium exceeds the United States price as shown in the table below. The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the Federal Register. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/ exporter	Weighted- average margin percent- age
Societe Chimique Prayon-Rupel ...	14.67
All Others .....	14.67

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on IPA from Belgium entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration,  
May 29, 1987.

[FR Doc. 87-15365 Filed 7-6-87; 8:48 am]

BILLING CODE 3510-03-M

(A-508-604)

#### Final Determination of Sales at Less Than Fair Value, Industrial Phosphoric Acid From Israel

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that industrial phosphoric acid (IPA) from Israel is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Israel that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in the amount indicated in the "Continuation of Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** July 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** David Levine, Ross Cotjanle, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673, 377-3534, or 377-0161.

#### SUPPLEMENTARY INFORMATION:

##### Final Determination

We determine that IPA from Israel is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on all sales of IPA to the United States by the respondent during the period of investigation, June 1, 1986, through November 30, 1986. The estimated weighted-average margin is 6.82 percent for Negev Phosphates Ltd. (NPL) and all other manufacturers, producers, and exporters in Israel of IPA.

##### Case History

Since the last Federal Register publication pertaining to this case [the preliminary determination of sales at less than fair value (52 FR 12952, April 20, 1987)], the following events have occurred. We conducted verification in Israel from May 10 through May 22,



1987, of the questionnaire response of NPL. Petitioners and NPL filed briefs on June 11, 1987, and rebuttal briefs on June 15, 1987, and they waived their respective rights to a hearing in this case. Additional comments were submitted by each party on June 16 and 17, 1987.

#### Scope of Investigation

The product covered by this investigation is industrial phosphoric acid (IPA), currently provided for in item 418.30 of the *Tariff Schedules of the United States*.

#### Fair Value Comparisons

To determine whether sales of IPA from Israel in the United States were made at less than fair value, we compared the United States price to the foreign market value for the company under investigation as specified below. We made comparisons on all U.S. sales of the product during the period of investigation, June 1, 1986, through November 30, 1986.

#### United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on the unpacked C&F prices to the unrelated purchaser in the United States. We made deductions, where appropriate, for foreign inland freight, certain terminal expenses at the Ashdod port, ocean freight, and certain directly related shipping charges (war insurance and bill of lading).

#### Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IPA on sales in the home market. We made deductions, where appropriate, for inland freight, certain terminal expenses at the Ashdod port, a freight-related charge (truck weighing), packing, and quantity rebates. We made a circumstance of sale adjustment for differences in credit expenses incurred in both markets, in accordance with § 353.15(a) of our regulations.

We disallowed the following adjustments claimed by NPL. NPL claimed a level of trade adjustment to compensate for differences in levels of trade existing between the U.S. market and the home market for sales of IPA. Pursuant to § 353.19 of our regulations, we have disallowed this deduction because NPL did not establish during

verification that quantifiable differences exist with regard to sales at different levels of trade in the home market.

NPL also claimed an adjustment for bad debt expenses. We disallowed this adjustment because we consider bad debt expenses to be indirect selling expenses since, under generally accepted accounting principles, bad debt is recovered over time by future price increases.

We disallowed NPL's request for an adjustment for Exchange Rate Risk Insurance Scheme (EIS) receipts related to its U.S. sales. These receipts represent compensation for the foreign exchange losses incurred by NPL between the date of each U.S. sale and the date of payment. Since, according to our regulations, we determine the amount of the U.S. price as of the date of sale and, thus, before it becomes affected by such losses resulting from the devaluation of the local currency relative to the currency of the outstanding foreign receivables, no adjustments for EIS receipts is appropriate. Similarly, the absence of EIS receipts for the sales in the home market does not represent a circumstance of sale expense because sales in the home market are made in local currency and are not subject to foreign currency fluctuations. EIS receipts do not qualify as directly related expenses under § 353.15 of our regulations. As we have determined in the companion countervailing duty investigation of IPA from Israel, the EIS is an export subsidy. Accordingly, we have instructed the U.S. Customs Service to collect estimated dumping duties reduced by the amount of estimated countervailing duties attributable to this export subsidy in accordance with section 772(d)(1)(D) of the Act.

Finally, NPL requested an offset for an expense it claimed was "tantamount to a commission" on each U.S. sale, and adjustments to foreign market value for quality control testing and truck dispatching costs. We have disallowed these claims. See DOC Positions to Respondent's Comments 2, 3, and 7.

#### Currency Conversion

As Federal Reserve certified exchange rates were not available, we made currency conversions from new Israeli shekels to U.S. dollars in accordance with § 353.56(a) of our regulations, using the International Monetary Fund (IMF) International Financial Statistics.

#### Negative Determination of Critical Circumstances

Petitioners alleged that critical circumstances exist within the meaning

of section 735(a)(3) of the Act, with respect to imports of IPA from Israel. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we normally consider the following factors: (1) The volume an value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analyses of import statistics, we find that there is no reasonable basis to conclude that imports of IPA from Israel have been massive over a relatively short period. Accordingly, we do not have to consider whether section 735(a)(3) of the Act applies to this case. Therefore, we have determined that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the ITC of this determination.

#### Petitioners' Comments

*Comment 1:* Petitioners argue that a direct charge adjustment to home market prices for inland freight between NPL's production site at Arad and its terminal facilities at Ashdod, as well as storage costs incurred by NPL at its terminal facilities at Ashdod, should be disallowed because they claim these costs are at best indirect selling expenses. At the same time, petitioners contend that an appropriate adjustment to the U.S. price for these costs should be made because, with respect to the U.S. sales, these costs are direct charges. Petitioners cite *Siver Reed America, Inc. v. U.S.*, 581 F. Supp. 1298 (CIT 1984) which affirmed the Department's determination to disallow transportation costs of unsold typewriters from a factory to a central storage warehouse, because they were not related to particular home market sales.

*DOC Position:* We disagree. As required by section 1677a(d)(1)(A) and 1677b(a)(1) of the Act, the Department makes appropriate adjustments to both U.S. price and foreign market value for inland freight expenses incurred in the

home market in order to arrive at the net ex-factory price of the merchandise "packed ready for shipment to the United States." This practice has been approved by the courts. In *Smith-Corona Group, Consumer Products Division, SCM Corp. v. U.S.* 713 F. 2d 1568, 1571-1572 (Fed. Cir. 1983), cert. den. 104 S. Ct. 1274, the court noted in making fair value comparisons "[b]oth values are subject to adjustment in an attempt to reconstruct the price at a specific, 'common' point in the chain of commerce, so that value can be fairly compared on an equivalent basis."

Accordingly, we made deductions for inland freight and loading expenses in our calculations of the foreign market value, as well as inland freight, loading, ship surveying, and export documentation processing expenses in our calculation of the U.S. price.

The case cited by petitioners is not applicable to the facts of this investigation. In that case, the product sold in the home market was shipped to a separate warehouse for inventory storage, while the product sold to the U.S. was shipped directly to the port of exportation. Thus, the issue in *Silver Reed* was the Department's methodology with respect to inventory warehousing, not inland freight.

We did not allow any adjustments for the costs of NPL's storage facilities at the Ashdod port terminal, since these are general fixed costs of the company and not the variable costs which are related to the sales under investigation.

**Comment 2:** Petitioners argue that an adjustment to the home market price for payments NPL received under the Government of Israel's Exchange Rate Risk Insurance Scheme ("EIS") for export shipments of IPA to the United States should be disallowed since these payments have no relationship with home market prices. To the extent that countervailing duties will be imposed on IPA imports from NPL to offset export subsidies, the U.S. price will be adjusted under section 772(d)(1)(D) of the Act.

**DOC Position:** See the "Foreign Market Value" and the "Continuation of Suspension of Liquidation" sections of this notice. Although no adjustment to the U.S. price is warranted under section 772(d)(1)(D) until the countervailing duty is actually assessed on the subject merchandise, there is no reason to require a duplicate cash deposit or bond for that portion of the antidumping duty which cannot be ultimately assessed.

**Comment 3:** Petitioners allege that the date of sale for invoice number 1934 should be the date of shipment and not the date of a preliminary document contemplating the sale. Petitioners suspect that the purchase agreement

may not have been a binding sales contract. Therefore, the date of sale should be based on the date of shipment, thus excluding this sale from the period of investigation.

**DOC Position:** We disagree. Although the actual shipments occurred outside of the period of investigation, we determined conclusively at verification that the primary terms of the sale (e.g., price and quantity) were established during the period of investigation. We have, therefore, included this sale in our calculation of foreign market value.

**Comment 4:** Petitioners contend that an adjustment to the home market price for certain packed sales in the home market should be disallowed since the price NPL charged did not include the cost of drums.

**DOC Position:** We disagree. Although the price paid by NPL's customer did not contain an additional charge for packing, NPL did incur packing costs for those drum sales. Therefore, the total price charged for these sales includes the cost of packing. Since NPL sells only in bulk to the United States, a packed sale in the home market must be adjusted for a difference in packing costs in order to make a proper comparison between the U.S. and foreign market prices.

**Comment 5:** Petitioners argue that since sales in the home market and the United States were financed largely by internally-generated funds, a home market interest rate should be used to calculate the credit expenses on both U.S. and home market sales.

**DOC Position:** We determined at verification that for the period of investigation NPL financed its sales of IPA to the United States with short-term dollar loans from the Bank of Israel's Export Shipments Fund. Since NPL finances its sales abroad and in the home market from two different sources of credit, in different currencies, and at different interest rates, it incurs different credit costs when selling in the two markets. We made an adjustment to the foreign market value for credit costs on sales made in each market using interest rates specific to the market in which each sale was made.

#### Respondent's Comments

**Comment 1:** Respondent argues that the receipt of EIS benefits constitutes additional revenue to the company resulting from export sales. A circumstance of sale adjustment should be made to home market prices since no comparable revenue is received on home market sales.

**DOC Position:** We disagree. See the "Foreign Market Value," Petitioners' Comment 2, and the "Continuation of

Suspension of Liquidation" sections of this notice.

**Comment 2:** Respondent claims that the "margin" contained within the negotiated price formula between NPL and its U.S. customer is identical to a commission. Respondent argues that since NPL pays a commission on its U.S. sales, adjustment to home market price for indirect selling expenses incurred in Israel by NPL is appropriate.

**DOC Position:** We disagree. The buyer of a product cannot receive a commission *per se* for its own purchase, as would a sales agent. We verified that this expense, or "margin" as the company describes it, is a fixed percentage deducted from the price of each U.S. sale. A reduction of the sale price to a purchaser, in this case by a specific fixed rate, constitutes a discount, not a commission. In addition, this margin does not depend upon future sales by the U.S. customer; rather, this discount is received by the purchaser regardless of whether future sales are actually made.

**Comment 3:** Respondent argues that a circumstance of sale adjustment should be made for differences in the costs of quality control tests performed on shipments in the U.S. and home markets. They contend that these tests are specifically tied to each sale and are required by NPL's customers. As such, they are a "condition of the sale."

**DOC Position:** We disagree. To the extent that the respondent can substantiate that quality control tests were performed at the request of the customer and were a condition of the sale, we would make a circumstance of sale adjustment. At verification, we were provided with no documentation which would enable us to verify that these tests were a required condition of the sale. In addition, we were unable to verify the basis of respondent's calculation for the adjustment, *i.e.*, the number of hours required to perform each test. As such, NPL was unable to demonstrate that these costs are directly related to specific sales of IPA, as required by § 53.15 of our regulations.

**Comment 4:** Respondent argues that an October 1986 sale was a spot price sale and should not be considered to be in the ordinary course of trade. They argue that, due to special circumstances, this sale was made at a price substantially higher than the usual negotiated price for this customer and, accordingly, this sale should be disregarded in foreign market value calculations.

**DOC Position:** We disagree. We consider sales made at spot prices and those made pursuant to long-term

contractual relationships to be within the ordinary course of trade. Moreover, the terms under which this sale was made are consistent with the terms of other sales made in the home market. The sales price falls within the range of prices paid by other customers in the home market and, thus, we have included this sale in our foreign market value calculations.

*Comment 5:* Respondent argues that because its parent company, Israel Chemicals Ltd. (ICL), requires ICL companies to buy from sister companies unless they can get a better price elsewhere, the sales to the two related companies should be excluded from foreign market value calculations. In addition, these sales were made at significantly higher prices because of the special IPA concentrations each customer requires.

*DOC Position:* We disagree. We consider these sales to be in the ordinary course of trade as the prices are consistent with prices paid by other customers in the home market. In addition, the fact that ICL companies can purchase supplies elsewhere if they find a better price indicates that these sales to related companies are arm's length transactions. The special IPA concentrations required by the purchasers and the limited number of suppliers in the Israeli market are legitimate market reasons or commercial considerations for a company to charge a customer a higher price. These factors do not render these sales excludable from consideration in this investigation.

*Comment 6:* Respondent argues that fixed costs at NPL's Ashdod facility should not be deducted from either the home market or the U.S. sales price. These fixed costs are incurred irrespective of whether a shipment is made, while the variable costs incurred by NPL at Ashdod vary with each sale and are directly related to each specific shipment.

*DOC Position:* We agree. We consider these fixed costs to be general overhead expenses which the company incurs regardless of whether a particular sale is made. We deducted only the variable costs incurred at Ashdod which qualify as direct selling expenses because these costs are directly related to specific sales.

*Comment 7:* Respondent argues that an adjustment to foreign market value for NPL's truck dispatching costs on sales in the home market is appropriate since no comparable direct cost is incurred on export sales.

*DOC Position:* We disagree. We could not verify and quantify this expense because we were provided with no substantiating documentation which

would enable us to verify truck dispatching costs. Therefore, we have not made this adjustment.

#### Verification

We verified the information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

#### Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after April 20, 1987, the date of publication of our affirmative preliminary determination notice in the Federal Register.

Normally, we would instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the foreign market value of IPA from Israel exceeds the U.S. price, which in this investigation is 8.82 percent for NPL and all other manufacturers, producers, and exporters of IPA from Israel. However, Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o . . . product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy, since there is no reason to require a cash deposit or bond for that amount. Therefore, the bonding rate in this investigation will be reduced by the rate attributable to the export subsidies found in the corresponding final countervailing duty determination. Accordingly, for duty deposit purposes, the bonding rate is 1.77 percent for NPL and all other manufacturers, producers, and exporters of IPA from Israel.

The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the Federal Register. The suspension of liquidation will remain in effect until further notice.

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are

making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on IPA from Israel entered or withdrawal from warehouse, for consumption, on or after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration,  
June 29, 1987.

[FR Doc. 87-15366 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-05-M

[C-423-603]

#### Final Negative Countervailing Duty Determination: Industrial Phosphoric Acid From Belgium

AGENCY: Import Administration,  
International Trade Administration,  
Commerce.

ACTION: Notice.

**SUMMARY:** We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Belgium of industrial phosphoric acid (IPA). In addition, because this final determination is negative, we need not reach the issue as to whether critical circumstances exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to refund all cash deposits and release all appropriate bond with respect to

imports of the subject merchandise entered on or after the date of publication of our preliminary affirmative determination on February 5, 1987, and before the termination of suspension of liquidation ordered on June 5, 1987.

**EFFECTIVE DATE:** July 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mark Linscott or Carole Showers, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-8330 (Linscott), 202/377-3217 (Showers).

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

Based upon our investigation, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Belgium of IPA. In accordance with section 705(a)(2) of the Act, because this final determination is negative, we need not reach the issue as to whether critical circumstances exist in this case.

**Case History**

Since the last Federal Register publication pertaining to this case [the notice of extension of the deadline date for this final determination (52 FR 5324, February 20, 1987)], the following events have occurred. We received supplemental responses from respondents on March 11, 1987. We conducted verification in Belgium from April 21 through May 7, 1987, of the questionnaire responses of the Government of Belgium and Societe Chimique Prayon-Rupel (SCPR).

At the request of counsel for petitioners and SCPR, a public hearing was held on May 27, 1987, to afford interested parties an opportunity to present views orally, in accordance with our regulations (19 CFR 355.35). Counsel for petitioners and SCPR filed pre-hearing briefs on May 20 and post-hearing briefs on June 5, 1987.

**Scope of Investigation**

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

**Analysis of Programs**

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These

principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18008, April 28, 1984).

For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985, which coincides with SCPR's fiscal year. In their responses and at verification, the Government of Belgium and SCPR provided data, including financial statements, for the applicable period.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written and oral comments filed by petitioners and respondents, we determine the following:

**I. Programs Determined not to Confer Subsidies**

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Belgium of IPA under the following programs:

**A. 1982 Equity Investment in SCPR by SRIW**

Petitioners allege that, in 1982, the Societe Regionale d'Investissement de Wallonie (SRIW), an investment corporation wholly owned by the regional government of Wallonie, invested in a bankrupt company, SCPR, in the form of shareholder equity and shareholder debt on terms inconsistent with commercial considerations. Petitioners base their allegations on the fact that SRIW subscribed to a disproportionately smaller share of subordinated shareholder loans than it did of two other forms of investment in SCPR and argue that this, in and of itself, amounts to a *prima facie* indication that SRIW's investment was not made on equal terms with the private shareholders' investments.

We verified that the "concordat proceedings" which liquidated the operations of two failing Belgian companies, Societe de Prayon (SP) and its subsidiary, Societe Industrielle de Prayon (SIP), fully adhered to Belgium's law of concordats and that SCPR was a wholly new entity, separate and distinct from SP and SIP. SP's and SIP's creditors approved the transfer of assets to SCPR, and an independent auditor expressed an opinion that the consideration paid by SCPR for SP and SIP assets was legitimate and fair. Finally, we confirmed that profitability studies conducted by one of the private investors prior to the formation of the SCPR joint venture justified optimistic

expectations as to SCPR's future profitability.

In order to determine whether SRIW's investment in SCPR was made on terms inconsistent with commercial considerations, we analyzed the terms of this investment in light of normal commercial practices. In our preliminary determination, we found that SRIW made its investment "on the same terms and conditions, at the same price, and at the same time as the private shareholders," and we stated that this constituted "a *prima facie* indication that SRIW's investment was consistent with commercial considerations" (52 FR 3681, February 5, 1987).

Each of the investors in SCPR (SRIW, a private Belgian industrial consortium, a Moroccan phosphate company, and a private French engineering firm) took shares in three different forms of investment instruments: straight equity, subordinated shareholder loans, and long-term debentures. Although SRIW paid the same per unit price (the same subscription price for equity and the same interest rates charged for debt) as did the private investors for each instrument, SRIW purchased proportionately less of the subordinated shareholder loans than it did of the other two forms, while the two largest private investors purchased proportionately more of the subordinated shareholder loans than they did of the other two forms.

If we limited our analysis to what each party paid on a per unit price basis for each instrument, we could conclude that SRIW purchased its shares in SCPR on the same terms and conditions as did the private investors. But to do this would require us to ignore the fact that an investor's rate of return will often vary with the relative proportions it takes of the several instruments which comprise this type of investment package. In such a situation, we cannot isolate our analysis of each individual instrument. Instead, all investment instruments must be analyzed as components within the composite investment package. Applying this type of analysis, we must conclude that, because the relative proportions that each party purchased in each instrument varied, per unit price does not necessarily provide a true basis for comparing terms and conditions nor expectations of future return.

Therefore, we must augment our analysis for determining whether SRIW's investment was consistent with commercial considerations. As we state in the Subsidies Appendix, we must determine whether the price paid by SRIW "rightly incorporates private

investors' perceptions of the company's future earning potential and worth." Typically, the price paid by private investors is dispositive.

If the government paid a higher per unit price for its equity shares than that paid by private investor, we would find the government's infusion to be inconsistent with commercial considerations. In this case, however, the government paid the same per unit price as that paid by private investors for each of three investment instruments but took a relatively lesser proportion of subordinated shareholder loans. Consequently, we must go beyond per unit price in our analysis of whether SRIW's investment was consistent with commercial considerations. This requires looking at whether the investment was reasonably perceived as ensuring a commercial rate of return to the investor, SRIW.

At verification we reviewed documentation on a contemporaneous investment that SRIW negotiated with Union Miniere, a private company which was the catalyst behind the SCPR joint venture. Under the terms of the investment package in SCPR, SRIW simultaneously purchased shares in a company called Umipray. Umipray was created pursuant to a large supply contract which guaranteed it a substantial rate of return over 15 years. Based on the record in this investigation, we conclude that the Umipray investment was inseparably linked to the SCPR investment, and that the investments in SCPR and Umipray should be analyzed as one package. Only by viewing SRIW's entire investment package can we accurately gauge SRIW's expectations of future return. Although SRIW's share in subordinated shareholder loans to SCPR was decreased, it was done so in order to accommodate SRIW's investment in Umipray. It is evident that acted commercially, given that its anticipated rate of return was comparable to that of the private investors, due to the Umipray component. We conclude that SRIW and the private investors invested with similar expectations of future returns.

For the reasons stated above, we determine that SRIW's investment in SCPR was not made on terms inconsistent with commercial considerations, and, therefore, does not confer a subsidy on IPA from Belgium.

#### B. 1985 Equity Infusion in SCPR by SRIW

Petitioners allege that SCPR's capital stock increase by its shareholders in 1985 was inconsistent with commercial considerations because the company

was clearly not an attractive investment opportunity at that time.

In order to determine whether the 1985 equity infusion was made on terms inconsistent with commercial considerations, we again analyzed this infusion in light of normal commercial practices. In contrast to the original investments in SCPR in 1982, SRIW's and the private investors' 1985 infusion involved only one form of investment, straight equity purchases. Consequently, per unit price provides an accurate means for comparing terms and conditions between investors. We do not find this transaction inconsistent with commercial considerations because SCPR's private shareholders also contributed to the increase in capital stock at the same price and on the same terms and conditions as SRIW.

Accordingly, we determine that SRIW's equity infusion into SCPR in 1985 was not on terms inconsistent with commercial considerations and does not confer a subsidy on IPA from Belgium.

#### C. SNCI Short-Term Credit

The Societe National de Credit a l'Industrie (SNCI), a government lending institution, offers a variety of short- and long-term credit facilities in both Belgian and foreign currencies. At verification we found that SCPR had utilized a short-term line of credit during the last four months of the review period. We verified that interest rates charged on the SNCI loans were no lower than those charged on short-term credit lines from private sources. We also verified at the Belgian Central Bank and at the Belgian National Banking Association that SNCI rates are the standard commercial benchmarks for short-term credit in the Belgian economy. Therefore, we determine that short-term credits from SNCI are not on terms inconsistent with commercial considerations and do not confer a subsidy on IPA from Belgium.

#### II. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Belgium of IPA did not use the following programs during the review period:

##### A. Programs Created by the 1970 Economic Expansion Law (EEL)

The Economic Expansion Law (EEL) of December 30, 1970, offers incentives to promote operations which establish new enterprises or expand existing ones within designated development zones and which contribute directly to the creation of new activities and new employment. The provisions of the EEL are approved, implemented, and

administered by regional authorities of the Belgium government. Companies which invest in the designated development zones, and whose projects have been approved, are eligible to receive various benefits under the EEL including: capital grants or interest rate reductions, loan guarantees, accelerated depreciation, tax exemptions (*i.e.*, real property, capital registration, and capital gains), contractual aid, and employment premiums.

SCPR has two separate production facilities in Belgium, one in Puurs which produces and sells IPA, and one in Engis which produces and sells various phosphate products. At Engis a relatively impure form of phosphoric acid is produced only at an intermediate stage in the downstream production of these phosphate products. Each facility was established as a self-contained unit, and we verified that neither requires nor utilizes inputs from the other.

At verification we found that (1) SCPR's plant at Puurs, the only plant producing IPA for sale to all markets, is not located in a development zone and has never received benefits under this program; and (2) SCPR's plant at Engis was located in a development zone from 1970-1982 and, thereafter, located in a "zone of possible exception" with project approval authorized on a case-by-case basis. According to the responses and to verified information, benefits were received by the Engis facility under the 1970 EEL. However, even though Engis is located in a development zone and received benefits under this program, evidence on the record clearly shows that phosphoric acid produced at Engis is not, and cannot be, sold to the United States as IPA.

Verified documentation on the record shows that all of the acid produced at Engis is for captive use only (*i.e.*, it is consumed internally by the Engis plant to manufacture other products). The documentation further shows that this acid contains impurities at a level that is not marketable in the United States and that the necessary modifications at Engis to further purify the acid would require substantial investments. We have been provided with purchasers' specifications, including those of petitioners, which show that the required levels of purity for the IPA demanded in the U.S. market are well below the impurity level of the acid produced at the Engis plant. Respondent has also documented unsuccessful company attempts to sell in the U.S. market a more impure form of the acid produced at the Puurs plant.

Because the acid produced in the facilities at Engis is not being exported to the United States, and because we determine that this acid cannot be sold in the U.S. market as IPA with its current level of impurities, we determine that any benefits received by the Engis plant do not benefit the production of the IPA which is sold in the United States.

#### B. SNCI Long-Term Credit

As discussed in section I.C. of this notice, SNCI offers a variety of credit facilities, including long-term loans, in both Belgian and foreign currencies. At verification we found that SCPR had no long-term loans outstanding during, or subsequent to, the review period.

#### C. Employment-Based Benefits

The Office National de l'Emploi (ONEM), offers funds for employee training programs and other employment-based benefits. We verified that SCPR has never applied for, nor received, benefits under any ONEM program.

#### D. Operating Subsidies

Petitioners allege that SCPR's annual reports for 1984 and 1985 show that the company received certain unspecified "operating subsidies." At verification we found that the "operating subsidies" in question consisted of certain research and development grants awarded by the Institute for the Encouragement of Scientific Research in Industry and Agriculture (IRSIA), an agency of the Government of Belgium, for laboratory research wholly unrelated to IPA. For purposes of this investigation, we determine that these grants were not used because they did not benefit the production of IPA.

#### E. Export Programs

At verification we discovered several export programs sponsored by the Ministry of Economic Affairs. These export incentives include export risk insurance, medium-term export financing, rebates of excise taxes associated with exports, and export marketing promotion. We verified that SCPR has never applied for, nor received, benefits under any of these programs for exports to the United States.

#### Petitioners' Comments

*Comment 1:* Petitioners contend that, despite differences in levels of purity and end-use, the phosphoric acids produced at the Puurs and Engis plants are both identical to the product under investigation, IPA.

*DOC Position:* Based on the evidence on the record, we consider that the phosphoric acid produced as an intermediate product at Engis, in contrast to that produced at Puurs, is not the IPA as currently required by U.S. purchasers. See section II.A. of this notice.

*Comment 2:* Petitioners argue that the Department has never required, nor did Congress intend, that a petitioner show that subsidy benefits accrue directly or solely to the exported products.

*DOC Position:* The Department does not require that subsidy benefits accrue directly or solely to the exported product. However, if in a particular case, documentation indicates that subsidies are either tied to a product not being exported to the United States or to facilities which produce that product, we will not include those subsidies in our final calculation. [See *Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel* (49 FR 38122, September 14, 1984); *Final Results of Countervailing Duty Administrative Review: Industrial Nitrocellulose from France* (52 FR 833, January 9, 1987)]. At verification we found that subsidies provided under the 1970 EEL are directly tied to production at Engis. As stated earlier in this notice (see section II.A.), the evidence on the record demonstrates that the phosphoric acid produced at Engis is not, and cannot be, exported to the United States as IPA. For purposes of this investigation, we requested from petitioners any form of evidentiary link that they could provide to refute this evidence. We have not received any documentation that accomplishes this. Therefore, based on verified data, and without evidence to the contrary, we have determined that the Engis acid is not, and cannot be, exported to the United States as IPA, and that subsidies tied to that production should not be included in this final determination.

*Comment 3:* Petitioners argue that, although subsidies under the 1970 EEL were disbursed only to the Engis plant, they also benefit the production at the Puurs plant by allowing it to focus exclusively on export quality acid.

*DOC Position:* We disagree. We have no evidence that benefits tied solely to the Engis plant have benefited the production of IPA at Puurs, which is an entirely separate production facility. The two plants are distant from one another, there are no internal transfers between them, and they do not share distribution, storage, or any other facilities. Furthermore, the benefits received by the Engis plant were tied specifically to the purchase of specialized machinery to be used in that

plant. Even though SCPR has rationalized its production operations between the two plants, we have observed no vehicle through which these subsidies would have flowed to Puurs production.

*Comment 4:* Petitioners argue that, because the benefits available under the 1959 Economic Expansion Law, which has been found to be generally available in previous Belgian cases, are promulgated under a separate and distinct statute from those available under the 1970 Law, the Department should countervail the entire amount of subsidies received under the 1970 Law.

*DOC Position:* Because we have determined that the assistance disbursed under the 1970 Law to the Engis plant does not benefit, in any way, the production or exportation of the subject merchandise, petitioners' argument is rendered moot. See section II.A. of this notice.

*Comment 5:* Petitioners argue that SRIW chose to forego an increased rate of return when it agreed to its 1982 investment in SCPR because it subscribed to a relatively lesser proportion of subordinated shareholder loans that it did of the other two components in the SCPR financing package. Petitioners contend that an analysis of rates of return and overall risk shows that subordinated shareholder loans were the most attractive element in the financing package. They conclude that, given this disparity, it is evident that SRIW's investment was not made on the same terms as the private investments.

*DOC Position:* We disagree. Each element in the financing package provided unique advantages to the investors. We cannot conclude that the subordinated shareholder loans were any more desirable than the other two investment instruments. Furthermore, our analysis shows that SRIW anticipated a future rate of return comparable to that anticipated by the private investors. See section I.A.

*Comment 6:* Petitioners argue that respondents, in claiming a link between the Umipray and SCPR investments, failed to provide evidence documenting the Umipray investment and that, in any event, SRIW apparently obtained its shares prior to its investment in SCPR. Petitioners conclude that respondents' bargain thesis is unsupported.

*DOC Position:* We disagree. We have documentation provided in respondents' response, and we obtained documentation at verification, showing that (1) the Umipray transaction did occur and was linked, during negotiations, with the SCPR transaction.

(2) the transactions for the Umipray and SCPR investments occurred simultaneously, and (3) SRIW subsequently sold its interest in Umipray at a profitable return. See section I.A. of this notice.

#### Respondents' Comments

*Comment 1:* Respondents contend that the Engis plant does not produce a product of the same class or kind as the product under investigation and, furthermore, that the Engis phosphoric acid is not exported to the United States.

*DOC Position:* See DOC Position on Petitioners' Comment 1.

*Comment 2:* Respondents argue that SRIW's equity investments are not countervailable because they were made consistent with commercial considerations.

*DOC Position:* We agree. See sections I.A. and I.B. of this notice and DOC Position on Petitioners' Comment 5.

#### Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the responses to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

#### Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on February 5, 1987, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require that a cash deposit or bond be posted equal to the estimated net subsidy. The countervailing duty final determination was extended to coincide with the final antidumping duty determination on the same product from Belgium, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). Under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code"), provisional measures cannot be imposed for more than 120 days. Thus, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without a final determination of subsidization and injury. Therefore, on June 3, 1987, we instructed the U.S.

Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after June 5, 1987.

In accordance with section 705(c)(2) of the Act, we are directing the U.S. Customs Service to refund all cash deposits and release all appropriate bonds for entries of the subject merchandise made after the publication of our preliminary affirmative determination on February 5, 1987, and before the termination of suspension of liquidation on June 5, 1987.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the Federal Register. Hence, the ITC is not required to make a final injury determination.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

*Assistant Secretary for Trade Administration.*

June 29, 1987.

[FR Doc. 87-15384 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-05-M

[C-508-605]

#### Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of industrial phosphoric acid (IPA). The estimated net subsidies and duty deposit rates are indicated in the "Suspension of Liquidation" section of this notice. In addition, we determine that critical circumstances do not exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determinations. If the ITC determines that imports of IPA materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of our countervailing duty order and to require a cash deposit on

entries of the subject merchandise in an amount equal to the appropriate estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** July 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** David Levine or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-1673 (Levine), 202/377-0160 (Taverman).

#### SUPPLEMENTARY INFORMATION:

##### Final Determination

Based upon our investigation, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of IPA. For purposes of this investigation, the following programs are found to confer subsidies:

- Encouragement of Capital Investments Law Grants
- Long-Term Industrial Development Loans
- Bank of Israel Export Production Fund Loans
- Bank of Israel Export Shipment Fund Loans
- Bank of Israel Import-for-Export Fund Loans
- Exchange Rate Risk Insurance Scheme
- Encouragement of Research and Development Law Grants

##### Case History

Since the last Federal Register publication pertaining to this case [the notice of extension of the deadline date for this final determination (52 FR 5321, February 20, 1987)], the following events have occurred. We conducted verification in Israel from March 23 through April 3 and from May 10 through May 22, 1987, of the questionnaire responses of the Government of Israel and Negev Phosphates Ltd (NPL).

Petitioners, NPL, and the Israeli government filed briefs on June 10 and rebuttal briefs on June 12, 1987, and waived their respective rights to a hearing in this case. On June 8, 1987, Haifa filed comments on our preliminary determination.

##### Scope of Investigation

The product covered by this investigation is industrial phosphoric acid (IPA), currently provided for in item

#### 416.30 of the *Tariff Schedules of the United States*.

##### Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is April 1, 1985, through March 31, 1986. In their responses and at verification, the Government of Israel and NPL provided data, including financial statements, for the applicable period.

There are two known manufacturers, producers, or exporters in Israel of IPA, NPL and Haifa. Haifa did not respond to our questionnaire and we were not able to verify any information related to Haifa, except for Government of Israel export statistics. Therefore, under each countervailable program we calculated benefits to Haifa based on the best information available. As best information available, we used the higher of either the rate we calculated for NPL (the other company under investigation) or a rate found in a past Israeli case.

We have calculated a company-specific estimated net subsidy rate in this final determination for Haifa because its estimated net subsidy rate is significantly different than the weighted-average country-wide rate (the weighted-average of NPL's and Haifa's rates). Since Haifa and NPL are the only two known producers and exporters of IPA in Israel, and since we have calculated a company-specific rate for Haifa, the estimated net subsidy for NPL and all others equals NPL's estimated net subsidy rate.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments filed by petitioners and respondents, we determine the following:

##### *I. Programs Determined To Confer Subsidies*

We determine that subsidies are being provided to manufacturers, producers, or exporters in Israel of IPA under the following programs:

##### A. The Encouragement of Capital Investments Law (ECIL) Grants

The purpose of the ECIL is to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, drawback grants, and capital grants, accelerated depreciation, and reduced tax rates, the applicant must obtain approved enterprise status. We discuss ECIL tax programs below under the section entitled "Programs Determined Not to be Used."

Approved enterprise status is obtained after review of information submitted to the Israel Ministry of Industry and Trade, Investment Center Division. The amount of the grant benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL, Israel is divided into three zones—Development Zone A, Development Zone B, and the Central Zone—each with a different funding level.

We verified that, since 1978, only investment projects outside the Central Zone have been eligible to receive grants. The Central Zone comprises the geographic center of Israel including its largest and most developed population centers. Because the grants are limited to enterprises located in specific regions, we determine that they constitute subsidies within the meaning of the Act.

NPL, which is located in Development Zone A, received ECIL investment, drawback, and capital grants for several projects. We verified that NPL's production at its Oron and Zin plants, where all but two of the funded projects were located, was unrelated to its IPA production. For the other two projects, some of the grants applied entirely to NPL's IPA production facility and some were for another facility. We verified that only 5.3 percent of the sales value of this other facility's production was devoted to the production of IPA and have, therefore, included only 5.3 percent of those grant values in our calculation of the benefit.

To calculate the benefit, we allocated these grants over ten years (the average useful life of assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System). Usually, to allocate benefits over time we use as our discount rate the firm's weighted cost of capital, which is an average of the company's marginal costs of debt and equity for the year in which the terms of the grant were approved. In this instance, however, NPL has no significant fixed-rate long-term debt. Instead, virtually all

of its long-term loans bear variable interest rates. Therefore, we have used the interest rate in effect during the review period for non-preferential Israeli-sourced loans taken out in the same years that the grants were given as the discount rate. We have used those variable interest rates charged on dollar-linked long-term industrial development loans in the Central Zone (see next section). Based on this allocation methodology, we computed the benefit for IPA during the review period and then divided this amount by the value of NPL's total IPA sales during the review period. The estimated net subsidy for NPL is 0.48 percent *ad valorem*. As best information available, we determine that the estimated net subsidy for Haifa is 1.18 percent *ad valorem* based on our *Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel (Potash)* (49 FR 36122, September 14, 1984).

##### B. Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel. We verified that these loans, like the ECIL grants, were project-specific. They were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks which no longer exist.

We verified that the long-term industrial development loans are provided to a diverse number of industries, including agricultural, chemical, mining, machine, and others. However, the interest rates charged on these loans vary depending on the Development Zone location of the borrower. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest. Therefore, loans to companies in Zones A and B are at preferential terms relative to loans received by companies in the heavily populated and developed Central Zone. Because preferential terms are limited to companies located in certain regions, we determine that these loans are regional subsidies, countervailable to the extent that the applicable interest rates are less than those on loans to companies in the Central Zone.

NPL had loans outstanding under this program during the review period for projects at five of its plants, four of which are unrelated to IPA production and one of which is a rock processing facility which produces an input for IPA. The loans provided for this plant carry



the Zone A interest rates because of NPL's location. Therefore, we determine that NPL received countervailable benefits under this program because the interest rates charged NPL are less than those which would apply in the Central Zone.

To calculate a benefit under our normal long-term loan methodology, we would calculate the present value of interest savings accruing over the life of the loan and allocate that amount using an appropriate discount rate. However, the loans under this program have variable interest rates linked to changes in the dollar-shekel exchange rate. Therefore, we cannot calculate the present value of the interest savings, nor is there a single discount rate for allocating the benefits over time. Because of this, we have compared the interest that would have been paid on the variable-rate benchmark loan (*i.e.*, a loan available to firms in the Central Zone) to the interest paid on the preferential loan during the review period. We divided the difference in these amounts by NPL's total sales of IPA during the review period, which resulted in an estimated net subsidy of 0.06 percent *ad valorem* for NPL.

In this case, we were able to verify at the government that the interest rate on loans to companies located in the Central Zone is not limited and we were able to verify at NPL complete information concerning these loans. Accordingly, we used verified information for calculating the benefit received by NPL. However, we have no verified information concerning Haifa's use of long-term development loans, *i.e.*, loan amounts, terms and conditions of the loans, and interest rates paid. Therefore, we cannot apply to Haifa the methodology used to calculate NPL's benefit. As such, we have relied on the rate found in our *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel (OCTG)* (52 FR 1649, January 15, 1987) as best information available (BIA) for purposes of estimating the net subsidy received by Haifa. Applying the highest rate found in a prior investigation is a standard Departmental practice for purposes of establishing a BIA rate. Therefore, the estimated net subsidy for Haifa is 5.02 percent *ad valorem*.

#### C. Bank of Israel Export Loans

The Government of Israel provided preferential short-term financing in local and foreign currencies to exporters in Israel through three export credit funds administered by the Bank of Israel (BOI).

In cases in which program-wide changes have occurred prior to a

preliminary determination and where the changes are verifiable, the Department's practice is to adjust the duty deposit rate to correspond to the eventual duty liability. We have verified that since July 1985 the loans under these funds are provided only in foreign currencies and are no longer at preferential terms. Accordingly, we have taken this change into account by not including the BOI export loan benefits in the duty deposit rate.

1. **Export Production Fund (EPF).** Under the EPF, three-month loans are provided to exporters to finance export production. The amount which a company is able to borrow under this program is limited by a quota set by the BOI. The quota is based on the value of the company's exports, the product's value-added percentage, and the production cycle of the company. During the review period, NPL received loans under this program denominated in NIS prior to July 1985, and in U.S. dollars after July 1985.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. We used as our benchmark for the NIS-denominated loans the national average non-directed short-term NIS lending rate, as provided by the BOI, adjusted for inflation. Comparing this benchmark to the interest rates charged on these loans, we determine that the loans were provided at preferential rates prior to July 1985 and are, therefore, countervailable. Dollar loans are not otherwise available in Israel and we were not able to obtain a benchmark interest rate for these loans from independent sources. We therefore used the benchmark applied to dollar loans under the Export Shipment Fund (see next section) in *Potash* and *OCTG*, which is the London Interbank Offered Rate (LIBOR) plus two percent. Since NPL paid interest on the loans at our benchmark rate, we determine that the company received no countervailable benefits under the dollar-denominated EPF loans.

To calculate the benefit from EPF loans, we allocated the interest savings over total exports during the review period because NPL did not segregate loans provided for IPA from loans for other products. On this basis, we calculated an estimated net subsidy of 0.85 percent *ad valorem* for NPL. The estimated net subsidy for Haifa is 2.78 percent *ad valorem* based on *OCTG*.

2. **Export Shipment Fund (ESF).** Under the ESF, loans are provided to exporters to enable them to extend credit in foreign currency to their overseas customers. Financing is granted on a

shipment-by-shipment basis. Funding is provided after shipment of the goods and must be repaid within six months. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

We verified that NPL received only dollar-denominated loans under the ESF at the interest rate of LIBOR plus two percent. Since NPL paid interest on the loans at our benchmark rate, we determine that the company received no countervailable benefits under the ESF. The estimated net subsidy for Haifa is 0.41 percent *ad valorem* based on *Potash*.

3. **Import-for-Export Fund (IEF).** Under the IEF, exporters receive three-month loans in order to finance imported materials used for export production. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

We verified that NPL received dollar-denominated loans under the IEF during the review period, before and after July 1985. Comparing the benchmark interest rate (LIBOR plus two percent) to the rates charged on these loans, we determine that the pre-July 1985 loans were provided at preferential rates and are, therefore, countervailable. To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period since NPL did not segregate loans for IPA from loans for other products. We thereby calculated an estimated net subsidy of 0.01 percent *ad valorem* for NPL. The estimated net subsidy for Haifa is 1.16 percent *ad valorem* based on *OCTG*.

#### D. Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EISA), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the NIS value of an exporter's foreign currency receivable does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these

two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated for all participants as a percentage of the value-added sales value of exports. IFTRIC changes this percentage rate periodically; but at any given time, it is the same for all exporters.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In *OCTG and Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Israel (Flowers)* (52 FR 3316, February 3, 1987), we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods and flowers. In both those cases and in this case, we reviewed EIS data which showed that EIS operated at a loss from 1981 through 1985. In fact, in the five years of operation, there was only one month in which premiums received were greater than compensation paid out. We believe that five years, in this case, is a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. Therefore, we determine that this program confers an export subsidy on exports of IPA from Israel.

In calculating the benefit, we have taken into account the special features of this program. Under a typical insurance scheme, the users pay premiums and then receive a payment if the event being insured against occurs. Under the Exchange Rate Risk Insurance Scheme, on the other hand, the user can receive a payment (if the inflation rate exceeds the depreciation rate) or must make an additional payment (if the depreciation rate exceeds the inflation rate).

Since the program has been in place, payments received by users have exceeded the payments they have made to the scheme. Thus, users of the scheme have virtually no risk of incurring additional payment costs, and the "premiums" serve only as a fee to obtain payment from the scheme. Therefore, we have calculated the benefit by allocating the amount of compensation NPL received from IFTRIC expressly for IPA exported to the United States, after deducting premiums paid, over the value of the company's exports of IPA to the United States during the review period.

We thereby found an estimated net subsidy of 4.78 percent *ad valorem* for NPL. The estimated net subsidy for Haifa is 8.87 percent *ad valorem* based on *Flowers*.

#### E. Encouragement of Research and Development Law (ERDL) Grants

Petitioners alleged that manufacturers, producers, or exporters in Israel of IPA may benefit from research and development grants under this program. We verified that NPL directly received a grant under this program, which was unrelated to its production of IPA. Petitioners also alleged that NPL may have indirectly received benefits under this program for its IPA production through grants provided to its parent company, Israel Chemicals Ltd (ICL). Although we were unable to verify such grants to ICL, its 1985 Annual Report indicates that such grants were received. Since we have verified that the results of research funded by ERDL grants are not made publicly available, we determine these grants to be countervailable.

According to our grant methodology, we would normally gather information on such grants for the last ten years, which is the average useful life of assets in the chemical industry. However, because financial data were unavailable for years other than 1985, we used, as best information available, the total value of grants listed in ICL's 1985 Annual Report, provided in the petition, as representing the amount disbursed during the review period. We expensed this full amount to 1985 and divided by ICL's total consolidated sales, as reported in the Annual Report, to derive an estimated net subsidy for NPL and Haifa of 0.04 percent *ad valorem*.

#### II. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Israel of IPA under the following programs:

##### A. Government of Israel Land Leases

Petitioners alleged that NPL receives preferential land leases on its IPA plant property from the Government of Israel. We verified that the Government of Israel appraises land values throughout Israel and neutrally applies terms on its land leases. We saw, for example, that the government appraised NPL's IPA plant property relative to the value of a neighboring company's property. Land lease rates are determined as a percentage of the appraised land value, and lease payments for all lessees in Israel are annually linked to the Israeli consumer price index to account for

inflation. We verified that NPL and other companies paid land lease rates in accordance with this established practice. We therefore determine that the Israeli government does not provide preferential benefits under this program.

##### B. The Encouragement of Industry Law (EIL) Accelerated Depreciation and Further Tax Reductions

Petitioners alleged that manufacturers, producers, or exporters in Israel of IPA may receive accelerated depreciation and further tax reductions under the EIL.

We verified that benefits under the EIL are limited neither regionally nor to specific enterprises or industries, or groups of enterprises or industries. We also verified that, in fact, EIL tax benefits have been used by a wide variety of industries, including the machine, agriculture, construction, chemical, and hotel industries. Therefore, we determine that the EIL provides no countervailable benefits to manufacturers, producers, or exporters in Israel of IPA.

##### C. Provision of Rail Facilities by the Government of Israel

During our verification, we found that NPL ships its products over rail lines built by the Government of Israel. We verified that a few chemical companies comprise the main users of rail lines in the desert region of Israel, and that the government built these lines primarily for use by these companies. The government determined the feasibility of constructing the lines based on cost/profit analyses for itself and for the companies. The government made a profit on its cargo lines during the review period.

We held in our *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod From Saudi Arabia* (51 FR 4206, 4210, February 3, 1986) that the provision of basic infrastructure does not confer a countervailable (subsidy) when the following three conditions are met:

(1) The government does not limit who can move into the area where the infrastructure has been built;

(2) The infrastructure that has been built is in fact used by more than a specific enterprise or industry, or group of enterprises or industries; and

(3) Those that locate there have equal access or receive the benefits of the infrastructure on the basis of neutral criteria.

Since we found that a limited number of chemical companies comprise almost all

users of the rail lines in the desert region, part (2) of our test is not met.

Given that the rail lines in the desert region appear to have been built for the almost exclusive use of a few chemical companies, we looked to see if the rates charged by the Government of Israel on these lines are preferential to rates charged by the government on lines which are not limited to a specific enterprise or industry, or group of enterprises or industries. The rail lines in northern Israel carry a variety of products, including many agricultural products. The Department has previously determined that agriculture constitutes more than a specific group of industries. Therefore, it is appropriate to compare the rates charged on the desert lines to the rates charged on the northern lines. We verified that NPL has paid higher rates than those charged other companies in other regions. On this basis, we have determined that NPL does not pay preferential rail rates in Israel.

Because NPL's rail rates are not preferential, we determine that the provision of rail facilities in the desert region does not confer a subsidy to manufacturers, producers, or exporters of IPA in Israel.

### III. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters of IPA in Israel did not use the following programs during the review period:

#### A. Foreign Investment Company Benefits

Petitioners alleged that under Amendment 15 to the ECIL a "Foreign Investment Company" is entitled to certain grants. NPL did not qualify for any benefits under this law.

#### B. Export Promotion Fund Benefits

Petitioners alleged that exporters in Israel may receive benefits under this program. We verified that NPL received foreign currency loans under this program only for its Paris office, but that it received no other benefits.

#### C. Preferential Accelerated Depreciation and Reduced Tax Rates Under the ECIL

Under section 42 of the ECIL, a company which has obtained approved enterprise status can choose to depreciate machinery and equipment at double the normal rate and buildings at four times the normal rate. We verified that NPL depreciated one of its buildings at the rate sanctioned by this ECIL section, but that this building was not related to its IPA production or sales. We also verified that NPL reported a tax

loss, and therefore paid no taxes, on its IPA production facility during the review period. Therefore, the preferential tax rate allowed under section 47 of the ECIL did not apply to its IPA sales.

### IV. Program Determined To Be Terminated

We determine that the following program has been terminated.

#### A. Property Tax Exemptions on Buildings and Equipment

Petitioners alleged that manufacturers, producers, or exporters in Israel of IPA may benefit from tax incentives that allow eligible enterprises a five-year exemption from payment of two-thirds of property taxes on buildings and a ten-year exemption for payment of one-sixth of property taxes on equipment. We verified that the exemptions were repealed by Amendment No. 17, ECIL, 5738-1979. Also, property taxes on industrial buildings and equipment were repealed for all taxpayers in Israel on April 1, 1981. Property tax exemptions referred to in section 53 of the ECIL are taxes on apartment buildings in residential areas.

#### Negative Determination of Critical Circumstances

Petitioners alleged that critical circumstances exist within the meaning of section 703(e)(1) of the Act with respect to imports of IPA from Israel. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we have considered the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. A review of this information indicates that imports from Israel have not been massive over a relatively short period of time.

Since we have not found massive imports over a relatively short period of time, we do not need to consider whether the alleged subsidies are inconsistent with the Agreement. Therefore, we determine that critical circumstances do not exist.

### Petitioners' Comments

*Comment 1:* Petitioners argue that the Department should follow its preliminary determination in finding countervailable and allocating the full amount of the grants made to the Arad rock processing facility over NPL's total sales. The Department should not use the allocation method proposed by respondents which is based on cost and value and relies in large part on intracompany sales. If only a portion of benefits to the Arad rock processing plant, however, are found countervailable, the allocation should be limited to sales from the Arad plant alone.

*DOC Position:* We verified that, in fact, NPL uses only a small portion of the rock processing facility's production in making IPA. We also verified, through NPL's cost and sales records, the relative values of the facility's production which is sold, used captively in the production of enriched phosphate, and used in the production of IPA. Therefore, we believe the benefits from grants provided expressly for the rock processing facility should be allocated proportionally to the products yielded by that facility.

*Comment 2:* Petitioners claim that an additional investment grant which the Department discovered during verification should be included in the calculation of the net subsidy amount.

*DOC Position:* We have included this grant for the Arad rock processing facility in our grant benefit calculation.

*Comment 3:* Petitioners assert that the Department should include in its final determination of net subsidies certain ECIL grants received by respondent in 1986 which are directly related to IPA production, but which were not included in the Department's preliminary finding.

*DOC Position:* Because NPL received these grants after the review period, we have not included them in our grant benefit calculation. Any benefits from these grants would be covered in an administrative review conducted by the Department under section 751 of the Act, if one is requested.

*Comment 4:* Petitioners contend that certain subsidies made available to the Ashdod plant should be included in the subsidy calculation since the facilities at the Ashdod plant are involved with IPA.

*DOC Position:* We verified that there is no Ashdod plant. NPL has shipping and storage facilities at the Ashdod port. However, the port facilities for which NPL received Government of Israel assistance relate only to its shipment of rock phosphate. NPL's IPA port facilities

are wholly separate and did not benefit from any government assistance.

*Comment 5:* Petitioners claim that, with regard to the Export Shipment Fund (ESP), the Export Production Fund (EPF), and the Import-for-Export Fund (IEF), the lack of availability of dollar loans, except through government export programs, demonstrates their subsidy nature and their inconsistency with commercial considerations. Petitioners urge the Department to reconsider the use of LIBOR plus two percent as the benchmark rate.

*DOC Position:* We disagree. The mere absence of Israeli-sourced short-term dollar financing outside the BOI loan program does not, *per se*, make them subsidies. The limitation on foreign currency financing in Israel is a legitimate means by which the Government of Israel has chosen to control its foreign currency reserves. We also verified that, with BOI permission, companies in Israel, including NPL, may negotiate short-term (and long-term) foreign currency financing from foreign sources. For example, companies may receive suppliers' credits from foreign sources or other types of financing from foreign banks. We found that the interest rates on such foreign-sourced short-term financing varied, but did not exceed the rate of LIBOR plus two percent during the review period.

*Comment 6:* Petitioners argue that the lack of private long-term credit facilities and the corresponding need for government intervention in the marketplace to make such credit available should be conclusive proof of the subsidy nature of the long-term industrial development loans received by NPL. Moreover, the law by its own terms bestows a prohibited regional subsidy since the subsidized interest rate on the loans varies according to the ECIL "development zone" in which the recipient is located, with NPL located in the development zone receiving the lowest available rates.

*DOC Position:* We have determined that these loans are countervailable to the extent that the interest rates charged are lower than those charged companies located in the Central Zone. We disagree with petitioners' assertion that they are countervailable merely because long-term financing was otherwise not available from Israeli sources.

*Comment 7:* Petitioners believe that the benchmark for the long-term development loans should account for inflation and a reasonable profit margin and should be higher than the benchmark for short-term lending, reflecting the relatively greater return generally required by commercial lenders on long-term transactions. Since

NPL's only non-governmental long-term borrowing was from its own parent company, the appropriate "adequate comparable commercial experience" on which a company-specific rate might be based does not exist in this case. The proper benchmark rate in this case, therefore, must be based on best information available, including those few long-term commercial loans to comparable companies examined at verification which were at rates considerably higher than the short-term rates used as a benchmark in the preliminary determination.

*DOC Position:* We agree that short-term rates are not appropriate. However, the few long-term loans outside the development loan program which we saw at verification primarily came from foreign sources and many originated in foreign currencies. We therefore believe that the rates on these loans are less appropriate for measuring the benefit from this program than the generally available rates under the program itself, *i.e.*, those charged in the Central Zone, where no preference applies.

*Comment 8:* Petitioners assert that overall production, including IPA production, benefits either directly or indirectly from ECIL tax provisions. Although these tax benefits apparently have been provided to a wide variety of industries within Israel, "approval" for purposes of receiving the benefits depends on location within ECIL development zones. Thus, the benefits bestow a countervailable regional subsidy and should be included in the calculation of the net subsidy amount. Moreover, the department in a prior proceeding found that one of the economic criteria on which approval is based is export performance, thus raising the likelihood that ECIL benefits constitute a prohibited export subsidy as well.

*DOC Position:* We verified that ECIL tax benefits apply to specific approved projects. We also verified that NPL received no ECIL tax benefits pertaining to its production, sale, or exports of IPA. We therefore have determined that NPL received no countervailable ECIL tax benefits on IPA.

*Comment 9:* Petitioners argue that NPL and Haifa are the only Israeli producers who could benefit from the research and development (R&D) grants since they are the sole producers of IPA in Israel and economic barriers to entry into the industry are insurmountably high. There is no indication that Haifa has shared, or would be permitted to share, in the results of these research projects. The ERDL grants provided to NPL clearly benefit the production of IPA and should

be included in the final amount of countervailable net subsidies. In addition, the official government records should be considered authoritative with respect to the second grant given to NPL and the full amount of this grant should be included in the net subsidy amount.

*DOC Position:* At verification we found discrepancies between government and NPL records of R&D grants provided to NPL. Because of many internal inconsistencies in the government records and virtually no internal inconsistencies in NPL's company records, we determined that NPL's records should be controlling. The R&D grant documented in NPL's records was unrelated to IPA production, so we did not include it in our subsidy calculation.

However, we did include in our benefit calculation of R&D grants the best information available regarding provisions to ICL because we were unable to verify such grant values and their ultimate beneficiary. We agree that the results of such R&D in Israel are not made publicly available. As best information available, we assumed that Haifa received the same benefits under this program as NPL.

*Comment 10:* Petitioners claim that the Government of Israel land leases constitute countervailable subsidies since both the amount of initial payments and the date of commencement of the obligation to pay rent vary according to location in a development zone. The lease does not appear to have been adjusted to take into account the real increase in land values in Israel. Petitioners urge the Department to compare the actual amount of rent paid by NPL to appropriate benchmark rates and include the amount of any preference in its final determination of net subsidies.

*DOC Position:* We verified that the Israeli government appraises land in commercial terms and bases initial rent on appraised land value. We also verified that the increase in the annual rents is linked to the CPI and that actual rent paid by NPL was consistent with this practice. We therefore determined that this program is not countervailable.

*Comment 11:* Petitioners contend that NPL's parent company, ICL, has received substantial investment grants and long-term loans from the Israeli government and it is likely that some of these benefits have flowed downward to NPL in the form of loans on preferential or non-commercial terms. The amount of any benefits conferred should be included in the final amount of countervailable subsidies. With respect to any benefits that the Department was

not permitted to investigate fully, the Department should use the annual reports of NPL and ICL as "best information available" for purposes of determining an appropriate subsidy amount.

*DOC Position:* At verification we saw in NPL's general ledger and accounting records that it maintains an "account" with ICL through which it receives and repays loans. We found that long-term loans provided to NPL by ICL were on commercial terms and that NPL repaid them in accordance with those terms.

The only government grants to ICL which we were not permitted to investigate fully were R&D grants and we have used the best information available concerning these grants to determine benefits which may have accrued to NPL. We verified that ECIL grants could not have been given to ICL.

*Comment 12:* Petitioners submit that government assistance in the construction and maintenance of the rail lines fails to satisfy the Department's three part infrastructure test and thus constitutes a countervailable subsidy. The Department should allocate an appropriate portion of the benefits over NPL's total production of IPA and include that amount in its final determination of net subsidies.

*DOC Position:* We disagree. See the section of this notice entitled "Analysis of Programs" for our full discussion of this issue.

#### Respondents' Comments

*Comment 1:* Respondents contend that essentially any company, located anywhere in Israel, can apply for an ECIL grant, and any company that can withstand an objective economic feasibility analysis concerning its project will become an approved enterprise. ECIL approval is generally available in Israel and has not been conferred selectively on a specific enterprise or industry, or group of enterprises or industries.

*DOC Position:* We verified that the benefits which accrue under the ECIL grants vary regionally. Therefore, we have determined that, to the extent the benefits received by a company exceed those in the Central Zone, such benefits are countervailable subsidies.

*Comment 2:* Respondents claim that all approved enterprises, regardless of location in Israel, are entitled to the same tax benefits. Because of their wide availability and usage on the same terms throughout the country, ECIL tax benefits are generally available and do not confer countervailable subsidies. The amount and type of benefits do not vary among development zones.

*DOC Position:* We have determined that NPL received no ECIL tax benefits pertaining to its sale or production of IPA.

*Comment 3:* Respondents contend that the preliminary calculation of grants allocable to IPA should be adjusted to conform with the numbers verified by the Department and that, with respect to the Arad rock processing grants, the Department should allocate only that portion of grants applicable to rock that is incorporated into IPA over NPL's total sales of IPA since they claim that it was shown at verification that only a "minimal" percentage of the Arad rock processing grants benefits IPA. The additional amount "discovered" at verification is nothing more than a computer error and should not be included in the subsidy calculation.

*DOC Position:* We have allocated the grant benefits proportionally to the production yield of the rock processing facility. However, since we were unable to verify NPL's receipt of one relatively small grant, we have included it in our grant benefit calculation. See our responses to Petitioners' Comments 1 and 2.

*Comment 4:* Respondents argue that none of the grants received for Machtesh should be allocated to IPA sales since any benefit to NPL associated with operations at Machtesh expired when the plant closed and the assets purchased by the grants ceased to operate or be productive. If the Department should calculate a small benefit from these grants, the deposit rate should be zero since the last Machtesh grant was paid in August 1977, almost a full ten years from the date of the final determination.

*DOC Position:* Since a portion of the production left over from when the Machtesh plant was in operation was used in NPL's IPA production, we have apportioned the 1977 grant value similarly to our apportionment of Arad rock processing facility grants.

*Comment 5:* Respondents claim that the Department has examined all grants received by NPL since 1975. At verification it was shown that grants are tied to specific assets and that the company does not receive the grant money unless it can prove that it has already spent the money to purchase the designated assets. It was also shown that the facilities at Oron and Zin are not involved in IPA production, sales, or export. The Ashdod facility which received grants was related to rock phosphate and not to IPA production.

*DOC Position:* We agree. See the section of this notice entitled "Analysis of Programs."

*Comment 6:* Respondents claim that development loans given by the six industrial development banks, at their own risk, were widely distributed throughout Israel and were available to all sectors of Israeli industry. Basically, the same companies that obtained ECIL approval also received development loans.

*DOC Position:* We agree that these loans are available to many sectors within Israel. However, we have determined that the interest rates these loans bear very regionally and, thus, the loans are countervailable to the extent interest is less than that which would be due in the Central Zone.

*Comment 7:* Respondents point out that at verification NPL demonstrated that it was able to borrow long-term through its parent company, ICL, at an interest rate lower than the indexed development loan rate. Respondents argue that if a long-term rate is used as a benchmark, it is this company-specific rate that should be compared to the development loan rate.

*DOC Position:* We disagree. We believe the generally available rate for the long-term development loans in the Central Zone is a more appropriate benchmark because those loans are provided by the same sources within Israel, for the same durations, and for similar purposes as the development loans received by NPL. Moreover, this benchmark enables us to measure the exact benefit resulting from the preference which we have found to exist. See the section of this notice entitled "Analysis of Programs" for our discussion of this issue.

*Comment 8:* Respondents submit that ECIL grants and development loans were given for specific projects and only grants and loans at the Arad rock processing plant can be said to have benefited IPA production in any way. Loans and grants for Ashdod, Oron, and Machtesh are not related to IPA production and should not be included in any net subsidy calculation.

*DOC Position:* We have not included loans and grants not related to the production of IPA in our benefit calculations. See the section of this notice entitled "Analysis of Programs."

*Comment 9:* Respondents claim that ICL is not eligible for investment grants; only subsidiary manufacturing companies, such as NPL, are entitled to receive grants for investment projects. Since money is not given until after the specific investment is proven to have been made, it would be impossible for another ICL subsidiary, for example, to receive investment grant money and

divert it to NPL through the parent company, ICL.

*DOC Position:* We agree. See our response to Petitioners' Comment 11.

*Comment 10:* Respondents argue that any money received by NPL from its parent was raised through public offerings in Israel and no government money was used. Respondents submit that loans from ICL to NPL were at commercial rates and can be used as a benchmark comparison for development loans taken by the company.

*DOC Position:* We believe that because the long-term development loans are countervailable due to the regional variance in rates, the most appropriate benchmark rate is the one which applies in the Central Zone. See our responses to Petitioners' Comment 7 and Respondents' Comment 7.

*Comment 11:* Respondents contend that it is premature to judge the Exchange Rate Risk Insurance Scheme operated by IFTRIC as a long-term loss. Because of unexpected and unprecedented inflation in Israel, IFTRIC was not able to forecast changes in inflation and currencies; now that inflation in Israel has been brought more under control, the EIS program will self-balance. Respondents thus urge the Department to give this program a bit more time before finding it a subsidy.

*DOC Position:* We verified that IFTRIC has operated this program at a loss since its inception over five years ago and that it is continuing to do so. We therefore believe sufficient time has elapsed for us to determine that this program confers a countervailable export subsidy.

*Comment 12:* Respondents claim that the ERDL grants are generally available and that they are, in fact, not grants since the recipient must pay royalties to the Chief Scientist's office equal to two percent of sales if the R&D is successful. If the Department should find these to be a subsidy, they cannot be attributed to IPA production.

*DOC Position:* We verified that one grant which went directly to NPL was unrelated to IPA. We also found that, according to its own records, NPL never paid any royalties related to this grant. We also found that any results of R&D funded under the ERDL are not made publicly available. Therefore, we have determined that those grants going to ICL, which we were unable to verify, conferred countervailable benefits which may have accrued to NPL.

*Comment 13:* Respondents assert the following with regard to the provision of rail facilities: (1) Previous to its construction, a feasibility study showed that the line was economically viable; (2) cargo lines in Israel were (and are)

profitable and self-supporting; (3) NPL pays a commercial rate for rail services which is, in fact, higher than the rate charged other users of the lines; (4) the charge per unit to NPL for rail services is higher than the cost per unit of the lines; (5) there are no restrictions on access to the various lines and, in fact, the lines are used by several companies, not just NPL; and (6) the lines were built neither for nor at the request of NPL. Based on the foregoing, respondents argue that the railways servicing NPL cannot be considered to provide a subsidy to that company.

*DOC Position:* We have not found rail lines to be countervailable. See the section of this notice entitled "Analysis of Programs" for our full discussion of this issue.

#### Comments by Haifa

*Comment 1:* Haifa contends that it should not have been required to respond to the Department's questionnaire, and that Haifa's refusal to respond in no way impeded this investigation.

*DOC Position:* We disagree. In our questionnaire, we requested that all manufacturers, producers, and exporters respond. Particularly when there are relatively few potential respondents in an investigation, and when it would be administratively feasible, we believe that full coverage of producers and exporters under investigation yields the most accurate case results. In the instant case, because Haifa chose not to respond or participate in any way throughout the investigation, we calculated an estimated net subsidy for Haifa based on the best information available.

*Comment 2:* Haifa argues that the best information applicable to Haifa should be the information we verified for NPL and that the rate assigned to Haifa should be the rate established for NPL.

*DOC Position:* We disagree that the best information applicable to Haifa is the information we verified for NPL. We have no way of determining the exact benefits received by Haifa under the countervailable programs. Therefore, in accordance with established Department practice, we adversely assumed that, under each program Haifa received the higher of either the benefits received by NPL or those found in any other Israeli case.

Section 607 of the Trade and Tariff Act of 1984 provides that a countervailing duty order—

Shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or  
(B) a State-owned enterprise is involved.

The order may provide for differing countervailing duties. Section 355.20(d) of our proposed regulations, which states our current practice for determining the existence of a significant differential, provides in pertinent part that:

(3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

Since the estimated net subsidy rate we have found for Haifa differs significantly from the weighted-average country-wide rate, we have determined that a separate rate should be applied to Haifa.

#### Verification

In accordance with section 776(a) of the Act, except where noted in this determination, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

#### Suspension of Liquidation

In accordance with our preliminary countervailing duty determination, published on February 5, 1987, we directed the U.S. Customs Service to suspend liquidation on the product under investigation and to require a cash deposit or bond equal to the estimated net subsidy. This final countervailing duty determination was extended to coincide with the companion final antidumping determination, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). However, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without the issuance of final affirmative determinations of subsidization and injury. Therefore, on June 3, 1987, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after June 3, 1987, but to continue the suspension of liquidation of all entries or withdrawals from warehouse, for consumption, of the subject merchandise entered between February 5, 1987, and

June 4, 1987. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and require cash deposits on all entries of the subject merchandise in the amounts indicated below:

Manufacturer/producer/ exporter	Estimated net subsidy (percent)	Duty deposit rate (percent)
Hafa Chemicals Ltd.....	19.46	15.11
All others.....	6.02	5.36

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of IPA from Israel entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

June 29, 1987.

[FR Doc. 87-15368 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-05-M

Impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

**Authority:** This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.  
Kenneth R. Mason,  
*Secretary.*

Issued: July 21, 1987.

[FR Doc. 87-17227 Filed 7-28-87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 701-TA-285 (Final)]

**Industrial Phosphoric Acid From Belgium**

**AGENCY:** International Trade Commission.

**ACTION:** Termination of investigation.

---

**SUMMARY:** On July 7, 1987, the U.S. Department of Commerce published notice in the Federal Register of a negative final determination of subsidies in connection with the subject investigation. Accordingly, pursuant to § 207.20(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.20(b)), the countervailing duty investigation concerning industrial phosphoric acid from Belgium (investigation No. 701-TA-285 (Final)) is terminated.

**EFFECTIVE DATE:** July 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ilene Hersher (202-523-46167), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20438. Hearing-



APPENDIX B

LIST OF WITNESSES APPEARING AT THE PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

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

INDUSTRIAL PHOSPHORIC ACID FROM BELGIUM AND ISRAEL

Those listed below appeared as witnesses at the United States International Trade Commission's hearing held in connection with the subject investigations at 9:30 a.m. on July 7, 1987, in the Hearing Room of the U.S. International Trade Commission, 701 E Street, NW, Washington, DC.

In support of the petition:

Gibson, Dunn & Crutcher—Counsel  
Washington, DC  
on behalf of

FMC Corp.  
Monsanto Co.

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

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

Roger F. Sellev, Director, Commercial Detergents and Food Ingredients,  
Monsanto Co.

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

In opposition to the petition:

Squire, Sanders & Dempsey—Counsel  
Washington, DC  
on behalf of

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

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

Thomas M. Craig, Vice President, Industrial Chemicals, Nitron  
Chemical Corp.

Bruce Malashevich, Economic Consulting Services, Inc.

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

In opposition to the petition:

Kaplan, Russin & Vecchi—Counsel  
Washington, DC  
on behalf of

Negev Phosphates Ltd.

Dr. Albert Fang, Division Manager, E&C Services

James E. Dillman, Technical Service Consultant, HCI Chemicals  
(U.S.A.) Inc.

P. Lance Graef, Vice President, International Programs, ICF Inc.

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



APPENDIX C  
ADDITIONAL TABLES

Table C-1.—Industrial phosphoric acid: U.S.-produced domestic shipments and intracompany or intercompany transfers, 1/ imports for consumption from Belgium, Israel, and all other countries, 2/ apparent U.S. consumption, and U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987

Source	1984	1985	1986	January-March—	
				1986	1987
<u>Quantity (1,000 pounds)</u>					
U.S.-produced—					
Domestic shipments..	782,198	752,727	705,025	221,254	191,929
Intracompany or intercompany transfers.....	1,546,144	1,374,987	1,383,678	360,562	346,747
Total.....	2,328,342	2,127,714	2,088,703	581,816	538,676
Imports from—					
Belgium <u>3/</u> .....	21,540	32,224	37,958	9,565	8,189
Israel <u>4/</u> .....	150	15,425	15,619	2,172	6,228
All other <u>5/</u> .....	2,030	1,766	7,470	5,017	1,109
Total.....	23,720	49,415	61,047	16,754	15,526
Apparent U.S. consumption.....	2,352,062	2,177,129	2,149,750	598,570	554,202
U.S. open-market consumption.....	805,918	802,142	766,072	238,008	207,455
<u>Value (1,000 dollars)</u>					
U.S.-produced—					
Domestic shipments..	164,812	156,818	142,313	40,737	36,762
Intracompany or intercompany transfers.....	263,238	240,218	237,717	63,261	57,196
Total.....	428,050	397,036	380,030	103,998	93,958
Imports from <u>6/</u> —					
Belgium.....	4,090	5,528	6,525	1,671	1,624
Israel.....	133	2,436	2,650	358	1,124
All other.....	240	1,181	1,621	1,048	267
Total.....	4,463	9,145	10,796	3,077	3,015
Apparent U.S. consumption.....	432,513	406,181	390,826	107,075	96,973
U.S. open-market consumption.....	169,275	165,963	153,109	43,814	39,777

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

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

3/ Converted from an \* \* \*-percent assay to a 75-percent assay and adjusted for misclassifications, including \* \* \*.

4/ Converted from a \* \* \*-percent assay to a 75-percent assay and adjusted for \* \* \*.

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

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

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

Table C-2.—Industrial phosphoric acid: Imports for consumption from Belgium, Israel, and all other countries, 1/ 1984-86, January-March 1986, and January-March 1987

Source	1984	1985	1986	January-March—	
				1986	1987
Quantity (1,000 pounds)					
Belgium 2/.....	21,540	32,224	37,958	9,565	8,189
Israel 3/.....	150	15,425	15,619	2,172	6,228
All other 4/.....	2,030	1,766	7,470	5,017	1,109
Total.....	23,720	49,415	61,047	16,754	15,526
Value (1,000 dollars) 5/					
Belgium.....	4,090	5,528	6,525	1,671	1,624
Israel.....	133	2,436	2,650	358	1,124
All other.....	240	1,181	1,621	1,048	267
Total.....	4,463	9,145	10,796	3,077	3,015
Unit value (per pound)					
Belgium.....	\$0.19	\$0.17	\$0.17	\$0.17	\$0.20
Israel.....	.89	.16	.17	.16	.18
All other.....	.12	.67	.22	.21	.24
Average.....	.19	.19	.18	.18	.19
Percent of total quantity					
Belgium.....	90.8	65.2	62.2	57.1	52.7
Israel.....	.6	31.2	25.6	13.0	40.1
All other.....	8.6	3.6	12.2	29.9	7.2
Total.....	100.0	100.0	100.0	100.0	100.0

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

2/ Imports from Belgium are adjusted to include \* \* \*. Imports from Belgium are also adjusted to exclude \* \* \*. Imports from Belgium were converted to a 75-percent assay from an \* \* \*-percent assay.

3/ Converted from a \* \* \*-percent assay to a 75-percent assay and adjusted to \* \* \*.

4/ Imports from the United Kingdom include \* \* \*. Imports from the United Kingdom were converted from an \* \* \*-percent assay to a 75-percent assay. Imports from West Germany were adjusted to include \* \* \*. Imports from West Germany and imports from all other countries are assumed to have entered on a 75-percent-assay basis.

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

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

Table C-3.—Industrial phosphoric acid: Ratios of the quantity of imports for consumption from Belgium, Israel, and all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1984-86, January-March 1986, and January-March 1987

(In percent)

Item	1984	1985	1986	January-March—	
				1986	1987
Ratio to apparent U.S. consumption of imports from—					
Belgium.....	0.9	1.5	1.8	1.6	1.5
Israel.....	1/	.7	.7	.4	1.1
Subtotal.....	.9	2.2	2.5	2.0	2.6
All other.....	.1	.1	.3	.8	.2
Total.....	1.0	2.3	2.8	2.8	2.8
Ratio to U.S. open-market consumption of imports from—					
Belgium.....	2.7	4.0	5.0	4.0	3.9
Israel.....	1/	1.9	2.0	.9	3.0
Subtotal.....	2.7	5.9	7.0	4.9	6.9
All other.....	.2	.2	1.0	2.1	.5
Total.....	2.9	6.1	8.0	7.0	7.5

1/ Less than 0.05 percent.

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

Note.—Because of rounding, figures may not add to the totals shown.



Table C-4.—Industrial phosphoric acid: Ratios of the value of imports for consumption from Belgium, Israel, and all other countries to apparent U.S. consumption and to U.S. open-market consumption, 1/ 1984-86, January-March 1986, and January-March 1987

Item	(In percent)				
	1984	1985	1986	January-March—	
				1986	1987
Ratio to apparent U.S. consumption of imports from—					
Belgium.....	0.9	1.4	1.7	1.6	1.7
Israel.....	<u>2/</u>	.6	.7	.3	1.1
Subtotal.....	<u>.9</u>	<u>2.0</u>	<u>2.4</u>	<u>1.9</u>	<u>2.8</u>
All other.....	<u>.1</u>	<u>.3</u>	<u>.4</u>	<u>1.0</u>	<u>.3</u>
Total.....	1.0	2.3	2.8	2.9	3.1
Ratio to U.S. open-market consumption of imports from—					
Belgium.....	2.4	3.3	4.3	3.8	4.1
Israel.....	<u>.1</u>	1.5	1.7	.8	2.8
Subtotal.....	<u>2.5</u>	<u>4.8</u>	<u>6.0</u>	<u>4.6</u>	<u>6.9</u>
All other.....	<u>.1</u>	<u>.7</u>	<u>1.0</u>	<u>2.4</u>	<u>.7</u>
Total.....	2.6	5.5	7.0	7.0	7.6

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

2/ Less than 0.05 percent.

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

