

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-428-841, A-570-925]

Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations

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

EFFECTIVE DATE: December 5, 2007.

FOR FURTHER INFORMATION CONTACT:

Brian Smith (Federal Republic of Germany) or Magd Zalok (People's Republic of China), AD/CVD Operations, Offices 2 and 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-4162, respectively.

SUPPLEMENTARY INFORMATION:**The Petitions**

On November 8, 2007, the Department of Commerce (the Department) received petitions concerning imports of sodium nitrite from the Federal Republic of Germany (Germany) (German petition) and the People's Republic of China (PRC) (PRC petition) filed in proper form by General Chemical LLC (petitioner). See the Petitions on Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China submitted on November 8, 2007. On November 14, 2007, the Department issued a request for additional information and clarification of certain areas of the petitions. Based on the Department's requests, the petitioner filed additional information on November 19, 2007 (three distinct submissions on General, Germany-only and PRC-only material). The period of investigation (POI) for Germany is October 1, 2006, through September 30, 2007. The POI for the PRC is April 1, 2007, through September 30, 2007. See 19 CFR 351.204(b)(i).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of sodium nitrite from Germany and the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because the

petitioner is an interested party as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping duty investigations that the petitioner is requesting that the Department initiate (*see* "Determination of Industry Support for the Petitions" section below).

Scope of Investigations

The merchandise covered by each of these investigations is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these investigations may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of signature of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the

appropriate physical characteristics of sodium nitrite to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as 1) general product characteristics and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe sodium nitrite, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by December 18, 2007. Additionally, rebuttal comments must be received by December 28, 2007.

Determination of Industry Support for the Petitions

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

production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

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

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that sodium nitrite constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* the Antidumping Investigation Initiation Checklist: Sodium Nitrite from the Federal Republic of Germany, Industry Support at Attachment II (Germany Initiation Checklist) and the

Antidumping Investigation Initiation Checklist: Sodium Nitrite from the People's Republic of China (PRC), Industry Support at Attachment II (PRC Initiation Checklist) on file in the CRU, Room B-099 of the main Department of Commerce building.

Our review of the data provided in the petitions, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. To establish industry support, the petitioner demonstrated that it was the sole producer of the domestic like product in 2006. Therefore, the petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 732(c)(4)(D) of the Act. In addition, the domestic producers have met the statutory criterion for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petitions account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criterion for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Germany Initiation Checklist at Attachment II (Industry Support) and PRC Initiation Checklist at Attachment II (Industry Support).

The Department finds that the petitioner filed the petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigations that it is requesting the Department initiate. *See* Germany Initiation Checklist at Attachment II (Industry Support) and PRC Initiation Checklist at Attachment II (Industry Support).

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is

threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, capacity and capacity utilization rate, reduced shipments, underselling and price depressing and suppressing effects, lost revenue, reduced employment, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Germany Initiation Checklist at Attachment III (Injury) and PRC Initiation Checklist at Attachment III (Injury).

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations of imports of sodium nitrite from Germany and the PRC. The sources of data for the deductions and adjustments relating to the U.S. price, constructed value (CV) (for Germany), and the factors of production (for the PRC) are also discussed in the country-specific initiation checklists. *See* Germany Initiation Checklist and PRC Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Germany

Constructed Export Price (CEP) and Export Price (EP)

The petitioner calculated three CEPs based on price quotes during the POI obtained from U.S. distributors for German-produced sodium nitrite. The petitioner also calculated an EP using the average unit customs value (AUV) of imports of subject merchandise from Germany during the POI derived from U.S. Census Bureau import statistics. Specifically, for CEPs based on price quotes, the petitioner made adjustments to the starting price, where applicable, for discounts, foreign inland freight, ocean freight, marine insurance, U.S. inland freight and trans-loading fees, U.S. customs and port fees, and warehousing expenses. The petitioner calculated foreign inland freight, ocean

freight, marine insurance, U.S. inland freight and trans-loading fees, and warehousing expenses based on price quotes obtained from custom brokers, freight forwarders, and other service providers. U.S. customs and port fees (*i.e.*, U.S. duty, harbor maintenance and processing fees) were based on standard U.S. government percentages, as applied to the petitioner's estimate of entered value. Because the petitioner's calculation of entered value incorrectly excluded foreign inland freight and included U.S. inland freight and trans-loading fees, we have recalculated U.S. customs and port fees based on entered value exclusive of all movement expenses except foreign inland freight. The petitioner also made an adjustment for CEP profit. To calculate CEP profit, the petitioner derived the profit margin from U.S. chemical-industry-wide statistical gross-margin data from the U.S. Census Bureau and applied this profit ratio to gross unit price. However, the petitioner's CEP profit calculation methodology is not in accordance with the Department's practice (*i.e.*, the petitioner applied the profit ratio to gross unit price rather than to CEP selling expenses) (*see, e.g.*, Policy Bulletin 97.1: Calculation of Profit for Constructed Export Price Transactions (September 4, 1997)). The petitioner's methodology overstates the amount of profit included in CEP. The Department requested that the petitioner provide the information necessary to make the proper calculation, but the petitioner stated that this information was not reasonably available to it. Therefore, to be conservative, we have disallowed this adjustment and have recalculated the CEP-to-NV margins exclusive of the CEP profit adjustment for purposes of initiating this investigation. For EP based on AUV, the petitioner made an adjustment only for foreign inland freight, as the AUV is based on FOB foreign port price. *See* Germany Initiation Checklist and "Fair Value Comparisons" section below for the revised CEP-to-NV margins.

NV Based on CV

With respect to NV, the petitioner states that neither home-market prices nor third-country prices of German-produced sodium nitrite were reasonably available. According to the petitioner, it was unsuccessful in obtaining such pricing information, despite its best efforts. *See* German petition at page 10 and the November 19, 2007, supplement to the German petition at pages 4-5. Therefore, the petitioner based NV on CV.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacture

(COM); selling, general and administrative (SG&A) expenses; packing expenses; and profit. In calculating COM and packing, the petitioner based the quantity of each of the inputs used to manufacture and pack sodium nitrite in Germany on its own production experience during the POI. The petitioner then multiplied the usage quantities by the value of the inputs used to manufacture and pack sodium nitrite in Germany based on publicly available data, data obtained from market research, or its own costs. See Volume I of the German petition at pages 10–13.

Raw material (*i.e.*, ammonia and caustic soda) is the most significant input used in the production of sodium nitrite. The petitioner determined the usage of ammonia and caustic soda based on the quantities it used to produce a short ton of sodium nitrite (*i.e.*, technical and food grades). The values of ammonia and caustic soda were based on price data obtained from market research. The price data from market research were contemporaneous with the POI. The values for other raw material inputs and packing material inputs (*e.g.*, silicon dioxide, bags) were based either on a price quote from market research (silicon dioxide) or on the petitioner's own experience (packing materials). See Volume I of the German petition at pages 12–13 and 15, and the November 19, 2007, supplement to the German petition at pages 7–9.

The petitioner determined labor costs using the labor inputs derived from its own experience which it valued using an industrial German wage rate obtained from the International Labour Organization's "Laborsta" database at <http://laborsta.ilo.org>. See Volume I of the German petition at page 15.

The petitioner determined energy costs (*i.e.*, electricity, natural gas, steam, cooling water, and city water) using German price data from market research. See Volume I of the German petition at pages 13–14.

To calculate factory overhead, the petitioner relied on its own experience (excluding depreciation) and on a German sodium nitrite producer's parent company's consolidated financial data (for depreciation). See Volume I of the German petition at pages 15–16.

To calculate SG&A expenses and profit, the petitioner relied on a German sodium nitrite producer's parent company's consolidated financial data, for the fiscal year ending December 31, 2006, the period most contemporaneous with the POI for which the petitioner was able to obtain such information. See Volume I of the German petition at pages 16–17.

PRC EP

The petitioner calculated three EPs from price quotes for sodium nitrite manufactured in the PRC¹ and one EP from the AUVs of imports from the PRC that were classified under HTSUS number 2834.10.1000 for the period April 2007 through September 2007, as reported by the U.S. Census Bureau. Specifically, the petitioner calculated EPs from the price quotes by deducting from the prices, where applicable, the costs associated with exporting and delivering the product, including foreign inland freight, ocean freight and marine insurance, U.S. inland freight, U.S. warehousing expenses, and U.S. duties and port charges. See PRC Initiation Checklist. The petitioner calculated foreign inland freight expense using the Indian truck freight rate used by the Department in the investigation of certain lined paper products from the PRC,² and information it obtained regarding distances between sodium nitrite producers and the likely port of exportation. See Exhibit III–2 of the PRC petition, and Exhibit 2 of the November 19, 2007, supplement to the PRC petition. The petitioner based ocean freight and marine insurance expenses, U.S. warehousing, and rail and truck expenses on price quotes obtained from service providers. See Exhibits III–2–5 of the PRC petition. The petitioner based U.S. duties and port charges (*i.e.*, U.S. duty, harbor maintenance and processing fees) on standard charges and duties applicable to sodium nitrite imported under HTSUS number 2834.10.1000. The petitioner calculated an EP from import data by deducting from the AUV of April through September 2007 PRC imports under HTSUS number 2834.10.1000 the expenses for transporting the product from the PRC factory to the port of exportation (the AUV is based on an FOB foreign port price). See Exhibit 3 of the November 19, 2007, supplement to the PRC petition. We recalculated the EPs to correct certain errors in the petitioner's calculations. See PRC Initiation Checklist.

¹ The prices quotes are for three different types of sodium nitrite falling within the scope of these investigations, for delivery to the U.S. customer within the POI.

² See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695 (April 17, 2006).

NV

The petitioner stated that the PRC is a non-market economy (NME) country and no determination to the contrary has been made by the Department. Recently, the Department examined the PRC's status and determined that NME status should continue for the PRC. See the memorandum to David Spooner, Assistant Secretary for Import Administration, regarding "The People's Republic of China (PRC) Status as a Non-Market Economy (NME)," dated May 15, 2006 (this document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>). In addition, in two recent antidumping duty investigations, the Department determined that the PRC is an NME country. See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007); see also *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. Because the presumption of NME status for the PRC has not been revoked by the Department, it remains in effect for purposes of this initiation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. After initiation, all parties will have the opportunity to provide relevant information regarding the PRC's NME status and whether separate rates should be granted to individual exporters.

The petitioner selected India as the surrogate market economy country. The petitioner claimed, pursuant to section 773(c)(4) of the Act, that India is an appropriate surrogate country because it is at a level of economic development comparable to that of the PRC and is a significant producer of sodium nitrite. See Volume I of the PRC petition at pages 21–23. Based on the information provided by the petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation, we will solicit comments regarding surrogate country selection.

The petitioner calculated NVs for each U.S. price discussed above using the NME methodology required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Because the quantities of

factors of production consumed by Chinese producers in manufacturing sodium nitrite are not available to the petitioner, the petitioner calculated NVs using its own consumption rates for producing sodium nitrite during the last two completed quarters. See the PRC petition at page 23, Exhibit III-9 in Volume I of the PRC petition, and the November 19, 2007, supplement to the PRC petition at Exhibit 9. The petitioner adjusted its NV calculation to account for certain differences between its own manufacturing process and the prilling process used by PRC producers. See the PRC petition at page 27, and Exhibit 9 of the November 19, 2007, supplement to the PRC petition. One adjustment involved the number of labor hours required to produce a unit of output. Specifically, the petitioner stated that the production and packing of subject merchandise is more labor intensive in the PRC than in the United States, requiring twice as much labor to produce the same amount of finished product. The petitioner explained that this adjustment is based on its employees' commercial knowledge, observations of production in the PRC, and company resources. See Exhibit III-9 of the PRC petition, and the November 19, 2007, supplement to the PRC petition at page 8.

The petitioner based the value of material inputs on official Indian trade statistics from the Indian Department of Commerce's Export-Import Data Bank and prices in the periodical, *ICIS Chemical Bulletin*, dated September 10, 2007. See the PRC petition at Exhibits III-12 and III-13. In calculating surrogate values from Indian import data, the petitioner excluded the values of imports from unspecified countries, NME countries, and countries which the Department has found to maintain broadly available, non-industry-specific export subsidies (*i.e.*, Indonesia, the Republic of Korea and Thailand). See *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum at Comment 23. The surrogate values used by the petitioner for material and packing inputs consist of information reasonably available to the petitioner and are, therefore, acceptable for purposes of initiation.

The petitioner was unable to obtain surrogate values that were contemporaneous with the POI for all material inputs and, accordingly, it relied upon the most recently available information. Where a surrogate value was in effect during a period preceding

the POI, the petitioner adjusted it using the Indian wholesale price index in the publication, *International Financial Statistics*, which is published by the International Monetary Fund. However, because the petitioner incorrectly calculated these adjustments, the Department has revised them. See the PRC Initiation Checklist.

The petitioner based factory overhead expenses, SG&A expenses, and profit on data from an Indian sodium nitrite producer, Deepak Nitrite Limited. The data comes from Deepak Nitrite Limited's most recently available financial statement which covers the period April 1, 2006, through March 31, 2007. See the November 19, 2007, supplement to the PRC petition at Exhibit 16. We find the petitioner's use of Deepak Nitrite Limited's data is appropriate for purposes of this initiation. See the NV calculation in the November 19, 2007, supplement to the PRC petition at Exhibit 10.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of sodium nitrite from Germany and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of CEP and CV, calculated in accordance with section 773(a)(4) of the Act, the revised estimated dumping margins for sodium nitrite from Germany range from 65.58 to 151.98 percent. Based on a comparison of EP and CV, calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margin for sodium nitrite from Germany is 237 percent. See *Germany Initiation Checklist*. Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the revised estimated dumping margins for sodium nitrite from the PRC range from 131.72 percent to 190.74 percent. See PRC Initiation Checklist.

Initiation of Antidumping Investigations

Based upon the examination of the petitions on sodium nitrite from Germany and the PRC, the Department finds that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of sodium nitrite from Germany and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, *e.g.*, *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice.

Respondent Selection

For these investigations, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under HTSUS number 2834.10.1000 during the POI. We intend to make our decisions regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.

Use of Combination Rates in an NME Investigation

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

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of

investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation. (Emphasis added.)

Separate Rates and Combination Rates Bulletin, at page 6.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the petitions have been provided to the representatives of the Governments of Germany and the PRC. We will attempt to provide a copy of the public version of the petitions to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the International Trade Commission

The ITC will preliminarily determine, no later than December 24, 2007, whether there is a reasonable indication that imports of sodium nitrite from Germany and the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to either of the investigations will result in that investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

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

Dated: November 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-926]

Sodium Nitrite from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: (December 5, 2007.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3964 and (202) 482-3586, respectively.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation: The Petition

On November 8, 2007, the Department of Commerce (the Department) received a petition filed in proper form by General Chemical LLC (petitioner). On November 14 and November 15, 2007, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues and the countervailable subsidy allegations, respectively. Based on the Department's request, petitioner filed additional information concerning the petition on November 19 and November 20, 2007.

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

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it

is requesting the Department to initiate (see, *infra*, "Determination of Industry Support for the Petition").

Period of Investigation

The anticipated period of investigation (POI) is calendar year 2006. See 19 CFR 351.204(b)(2).

Scope of Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0. For purposes of the scope of this investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with petitioner to ensure that it is an accurate reflection of the merchandise for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (the GOC)

for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China with representatives of the GOC on November 26, 2007. See the Memorandum to the File, entitled, "Consultations with Officials from the Government of the People's Republic of China on the Countervailing Duty Petition: *Sodium Nitrite from the People's Republic of China*" (November 26, 2007), a public document on file in the CRU.

Determination of Industry Support for the Petition

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

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v.*

United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

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

With regard to the domestic like product, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that sodium nitrite constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Countervailing Duty Investigation Initiation Checklist: Sodium Nitrite from the People's Republic of China (PRC) (Initiation Checklist)*, Industry Support at Attachment II, on file in the CRU.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioner has established industry support. To establish industry support, the Petitioner demonstrated that it was the sole producer of the domestic like product in 2006. Therefore, the Petitioner established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). See Section 702(c)(4)(D) of the Act. In addition, the domestic producers have met the statutory criterion for industry support under 702(c)(4)(A)(i) because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criterion for industry support under 702(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the

Petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See CVD Initiation Checklist* at Attachment II (Industry Support).

The Department finds petitioner has filed the petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate. *See Initiation Checklist* at Attachment II.

Injury Test

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

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the subsidized imports of the subject merchandise. The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production capacity and capacity utilization rate, reduced shipments, underselling and price depressing and suppressing effects, lost revenue, reduced employment, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment III (Injury).

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The Department has examined the countervailing duty petition on sodium nitrite from the PRC and found that it

complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sodium nitrite in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see Initiation Checklist*.

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

GOC Loan Program

1. Loans and Interest Subsidies Related to the Northeast Revitalization Program

GOC Grant Programs

2. The State Key Technology Renovation Project Fund
3. Grants to Loss-Making State-Owned Enterprises

GOC Provision of Goods or Services for Less than Adequate Remuneration

4. Provision of Electricity to State-Owned Enterprises (SOEs) for Less than Adequate Remuneration
5. Provision of Land to SOEs for Less than Adequate Remuneration

GOC Income Tax Programs

6. Income Tax Exemption for Export-Oriented FIEs
7. Preferential Tax Policies for Foreign Invested Enterprises (FIEs) (Two Free, Three Half Program)
8. Reduced Income Tax Rates for FIEs Based on Location
9. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
10. Reduced Income Tax Rate for New or High Technology Enterprises
11. Preferential Tax Policies for Research and Development by FIEs
12. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
13. Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs
14. Reduced Income Tax Rate for FIEs Under the West Revitalization Program
15. Income Tax Reduction or Exemption for Export-Oriented or High Technology Enterprises under the West Revitalization Program
16. Preferential Tax Policies Under the West Revitalization Program

GOC Indirect Tax Programs and Import Tariff Programs

17. VAT Rebate for FIE Purchases of Domestically Produced Equipment

18. VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Provincial Loan Program

19. Reduced Interest Rate Loans Provided by Liaoning Province

Provincial Grant Programs

20. Provincial Export Interest Subsidies (Guangdong and Zhejiang Provinces)
21. Guangdong Province Funds for Outward Expansion of Industries

Provincial and Local Provision of Goods for Less than Adequate Remuneration

22. Provision of Land for Less than Adequate Remuneration (Jiangsu and Zhejiang Provinces, and Chongqing Municipality)
23. Provision of Electricity for Less than Adequate Remuneration (Jiangsu and Zhejiang Provinces)
24. Provision of Water for Less than Adequate Remuneration (Zhejiang Province)

Provincial and Local Income Tax Programs

25. Income Tax Exemption and Reduction Programs (Provinces of Jiangsu, Zhejiang, Guangdong, and Shandong; Municipalities of Beijing, Tianjin, Shanghai, and Chongqing) For further information explaining why the Department is investigating these programs, see the Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

GOC Loan Program

1. Government Policy Lending Program
Petitioner alleges that under the GOC's National Tenth Five-year Plan as well as the Tenth and Eleventh Five-year plans of the Chemical Industry, sodium nitrite producers may benefit from the provision of loans by state-owned commercial banks as part of the GOC's policy to encourage and to advance the chemical industry. In support of its allegation, Petitioner provided translated copies of the "Tenth Five-year Plan for National Economic and Social Development," and the "Tenth Five-year Plan of the Chemical Industry and Its Development," and a short, translated excerpt of the "Eleventh Five-year Plan of the Chemical Industry and Its Development." Our review of these documents did not indicate that financing or loans were available pursuant to the GOC's Chemical Policy.

Accordingly, we find that petitioner has not provided sufficient information to warrant initiation of an investigation of this program.

GOC Provision of Goods for Less than Adequate Remuneration

2. Provision of Natural Gas and Water to State-Owned Enterprises (SOEs) for Less than Adequate Remuneration

Petitioner alleges that the GOC provides natural gas and water to SOEs and special industrial sectors at subsidized prices. Petitioner further alleges that end-user prices for natural gas and for water are set by the National Development and Reform Commission, and rarely reflect the true market price of these commodities. For purposes of this initiation, we find that petitioner has not sufficiently alleged the elements necessary for a less than adequate remuneration subsidy, as identified in 19 CFR 351.511. Petitioner has not provided sufficient information demonstrating that the GOC has provided natural gas and water for less than adequate remuneration and that this program is specific. Accordingly, we find that petitioner has not provided sufficient information to warrant initiation of an investigation of these programs.

GOC Indirect Tax Program and Import Tariff Program

3. VAT Exemptions on Exports

Petitioner alleges that the GOC enterprises are exempted from paying import tariffs and VAT payments on imported equipment provided that these goods are not for resale. Petitioner notes that in certain cases, a full 17-percent VAT exemption will apply upon export. Petitioner states that the program, by definition, is conditioned upon export performance, and therefore, is an export subsidy. Petitioner further alleges that this is a prohibited export subsidy if the exemption or reduction of indirect taxes on the exported product exceeds the indirect taxes levied on the inputs into the exported product. We find that Petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we are not initiating an investigation of this program.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any

determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2001 Administrative Review*, 68 FR 70488, 70488–89 (December 18, 2003).

In the final affirmative countervailing duty determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the countervailing duty law. *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying *Issues and Decision Memorandum*, at Comment 1. Therefore, because petitioner has provided sufficient allegations and support of its allegations to meet the statutory criteria for initiating a countervailing duty investigation of sodium nitrite from the PRC, initiation of a countervailing duty investigation is warranted in this case.

Respondent Selection

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

Distribution of Copies of the Petition

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

ITC Notification

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

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which

it receives notice of this initiation, whether there is a reasonable indication that imports of subsidized sodium nitrite from the PRC are materially injuring, or threatening material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

Dated: November 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

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