

DEPARTMENT OF COMMERCE**International Trade Administration****[A-427-827]****Sodium Metal from France: Notice of Initiation of Antidumping Duty Investigation****AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**EFFECTIVE DATE:** November 20, 2007.**FOR FURTHER INFORMATION CONTACT:** Dennis McClure at or Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5973 and (202) 482-1168, respectively.**SUPPLEMENTARY INFORMATION:****INITIATION OF INVESTIGATION****The Petition**

On October 22, 2007, the Department of Commerce (Department) received an antidumping duty petition concerning sodium metal from France, filed by E.I. DuPont de Nemours & Co. Inc. (the petitioner) on behalf of the domestic industry producing sodium metal. *See* Antidumping Duty Petition on Sodium Metal from France (Petition). On October 29, 2007, the Department clarified that the official filing date for the Petition was October 23, 2007. *See* Memorandum from Lisa Nguyen, Import Policy Analyst, to Deputy Assistant Secretary Stephen Claeys: Decision Memorandum Concerning Petition Filing Date, dated October 29, 2007.

The petitioner is the only domestic producer of sodium metal. On October 25, 2007, the Department issued a request for additional information and clarification of certain areas of the Petition. On October 30, 2007, in response to the Department's request, the petitioner filed a supplement to the Petition. On November 1, 2007, the Department requested further clarification with regard to the Petition and the October 30, 2007, supplement to the Petition. The petitioner filed a second supplement to the Petition on November 2, 2007. On November 6, 2007, the Department requested further clarification and additional information in regard to the petitioner's November 2, 2007, supplement to the Petition. The petitioner further supplemented the Petition on November 8, 2007. On November 9, 2007, the Department requested further clarification and additional information in regard to the petitioner's November 8, 2007,

supplement to the Petition. Finally, the petitioner supplemented the Petition on November 9, 2007.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of sodium metal from France 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 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 has demonstrated that the petitioner is the only known member of the industry with respect to the initiation of the antidumping duty investigation that the petitioner is requesting. *See* the "Determination of Industry Support for the Petition" section below.

Period of Investigation

Because the Petition was filed on October 23, 2007, the anticipated period of investigation (POI) is October 1, 2006, through September 30, 2007. *See* 19 CFR 351.204(b).

Scope of the Investigation

The merchandise covered by this investigation includes sodium metal (Na), in any form and at any purity level. Examples of names commonly used to reference sodium metal are sodium metal, sodium, metallic sodium, and natrium. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) as subheading 2805.11.0000. The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "Sodium" to sodium metal. The CAS registry number is 7440-23-5. For purposes of the 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

We are setting aside a period for interested parties to raise issues regarding product coverage, as discussed in the preamble to the regulations. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). 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 determination.

Determination of Industry Support for the Petition

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 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 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 if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers 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 because the Department determines industry support at the time of initiation. Although this may result in different definitions of the domestic 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); *see also*

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 title." Thus, the reference point from which the domestic like-product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the domestic like product, the petitioner does not offer a definition of 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 metal 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, see the *Antidumping Duty Investigation Initiation Checklist: Sodium Metal from France (Initiation Checklist)* at Attachment II (Analysis of Industry Support), on file in the CRU, Room B-099 of the main Department of Commerce building.

In determining whether the petitioner has standing (*i.e.*, those domestic workers and producers supporting the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) 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), we considered the industry support data contained in the Petition with reference to the domestic like product as defined in Attachment I (Scope of the Petition) to the *Initiation Checklist*. To establish industry support, the petitioner indicated that it was the sole producer of the domestic like product and provided its production statistics for the domestic like product for the year 2006. The Petition indicates that the petitioner is the sole producer of sodium metal. For further discussion see the *Initiation Checklist* at Attachment II.

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. First, the Petition established support from the domestic producer 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. Second, the domestic producer has met the statutory criteria for industry support under 732(c)(4)(A)(i) because the domestic producer who supports the Petition accounts for at least 25 percent of the total production of the domestic like product. Finally, the domestic producer has met the statutory criteria for industry support under 732(c)(4)(A)(ii) because the domestic producer supporting the Petition accounts 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 732(b)(1) of the Act. *See Initiation Checklist* at Attachment II.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry in accordance with section 732(c)(4)(A) of the Act. The petitioner is an interested party as defined in section 771(9)(C) of the Act and had demonstrated sufficient industry support in favor of the initiation of the antidumping duty investigation. *See Initiation Checklist* at Attachment II.

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 fair value. The petitioner contends that the industry's injured condition is illustrated by the reduced market share, lost revenue and sales, underutilized production and capacity, reduced shipments, underselling and price depressing or suppressing effects, reduced employment, and decline in financial performance. 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.

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 this investigation of imports of sodium metal from France.

The sources of data for the deductions and adjustments relating to the U.S. price as well as normal value (NV) for France are discussed in greater detail in the *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 re-examine the information and revise the margin calculations, if appropriate.

Export Price

The petitioner provide two different calculations for export price (EP). The first calculation was based on estimates, which were in turn based on certain assumptions. The second calculation was based on the average unit values (AUVs) for U.S. import data during the POI as reported on the ITC's Dataweb for HTSUS subheading 2805.11.0000. See Petition, Exhibits II-1 and 6. For initiation, we did not rely on the estimated prices because we did not find the estimated prices to be reasonable because the assumptions were not based on prices from an actual sale or price quotes. Instead, we relied on the AUV to calculate EP, which was based on customs data. The petitioner calculated the AUV based on U.S. imports of sodium metal during the POI obtained from U.S. import statistics for HTSUS subheading 2805.11.0000. The petitioner states, to the best of its knowledge, sodium metal is the only product that is properly classifiable under this HTSUS number. The petitioner calculated net price by deducting an amount for foreign inland freight for shipping the subject merchandise and for returning the iso-container. The petitioner also deducted an amount for ocean freight for returning the iso-container to arrive at an ex-factory price. See November 2, 2007, supplement to the Petition at page 11 and Exhibit S-24.

Normal Value

The petitioner based NV on a sale of sodium metal by M.S.S.A. to one of its home market customers in France during the POI. See Exhibit S-25 of the November 8, 2007, supplement to the Petition. The petitioner deducted freight expense. See Exhibit II-9 of the Petition. The petitioner then deducted home market packing expenses and added U.S. packing expenses. See Exhibit II-5 and II-10 of the Petition. The petitioner then converted the Euro per metric ton amount to a U.S. dollar per pound amount by applying the POI exchange rate and converted the per metric ton dollar amount to pounds.

Sales-Below-Cost Allegation

The petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of sodium metal in France were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a sales-below-cost investigation.

An allegation of sales below COP need not be specific to individual exporters or producers. See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) at 833 (SAA). Thus, the Department's practice, as reflected in the SAA, is to consider allegations of below-cost sales in the aggregate for a foreign country. *Id.* Further, section 773(b)(2)(A) of the Act requires that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.

As described in the section below on "Cost of Production and Constructed Value," the Department calculated a country-specific COP for sodium metal for France.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(I) of the Act. Accordingly, the Department is initiating a country-wide cost investigation with regard to France. We note, however, that if we determine that the home market (*i.e.*, France) is not viable, our initiation of a country-wide cost investigation with respect to sales in the home market will be rendered moot. See *Initiation Checklist*.

Cost of Production and Constructed Value

Pursuant to section 773(a)(4) of the Act, COP consists of the cost of manufacturing (COM); selling, general and administrative (SG&A); financial expenses; and packing.

Pursuant to section 773(a)(4) of the Act, the petitioner calculated a single constructed value (CV) as the basis for NV. The petitioner calculated CV using the COM; SG&A expenses; financial expenses; and packing expenses. The

petitioner then added the average profit rate based on the 2006 financial statements of a chemical producer in France. See *Initiation Checklist*.

Specifically, the petitioner calculated COM and packing based on publicly available data and on a U.S. producer's cost experience, adjusted for known differences (*e.g.*, labor), to manufacture sodium metal in France, basing these adjustments on publicly available data. To calculate SG&A and financial expense rates, the petitioner relied on the most contemporaneous financial statements for a chemical producer in France. See *Initiation Checklist*.

The petitioner determined the input quantities of raw materials needed to produce one metric ton of sodium metal based on the experience of a U.S. sodium metal producer. See the November 8, 2007, supplement to the Petition at revised Exhibit 4. The petitioner valued the required raw material input quantities based on its own experience and publicly available information and provided an affidavit in the November 8, 2007, supplement to the Petition at revised Exhibit 23 as support.

The petitioner determined labor costs using the labor cost experience of a U.S. sodium metal producer to manufacture one metric ton of sodium metal, adjusted by the ratio of labor costs in France to that of the United States. The petitioner obtained the annual French and U.S. labor costs from the International Labor Organization statistics for 2005 for France and the United States. See the November 8, 2007, supplement to the Petition at page 8 and Exhibit 30.

The petitioner determined energy costs using input quantities of electricity needed to produce one metric ton of sodium metal based on the experience of a U.S. sodium metal producer and values using the Energy Information Administration publication for electricity and natural gas costs in France for 2006. In addition, the petitioner used the cost experience in 2006 of a U.S. sodium metal producer for steam, water, and nitrogen to manufacture one metric ton of sodium metal. See the November 8, 2007, supplement to the Petition at page 3 and Exhibits 9 and 10. The petitioner provided an affidavit in the November 8, 2007, supplement to the Petition at revised Exhibit 23 as support.

The petitioner determined the fixed overhead costs (exclusive of energy and labor) using the cost experience of a U.S. sodium metal producer to manufacture one metric ton of sodium metal adjusted to reflect costs in France. Specifically, the petitioner determined

the ratio of total fixed overhead to the total of raw materials, labor, variable overhead, and energy and utilities in 2006 for a U.S. producer and applied this ratio to these same factors included in its build-up of the cost of manufacturing of one metric ton of sodium metal. See the November 8, 2007, supplement to the Petition at pages 5 and 6 and revised Exhibits 4 and 5.

To calculate SG&A expense, interest expense and profit, the petitioner relied on the financial statements of a French chemical producer (*i.e.*, Rhodia) for the fiscal year ended December 31, 2006. See the November 8, 2007, supplement to the Petition at pages 6 and 7 and Exhibit 28.

The petitioner then reduced its calculated cost of producing one metric ton of sodium metal by allocating a portion of the total cost of production to the production of chlorine gas, which is a joint product in the production of sodium metal. The petitioner based this allocation on the experience of a U.S. sodium metal producer. See the November 8, 2007, supplement to the Petition at page 7 and the affidavit at Exhibit 29, which was provided as support.

Fair-Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of sodium metal from France are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to NV, the estimated average dumping margin based on a price-to-price comparison is 66.08 percent, and the estimated average dumping margin based on a price-to-CV comparison is 109.79 percent.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on sodium metal from France, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of sodium metal from France 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 and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

For this investigation, the Department intends to select respondents based on 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 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the government of France. We will attempt to provide a copy of the public version of the Petition to all exporters named in the Petition, as provided for in 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than December 7, 2007, whether there is a reasonable indication that imports of sodium metal from France are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this 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 13, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

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