



Australian Government  
Australian Customs Service

R E P O R T

Customs Act 1901 – Part XVB

TRADE MEASURES BRANCH

# TERMINATION OF AN INVESTIGATION

Alleged dumping of  
sodium tripolyphosphate (STPP)  
exported from the People's Republic of China

Report Number 121

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## ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
AWAL	Albright and Wilson (Australia) Limited
CCDB	Customs commercial database
CEO	Chief Executive Officer of Customs
China	People's Republic of China
Customs	Australian Customs Service
FOB	Free on board
Household Chemicals	Jiangyin Chengxing Household Chemicals Co Ltd
Hubei Xingfa	Hubei Xingfa Chemicals Group Co Ltd
International Trading	Jiangyin Chengxing International Trading Co Ltd
Kunming Malong	Kunming Malong Chemical Co Ltd
Minister	Minister responsible for Customs
SEF	Statement of Essential Facts
STPP	Sodium tripolyphosphate
the Act	<i>Customs Act 1901</i>
the goods	The goods the subject of the application
WTO	World Trade Organization

## **1 INTRODUCTION**

### **1.1 Purpose of the Investigation**

The dumping legislation provides for anti-dumping measures to be imposed where an imported product is sold at dumped prices and the dumping causes, or threatens to cause, material injury to an Australian industry producing like goods.

On 23 November 2006, Albright and Wilson (Australia) Limited (AWAL), lodged an application under s. 269TB of the *Customs Act 1901* (the Act), requesting that the Minister responsible for Customs (the Minister) publish a dumping duty notice in respect of sodium tripolyphosphate (STPP) exported to Australia from the People's Republic of China (China). On 13 December 2006, AWAL provided further information in support of the application.

The applicant claimed that the allegedly dumped exports from China caused material injury to the Australian industry from:

- loss of market share and volume
- reduced production
- price undercutting
- price suppression
- lost profit and profitability
- reduced return on investment
- reduced capacity
- reduced employment
- reduced productivity
- a decrease in revenue.

On 2 January 2007, Customs published a notice in The Australian newspaper advising acceptance of the application and the initiation of the investigation. Customs published Australian Customs Dumping Notice (ACDN) 2007/01 outlining the investigation procedures.

### **1.2 Investigation Process**

Customs is required to place on the public record, within 110 days of initiation, a statement of essential facts (SEF) on which it proposes to base its recommendation to the Minister. ACDN 2007/01 advised that the SEF would be placed on the public record by 22 April 2007 and Customs would report to the Minister by 6 June 2007.

Extensions of time were granted for some exporters to submit their responses to the exporter questionnaire due to end of year financial commitments and

Chinese New Year celebrations that impacted on their response preparation time. The extensions caused several weeks' delay in the schedule for verification visits to China. Consequently, the Minister extended the deadline for the SEF to 14 May 2007. The extension was advised in ACDN 2007/16. Customs advised that it must report to the Minister by 28 June 2007 whether to publish a dumping duty notice in respect of the goods.

Unless otherwise specified, all references in this report to sections of legislation are to the *Customs Act 1901*.

### **1.3 Procedures**

Customs examined data in relation to exports of STPP from China to Australia for calendar year 2006 (the investigation period) to determine whether dumping had occurred. Customs examined the Australian market from 1 January 2002 for injury assessment (injury analysis period).

In the investigation, Customs had regard to the application; submissions from Australian industry, exporters, importers and end users; and other relevant information including Customs commercial database (CCDB) and information in the public domain.

Customs visited AWAL and verified data provided in the application. Customs also visited importers and end users of the goods.

Customs received responses from three of the four exporters named in the application. Customs visited these exporters and verified the data provided in their submissions.

Customs maintained a public record throughout the investigation. The public record includes public versions of the application, the initiation report, visit reports and submissions by interested parties.

This report should be read in conjunction with the material available on the public file.

The applicant has 30 days after the publication of the termination notice to apply for a review of the CEO's decision.

## 2 THE GOODS UNDER CONSIDERATION

The goods under consideration (GUC) are STPP. The goods are classified to Schedule 3 of the *Customs Tariff Act 1995* as follows:

2835.31.00 – sodium tripolyphosphate  
Statistical Code 22.

The rate of duty for China is 5%.

The Chemical Abstracts Service (CAS) Registry number for STPP is 7758-29-4.

STPP is a chemical with a number of industrial and food applications. It is a white, free-flowing powder or granules. STPP's molecular formula is  $\text{Na}_5\text{P}_3\text{O}_{10}$ , and it has a molecular weight of 367.86. Two grades - food grade and technical grade - were exported to Australia. A particular grade may be sold in powder or granular form depending on customer preference. Where STPP is used in food applications additional parameters are specified in order to meet regulatory requirements, particularly with respect to minimum  $\text{Na}_5\text{P}_3\text{O}_{10}$  content and limits on impurities such as arsenic, fluoride and lead.

Technical grade STPP is used widely in retail laundry detergents and in commercial and industrial detergent products. It also finds use as a water softening agent and in industrial applications including mining and mineral processing, ceramics manufacture, petroleum and paper manufacturing.

Food grade STPP can be used in the same applications as the industrial grade STPP, but can also be used in food applications, such as meat, fish and vegetable processing, and in certain dairy applications. It is generally more expensive to buy than technical grade.

### **3 AUSTRALIAN INDUSTRY**

#### **3.1 Like goods**

AWAL manufactures a range of STPP grades, comprising technical and food grades, from powder to coarse granules. AWAL's food grade meets the regulatory requirements for use in food applications, as specified in Food Standards Code issued by Food Standards Australia New Zealand and the Food Chemical Codex (FCC).

Customs is satisfied that the STPP manufactured in Australia during the investigation period were goods that were identical to, or had characteristics closely resembling, the goods under consideration as described in Section 2.

Customs based its conclusion on the physical, commercial, functional and production process similarities between the goods.

No parties submitted to Customs that the goods manufactured by AWAL were not like goods to the goods the subject of the application.

#### **3.2 Australian Industry**

In the application AWAL stated it was the sole Australian manufacturer of STPP.

Customs visited AWAL's premises at Yarraville, Victoria, in January 2007. Sales, cost to make and sell and injury claims were verified. The plant and STPP production process was inspected.

During the investigation, Customs found no evidence to indicate that there were other Australian manufacturers of the goods.

Customs is satisfied that there is an Australian industry producing like goods to the goods under consideration and that it performed a substantial process of manufacture.

## **4 THE DUMPING INVESTIGATION**

### **4.1 Introduction**

This section explains the results of Customs' investigations into whether STPP was exported from China at dumped prices during the investigation period.

Dumping occurs when a product of one country is exported to another country at a price less than its normal value. Export price and normal value of goods are determined under s. 269TAB and s. 269TAC of the Act respectively.

Information contained in the application, in CCDB and from interested parties, was used to identify all possible exporters of STPP.

### **4.2 Cooperation**

In its application, AWAL identified:

- Hubei Xingfa Chemicals Group Co Ltd (Hubei Xingfa);
- Jiangyin Chengxing Industrial Group Co Ltd;
- Kunming Malong (Kunming Malong); and
- Kunming Bayoi.

as major exporters of STPP from China.

CCDB showed imports from Hubei Xingfa and Kunming Malong during the investigation period. Hubei Xingfa and Kunming Malong provided detailed responses to the exporter questionnaire and Customs visited both companies to verify their submissions.

CCDB did not show 'Jiangyin Chengxing Industrial Group Co Ltd' as a supplier/exporter during the investigation period. Customs inquiries revealed that the goods are manufactured by Jiangyin Chengxing Household Chemicals Co Ltd (Household Chemicals) and sold to Australian customers by Jiangyin Chengxing International Trading Co Ltd (International Trading). These companies are subsidiaries of Jiangyin Chengxing Industrial Group Co Ltd. Customs sent exporter questionnaires to both Household Chemicals and International Trading. Both companies provided detailed responses to the exporter questionnaire and Customs visited both companies to verify their submissions.

AWAL's application did not contain any contact details for Kunming Bayoi. CCDB did not show Kunming Bayoi as an exporter/supplier during the investigation period.

All remaining known exporters/suppliers of STPP during the investigation period were contacted and invited to co-operate with the investigation.

Customs received advice that the following companies wished to co-operate:

- Sichuan Blue Sword Import & Export Co Ltd;
- Wuhan Waking Lion Chemicals Co Ltd; and
- Mianyang (Anxian) Aostar Phosphate Chemical Industry Co Ltd,

Subsequently, each of the companies requested and were granted extensions of time by Customs to respond to the exporter questionnaire. However, Customs did not receive responses from any of these companies.

Other exporters/suppliers contacted by Customs did not co-operate in this investigation.

The following table sets out the participation by each of the exporters.

Exporter/manufacturer Country	Questionnaire sent	Responded in full	Visited by Customs	Did not cooperate
Jiangyin Chengxing International Trading Co Ltd	Yes	Yes	Yes	Cooperated
Jiangyin Chengxing Household Chemicals Co Ltd	Yes	Yes	Yes	Cooperated
Hubei Xingfa Chemicals Group Co Ltd	Yes	Yes	Yes	Cooperated
Kunming Malong Chemical Co Ltd	Yes	Yes	Yes	Cooperated
Kunming Bayoi	No	N/A	N/A	N/A
Sichuan Blue Sword Import & Export Co Ltd	Yes	No	No	Did not cooperate
Wuhan Waking Lion Chemicals Co Ltd	Yes	No	No	Did not cooperate
Mianyang (Anxian) Aostar Phosphate Chemical Industry Co Ltd	Yes	No	No	Did not cooperate
Exporters other than the above	Yes	No	No	Did not cooperate

The three co-operating manufacturers and exporters represent between 80 and 90 percent of the export volume to Australia from China over the investigation period.

The quantity of the goods imported during the investigation period is at **Confidential Appendix 1**. Customs visited a number of importer and importing agents that accounted for the vast majority of imports, namely:

- Chemita Pty Ltd;
- Deltrex Chemicals Limited;
- Interchem Agencies Limited;
- Fibrisol Services Australia Pty Ltd;
- Marchem Australasia Pty Ltd;
- Orica Australia Pty Ltd;
- Redox Pty Ltd; and
- Scalzo Trading Pty Ltd.

During the investigation period, some importers sourced STPP from more than one Chinese supplier/exporter.

Further, Customs visited or contacted some major end users of STPP, namely:

- Colgate-Palmolive Pty Ltd;
- Johnson Diversey Pty Ltd;
- Kerry Ingredients Australia Pty Ltd;
- Masterfoods Australia New Zealand;
- PZ Cussons Australia Pty Ltd; and
- Unilever Australia Limited.

### **4.3 Export Price**

#### **4.3.1 Hubei Xingfa**

Hubei Xingfa sold the goods (technical grade STPP) to three Australian customers during the investigation period. Two of the customers purchased relatively small volumes.

For sales by Hubei Xingfa to its Australian customers, Customs considers Hubei Xingfa to be the exporter of the goods and the Australian customers to be the importers.

For all sales by Hubei Xingfa to Australia during the investigation period, the goods were purchased by the importer from the exporter. Customs found sales by Hubei Xingfa to its Australian customers to be arms length in terms of s. 269TAA of the Act.

Customs assessed the export price for Hubei Xingfa in accordance with s. 269TAB(1)(a) of the Act using the invoice price less any post exportation charges.

#### **4.3.2 Jiangying Chengxing – Household Chemicals & International Trading**

During the investigation period, STPP manufactured by Household Chemicals was sold to Australian customers by its related trading arm International Trading. International Trading sold STPP directly to one Australian customer, and indirectly to two customers through importing agents.

For sales sold directly to the Australian customer, Customs considers Household Chemicals to be the exporter of the goods, the Australian customer to be the importer of the goods and that the goods were exported to Australia otherwise than by the importer. Customs found the purchases of the goods by the importer were arms length in terms of s. 269TAA of the Act. Customs also found the goods were not purchased by the importer from the exporter. Therefore, export prices for these sales cannot be established under s. 269TAB(1)(a) or s. 269TAB(1)(b) of the Act.

Customs is satisfied that sufficient information has been furnished about the circumstances of the exportations. Customs has calculated export prices for goods sold directly to the Australian customer in accordance with s. 269TAB(1)(c) of the Act, based on the invoice price from International Trading less any post exportation charges.

For sales sold indirectly to the two Australian customers, Customs considers these customers to be the beneficial owner and therefore the importers of the goods, whereas the importing agents used by the Australian customers act to facilitate the movement of the goods.

Customs considers Household Chemicals to be the exporter of the goods and the goods were exported to Australia otherwise than by the importer. Customs found the purchases by the importing agents to be arms length in terms of s. 269TAA of the Act. Customs found the goods were not purchased by the importer from the exporter. Therefore, export prices for these sales cannot be established under s. 269TAB(1)(a) or s. 269TAB(1)(b) of the Act.

Customs is satisfied that sufficient information has been furnished about the circumstances of the exportations. Customs calculated export prices for goods sold indirectly to the Australian customers in accordance with s. 269TAB(1)(c) of the Act based on the invoice price from International Trading less any post exportation charges.

#### 4.3.3 Kunming Malong

Kunming Malong sold the goods (technical grade STPP) to two Australian customers during the investigation period. One customer purchased relatively small volumes.

For sales by Kunming Malong to its Australian customers, Customs considers Kunming Malong to be the exporter of the goods and the Australian customers to be the importers.

For all sales by Kunming Malong to Australia during the investigation period, the goods were purchased by the importer from the exporter. Customs found sales from Kunming Malong to its Australian customers to be arms length in terms of s. 269TAA of the Act.

Customs assessed the export price in accordance with s. 269TAB(1)(a) of the Act, using the invoice price less any post exportation charges.

#### 4.3.4 Other Exporters

Other Exporters covers all exporters of the goods excluding Jiangyin Chengxing Household Chemicals, Hubei Xingfa and Kunming Malong.

Customs identified imports from all Other Exporters from China during the investigation period from CCDB.

CCDB indicated that the Other Exporters sold a relatively small percentage of all Chinese STPP exported to Australia over the investigation period. Generally, imports from Other Exporters were intermittent over the investigation period.

Customs considers that sufficient information was not furnished, or was not available, to enable Customs to ascertain the export price under s.269TAB(1)(a), (1)(b) or (1)(c) of the Act. Customs has therefore established

export prices for Other Exporters under s.269TAB(3) having regard to all relevant information.

Weighted average export prices for STPP were calculated during the investigation period using two sources of information:

- verified invoice price by exportation, which was obtained during visits to importers. This covered the majority of imports of STPP, sourced from Other Exporters. Customs deducted any part of the price that represented a charge in respect of the transport of goods after exportation, or in respect of any other matter arising after exportation; and
- where not covered by the above, from CCDB using the data relating to the exportation such as export price and export quantity. Customs used information from CCDB to deduct any part of the price that represented a charge in respect of the transport of goods after exportation, or in respect of any other matter arising after exportation.

#### **4.4 Normal Value**

##### 4.4.1 Hubei Xingfa

Hubei Xingfa sold like goods (both technical grade and food grade STPP) on the domestic market to distributors and end users. Because Hubei Xingfa sold only technical grade STPP to Australia and only to Australian customers that were distributors, Customs excluded domestic sales of technical grade STPP to end users and all sales of food grade from the normal value calculation.

For technical grade STPP sold to distributors, Customs found that there were sufficient volumes of domestic sales at arms length and in the ordinary course of trade. Therefore, Customs calculated normal values in accordance with s. 269TAC(1) of the Act using the price paid or payable in these domestic sales.

Adjustments to the price paid were made for net inland transport charges, FOB charges (including port and export handling charges), net VAT and credit in accordance with s. 269TAC(8) of the Act.

##### 4.4.2 Jiangying Chengxing – Household Chemicals

Household Chemicals sold like goods (both technical and food grade STPP) on the domestic market to both related and unrelated parties during the investigation period. Customs excluded domestic sales to related parties from the normal value calculation as they were non-arms length.

Customs found that there were sufficient volumes of domestic sales of each grade at arms length and in the ordinary course of trade.

Therefore, Customs calculated normal values in accordance with s. 269TAC(1) of the Act using the price paid or payable in these domestic sales.

Adjustments to the price paid were made for net inland transport charges, FOB charges (including terminal handling charges and export handling), net VAT

expense, trader's selling, general and administrative expenses and volume discount in accordance with s. 269TAC(8) of the Act.

#### 4.4.3 Kunming Malong

Kunming Malong sold like goods (technical grade STPP) on the domestic market to traders and end users.

For technical grade STPP sold to traders and end users, Customs found sufficient volumes of domestic sales at arms length and in the ordinary course of trade to determine normal value under s.269TAC(1) of the Act.

Adjustments to the price paid for net inland transport charges, FOB charges (including port and export handling charges) net VAT expense and credit were made in accordance with s. 269TAC(8) of the Act.

#### 4.4.4 Other Exporters

Customs considers that sufficient information was not furnished, or was not available, to enable normal values to be established using domestic selling prices, cost information, or export prices to third countries. Customs has therefore established normal values for Other Exporters under s.269TAC(6) of the Act having regard to all relevant information.

Customs considers the best information available is the verified domestic selling price information obtained from the domestic seller (Seller) of STPP with the highest average selling price of STPP.

Customs has calculated normal values, for both food grade and technical grade, for Other Exporters based on the verified prices paid or payable for the Seller's sales of like goods. Customs used domestic sales that were in the ordinary course of trade, in sales that were arms length transactions.

Customs considers that certain factors should be taken into account to ensure fair comparison of normal values and export prices. Customs had regard to differences between domestic and export inland freight, export charges to FOB and net VAT expense in calculating the normal value for Other Exporters.

### **4.5 Market Situation in China**

In the course of the investigation AWAL claimed that the market for STPP in China could be unsuitable for establishing normal values under s. 269TAC(1) of the Act. Having regard to all the relevant information available, Customs is not satisfied that the situation in the STPP market in China is such that sales of STPP in that market are not suitable for use in establishing normal value under s. 269TAC(1). The Australian industry's assertions and Customs' assessment of the available evidence is at **Attachment 1**.

### **4.6 Benchmarking**

In its application, AWAL presented its prima facie normal value calculation (AWAL Model). The AWAL Model showed the integrated cost of production for STPP: starting from the raw material phosphate rock, the conversion of rock to

phosphorus (P4), the conversion of P4 to phosphoric acid and finally to the production of STPP.

As an added check of the reasonableness of the exporters' costs, Customs compared verified raw material input costs, production costs and consumption rates for each of the exporters visited. Not all exporters operated at the same level of integration, so the comparison was limited accordingly. Customs found that the exporters, which were unrelated, located in different regions and purchased their raw inputs from different suppliers, had comparable in-common costs and usage rates.

Customs found that the AWAL Model did not accurately reflect the verified cost levels of the co-operating exporters.

#### 4.7 Dumping Margins

Customs calculated a weighted average dumping margin for each exporter in accordance with s.269TACB(2)(a) of the Act.

Dumping margins calculated by Customs are summarised below. Under s.269TDA(1) of the Act, a negligible dumping margin includes where the margin of dumping is less than 2%.

Exporter	Dumping margin
Hubei Xingfa Chemicals Group Co Ltd	Negative 7.76% (not dumped)
Jiangyin Chengxing Household Chemicals Co Ltd	Negative 3% (not dumped)
Kunming Malong Chemical Co Ltd	1.52% (negligible)
Other Exporters	0.84% (negligible)

Normal values, export prices and dumping margins for the each of the above are at **Confidential Appendices 2, 3, 4 and 5**, respectively.

## 5 SUBMISSION FROM AWAL

On 8 May 2007, AWAL provided a submission commenting on Customs' preliminary findings in each of the exporter visit reports and Customs' assessment on the market situation in China. A non-confidential version of AWAL's submission was placed on the public file on 9 May 2007.

### 5.1 STPP Market Situation in China

AWAL disagreed with Customs' preliminary assessment of the market situation for STPP in China. AWAL said it remained perplexed that Customs could not conclude that the Chinese government's arbitrary application of the VAT system and control of electricity prices resulted in a 'market situation' for STPP in China.

#### Customs' comments

Taking into account AWAL's submission, Customs is not satisfied that the situation in the STPP market in China is such that sales in that market are not suitable for use in determining normal values. Customs consideration of this issue is set out at **Attachment 1**.

### 5.2 Exporter Specific Comments

#### 5.2.1 Jiangyin Chengxing Household Chemicals

AWAL submitted that:

1. Customs had not undertaken an adequate assessment of the reasonableness of the costs; there has been limited verification of related party transactions, in particular whether an integrated producer has accounted for the fully absorbed cost of production of phosphorus and phosphoric acid in its STPP manufacturing costs; and it was insufficient to benchmark alleged transfer prices by Household Chemicals with quotations from the market place;
2. Household Chemicals's sales in 2006 cannot be in the ordinary course of trade given that losses were incurred in 2005 and 2006;
3. the approach of separating Household Chemicals's sales into four categories according to volume is inconsistent with the requirements of s.269TACB(2) and the Customs Manual does not allow for separation based upon volumes;

4. if the discussion of the treatment of VAT in the confidential attachment<sup>1</sup> to the report does not contain information confidential to the exporter then should it not be available on the public file.

#### Customs' comments

Customs found that Household Chemicals is not an integrated producer.

1. Customs verified that Household Chemicals purchased its raw material needs (including soda ash, phosphoric acid, sodium hydroxide and electricity) from other legal entities (suppliers). Customs found that Household Chemicals purchased phosphoric acid from the associated company Phosph Chemicals.

Therefore, Customs followed the verification approach for associated companies according to Customs standard policy and practice. Customs also benchmarked the prices of inputs against verified production costs of the other co-operating exporters. There was no evidence to indicate that the cost of phosphoric acid did not reflect the normal market price of the input.

2. In carrying out the ordinary course of trade test, Customs found that a considerable number of sales were unprofitable. However, there remained sufficient volume of sales in the ordinary course of trade.
3. Customs examined in detail the company's pricing policy and analysed verified sales data to confirm the implementation of the policy. Customs considers that, in the circumstances, it was appropriate to use sales from a particular category of customers to establish normal values.
4. The Customs investigating team created the VAT document to confirm their understanding of the scheme as it applied to the exporter. Customs has reviewed the status of the attachment and agrees that it does not contain commercially confidential information. Customs provided AWAL with the attachment.

#### **5.2.2 Hubei Xingfa**

AWAL submitted that:

1. the 2005 audited report for Hubei Xingfa gives a purchase price for phosphate rock that is consistent with the pricing used by AWAL in its prima facie normal value calculation. AWAL contend that the costs as shown should not have been dissimilar to the costs AWAL expected Customs to verify;
2. the 2005 audited report gives a purchase price for electricity that is higher than that used by AWAL in its prima facie normal value calculation; and

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<sup>1</sup> Confidential Attachment ADJ 4 of the Normal Value Report.

3. it is not possible to identify from Customs' report the adequacy of Customs' verification of phosphoric acid production costs.

#### Customs' comments

1. Customs notes that the references in Hubei Xingfa's audited statements referred to by AWAL are in respect of related party transactions only and account for a small proportion of Hubei Xingfa's phosphate rock and electricity requirements. Customs verified invoices for purchases of phosphate rock in 2006 from both related and non-related suppliers. Customs found that the majority of the company's phosphate rock requirement was sourced from non-related suppliers.
2. Customs found a substantial proportion of the company's electricity is self generated and accounted for as a manufacturing overhead. For this electricity, the prices in the audited report are not relevant.
3. Phosphoric acid production costs were not identified separately as there were no sales of the product. All production is consumed internally. Customs verified these costs. Similarly, depreciation is not broken down by the stage of production for STPP. Depreciation for the overall process was included and verified by Customs in the relevant ledger pages for each manufacturing plant.

### **5.2.3 Kunming Malong**

AWAL submitted that:

1. it is inconceivable that an integrated producer could achieve cost recovery on the basis of sales made in the last half of the year, assuming correct allocation of costs;
2. it was surprised that although the company remained idle for six months of the year, it could satisfy Customs' test of having made sales in the ordinary course of trade during 2006; and
3. Customs has not separately accounted for the phosphoric acid stage of production. AWAL said this raised serious concerns as to whether phosphoric acid production costs have been brought to account.

#### Customs' comments

1. Customs found that domestic sales were made throughout the year. The bulk of sales were, however, in the second half of the year reflecting production patterns.

2. Customs found the company's sales to be profitable, in sufficient volumes to determine normal values under section 269TAC(1) of the Act, and in the ordinary course of trade.
3. Customs reported on phosphoric acid production costs at Section 13.3.5 of the normal value visit report.

### 5.3 Third Party Costs for Raw Materials

AWAL claimed to have access to phosphoric acid costs and selling prices of a particular manufacturer in China (not involved in the investigation). AWAL provided a table purporting to show the manufacturer's cost of purchasing phosphorus and converting it to phosphoric acid. AWAL stated that it considered that the phosphoric acid cost and selling price information could be verified at the manufacturer's premises.

AWAL submitted that the average of the high and low phosphoric acid cost shown in the information provided was similar to the figure used to construct a normal value in its application for dumping measures.

AWAL also provided information on Chinese domestic soda ash prices during 2006. It claimed that the pricing levels shown were supported by published Chinese export statistics for soda ash.

#### Customs' comments

The information submitted by AWAL on phosphoric acid production costs of a particular producer in China was not supported by any documentary evidence. Customs is unsure if AWAL's comments represent a firm invitation for officers to visit the Chinese company to verify its costs but, in any case, Customs notes:

- the timing of the offer made it impracticable for Customs to accept the invitation; and
- even if verified as accurate, the acceptance of higher costs for one producer does not necessarily cast doubt on the verified costs of another.

Customs knows little about the phosphoric acid producer in question. AWAL provided no information on factors such as the company's production capacity or access to raw materials that might indicate that, if verified and accepted, the costs of the particular company should be similar to the verified costs of the co-operating exporters.

Customs understands that AWAL's soda ash pricing data was obtained from sources that are generally accepted as being reliable. However, the information was not accompanied by any detail on either the source or terms of the pricing which might indicate to Customs that the prices are a suitable benchmark for the large capacity manufacturers visited by Customs. Customs disagrees with AWAL's claim that the soda ash pricing provided with its submission is

supported by published Chinese export statistics. Customs notes a significant disparity between the prices.

Customs' examination of data provided by the three co-operating STPP exporters in China included a detailed examination of costs provided in their submission to audited financial statements and source documents.

Customs' compared the verified costs of the three exporters visited and found the data were consistent. Customs is satisfied that, for each co-operating exporter, it has determined the costs to make and sell STPP in China in accordance with the requirements of the legislation.

## 5.4 Other Comments

### 5.4.1 Kunming Malong – comments on normal value visit report

AWAL submitted that:

1. the ratio of phosphoric acid to soda ash used in the production of STPP of 75:25 is incorrect. This ratio could distort the company's overall production costs if relied upon;
2. there is an error for the capacity rating quoted for the phosphorus plant. A 5,000 tonne per annum phosphorus plant might be rated at 10,000 kW but would use in the order of 72.5 million kWh per year. AWAL requested that Customs review the Chinese government policies on plant capacities and confirm this electricity rating; and
3. when it imported a minor volume of Kunming Malong's STPP, the sales arrangements it followed for the purchase are not consistent with the arrangements described by Customs in the report. AWAL requested that Customs examine this inconsistency.

#### Customs' comments

1. Customs established that the correct ratio of phosphoric acid (75% strength) to soda ash to make one tonne of STPP is '0.59:0.41'. The correct ratio was used in the company's production costs at the time of verification.
2. Customs established that the correct plant capacity rating for the phosphorus furnace is 'P4 capacity of 5,000 tonnes per annum/electricity supply capacity 10,000 kVA.'
3. Customs has examined CCDB and found that other than the single shipment imported by AWAL there was no other importation of STPP in 2006 under the sales arrangements described by AWAL.

#### **5.4.2 Unilever's comment about dumping**

AWAL advised that in late 2006 a Unilever representative told a public hearing of the Joint Standing Committee on Treaties that STPP imported by Colgate Palmolive was unquestionably dumped. AWAL stated that it was surprised Customs did not ask Unilever to comment on this point. Unilever and Colgate Palmolive are major Australian end-users of STPP.

##### Customs' comments

Customs was aware of the comment attributed to Unilever in the public hearing. Customs did not pursue the comment as it preferred to rely on the detailed verified information obtained from the Chinese exporters to assess whether the exports of STPP to Australia from China were dumped.

## 6 TERMINATION

Sub-section 269TDA(1) of *the Customs Act 1901* states:

*If:*

- (a) *application is made for a dumping duty notice; and*
  - (b) *in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:*
    - (i) *there has been no dumping by the exporter of any of those goods; or*
    - (ii) *there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;*
- the CEO must terminate the investigation so far as it relates to the exporter.*

Sub-section 269TDA(3) states:

*If:*

- (a) *application is made for a dumping duty notice; and*
  - (b) *in an investigation for the purposes of the application the CEO is satisfied that the total volume of goods the subject of the application:*
    - (i) *that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and*
    - (ii) *that have been, or may be, dumped;*
- is negligible; the CEO must terminate the investigation so far as it relates to that country.*

A negligible volume is defined in s. 269TDA(4).

*For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:*

- (a) *when expressed as a percentage of the total Australian import volume, it is less than 3%; and*
- (b) *subsection (5) does not apply in relation to those first-mentioned goods.*

Sub-section 269TDA(6) provides that the volume of exports with negligible dumping margins may count in determining volume:

*The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:*

- (a) *in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and*
- (b) *in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.*

Customs found that exports by:

- Hubei Xingfa;
- Household Chemicals; and
- Kunming Malong,

during the investigation period have either been exported to Australia at prices that were not dumped or the dumping margins were negligible.

Customs terminates the investigation in accordance with s. 269TDA (1) for these exporters.

Customs found that the dumping margins for Other Exporters was negligible. As noted above, s. 269TDA(6) provides that the volume of exports with negligible dumping margins may count in determining volume (“...does not prevent exports by that exporter being taken into account”). Customs does not consider it appropriate, in the circumstances, to include exports by Kunming Malong or Other Exporters (those with negligible volumes) in working out the volume of exports of STPP from China that have been dumped.

Customs terminates the investigation for exports from China generally in accordance with s. 269TDA(3) of the Act.

## 7 EVIDENCE RELIED UPON

In reaching the conclusions contained in this report, Customs had regard to:

<b>Issue</b>	<b>Section of report</b>	<b>Evidence relied upon</b>
Goods under consideration	2	Applicant's submission. Information in the public domain
Like goods	3	Information from interested parties including Australian industry, importers, exporters and other interested parties. Information in the public domain
Australian industry	3	Australian industry submission, information gathered from Australian industry.
Export price	4	Information gathered during visits to importers and exporters, Customs commercial database.
Normal value	4	Exporters's submissions, information gathered from exporters
Market Situation	4.5 Attachment 1	Information in the public domain.

## 8 ATTACHMENTS & APPENDICES

Attachment 1	Assessment of the STPP Market Situation in China
Confidential appendix 1	Import volume of STPP exported from China
Confidential appendix 2	Hubei Xingfa normal values, export prices and dumping margins
Confidential appendix 3	Chengxing Jinagyin – Household Chemicals & International Trading normal values, export prices and dumping margins
Confidential appendix 4	Kunming Malong normal values, export prices and dumping margins
Confidential appendix 5	Other Exporters normal values, export prices and dumping margins

## **ATTACHMENT 1: ASSESSMENT OF THE STPP MARKET SITUATION IN CHINA**

### **1. Introduction**

Australia treats China as a market economy for anti-dumping purposes. Customs conducts investigations involving China in the same way it does for other members of the World Trade Organisation (WTO).

The anti-dumping framework provides that domestic sales that would otherwise be relevant for determination of normal value may be unsuitable because of the situation in the market in the country of export.

In considering whether sales are not suitable for use in determining a normal value because of the situation in the market of the country of export, Customs has regard to factors such as whether the prices of the goods are artificially low, whether there is significant barter trade or whether there are other conditions in the market which render sales in that market not suitable for use in determining normal values.

Government influence on prices or costs could be one cause of artificially low pricing. Costs are calculated on the basis that the exporter's records reasonably reflect the costs associated with the production and sale of the goods. Government influence is one factor considered in determining if the exporter's records reasonably reflect those costs.

The mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. Rather, Customs looks to the effect of this influence on prices and the extent to which market conditions can no longer be said to prevail. Customs considers that government influence on costs will only disqualify sales if those costs can be shown to be affecting the prices by making those prices artificially low.

In the course of the investigation, the sole Australian industry member, Albright & Wilson (Australia) Ltd (AWAL), claimed that the market for STPP in China could be unsuitable for establishing normal values for a number of reasons that are set out below. Customs placed non-confidential versions of AWAL's claims on the public record.

### **2. Assessing the market**

Pursuant to s. 269TAC(2)(a)(ii), Customs sought to test whether the situation in the STPP market in China was such that domestic sales in that market were not suitable for use in determining a price under s. 269TAC(1).

The assessment constitutes a positive test. That is, before domestic prices might be rejected, Customs needs to identify a market situation and be satisfied that the market situation renders the sales in that market not suitable for normal value purposes.

The key test is that an identified market situation has an influence on prices. It is not sufficient to simply identify a market situation. For example, the presence of state ownership in an industry would not necessarily lead Customs to conclude that sales in that market were unsuitable for normal value purposes unless Customs is satisfied that because of the state ownership, prices in the market were artificial and not set by market conditions.

Customs considers it is possible for a degree of government influence to exist without rendering the situation in the market such that sales in that market are unsuitable for normal value. However, Customs considers that significant government intervention in relevant market factors could distort prices to a degree that those prices may be artificially low and unsuitable for establishing normal value.

Should Customs find a market situation that rendered the domestic sales unsuitable for normal value purposes, it would need to consider other options for determining normal value.

### 3. Australian industry's claims

In its application for anti-dumping measures AWAL estimated normal value using its understanding of the cost to make and sell STPP in China. AWAL stated that, based on its understanding of STPP selling prices in China, these prices did not recover the cost of production. If this were the case, the cost to make and sell STPP would be the normal value. In other words, AWAL did not initially claim that the STPP market in China was unsuitable for establishing normal values.

On 14 February 2007, AWAL wrote to Customs offering to brief officers prior to meetings that might be held with Chinese government agencies. The correspondence raised the following issues:

#### 3.1 Soda Ash

Soda ash is one of two major raw materials used in STPP production. AWAL claimed to be aware that the National Development and Reform Commission<sup>2</sup> (NDRC) had published a recent direction to the soda ash industry titled "Circular for Strengthening Management and Promoting the Sound Development in the Soda Ash Industry". AWAL stated that the directive followed a State Council issued "Interim Provisions Concerning the Promotion of Industrial Restructuring" at the end of 2005 which imposed certain development restrictions. AWAL claimed that these initiatives were reported in the journal China Chemical Reporter of January 2007.

#### 3.2 Electricity

AWAL stated that it understood that the NDRC had issued a document relating to the differentiation of electricity prices across industry, with one of the affected industries being the phosphorous industry. Phosphorous is a key intermediate material in the production of STPP.

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<sup>2</sup> The NDRC is China's chief macroeconomic management agency with broad administrative and planning control over the Chinese economy.

### **3.3 Glass fibre industry**

AWAL claimed that the NDRC has issued directives on investment in the glass fibre industry, another downstream product of the soda ash industry.

### **3.4 Further AWAL submissions**

On 2 March 2007, AWAL met with Customs and provided background notes for officers travelling to China to verify information provided by Chinese exporters (background notes). A non-confidential version of the background notes was placed on the public file.

In its public file version of the background notes, AWAL raised the following issues relating to government involvement in the STPP market in China:

- AWAL said it understood that the Chinese government imposes restrictions on the export of certain raw materials as part of its ongoing policy framework. AWAL submitted that because of these restrictions, a price of phosphate rock used in cost constructions should be based on a cost other than the actual cost in China;
- comments on pricing policies for electricity in China, and AWAL's understanding that some phosphorous producers also own power companies;
- AWAL requested that, in view of certain characteristics of the soda ash industry in China, Customs carefully examine the purchase prices of soda ash;
- comments on government influence over company operating policies, ownership etc; and
- that AWAL believed the manipulation of varying VAT rates has made it less attractive to export raw materials and intermediates from China, and more attractive to export finished products. This, AWAL claimed, was part of government policy to direct industry towards adding value and job creation in China. AWAL asked that Customs explore the situation regarding variable rebates on VAT and the influence of government policies on VAT.

On 13 March 2007, Customs wrote to AWAL to advise that, based on the information available at that time, Customs did not propose to raise the claims of government influence with the Chinese Government authorities. Customs advised AWAL that, with the benefit of information available after its visits to the co-operating Chinese exporters, Customs may revise its position on possible approaches to the Chinese Government in respect of STPP.

AWAL responded in a submission dated 16 March 2007, asking that Customs reconsider its decision on meetings with the Chinese government. AWAL said that it was apparent that the manipulation of the VAT system by the Chinese

government depresses raw material input prices to encourage further downstream processing at intentionally lower prices than non-Chinese producers.

AWAL stated that the following matters required clarification with Chinese government agencies:

### **1. *China's WTO Obligations***

AWAL referred to the 2006 Annual Report of the US China Economic Security Review Commission. AWAL quoted some examples from the report cited on the Hong Kong Trade Development Council website including:

- that China's adherence to its WTO obligations remains patchy five years after its accession to the WTO;
- China has not yet fully embraced the key WTO principles of market access; and
- China has a centralised industrial policy that employs a wide variety of tools to promote favoured industries. In particular, China has used a range of subsidies to encourage the manufacture of goods meant for domestic consumption to secure foreign investment in the manufacturing sector (AWAL noted that it appeared the reverse was the case with STPP).

AWAL also referred to EU representations with the WTO raising concerns about China's use of the VAT system, asserting that it was not transparent and that it was discriminatory.

AWAL cited further representations made by the EU as part of China's Transitional Review Mechanism on Subsidy Practices. Included in those representations were questions from the EU concerning China's apparent reduction or other modification in September 2006 to VAT refunds paid upon exportation of a range of products.

AWAL claimed that while the EU had suggested the manipulation of the VAT system to benefit Chinese exporters may be an actionable subsidy, AWAL believed the distortion of VAT on raw material inputs into STPP rendered the Chinese domestic market unsuitable for normal value purposes.

## **2. *VAT on raw material inputs***

### **3.5 *Phosphate rock***

Phosphate rock is the primary raw material for phosphorous which is used to make phosphoric acid. Phosphoric acid is a major input in the production of STPP.

AWAL claimed that there have been various restrictions on the export of phosphate rock from China. AWAL stated that Chinese government directives have:

- (i) sometime before 15 September 2006, removed the VAT rebate on exports of phosphate rock (effectively increasing the price by 17 percent);

- (ii) on 14 September 2006, added phosphate rock to the list of prohibited exports (not a ban on export, rather a categorisation to which a tax will apply); and
- (iii) on 1 November 2006, added a further 10 percent tax on exports of phosphate rock.

AWAL claimed that the discriminatory nature of the VAT removal and 10 percent export tax benefits Chinese STPP producers at the expense of non-Chinese manufacturers.

AWAL provided a table of China's annual volumes and average prices of phosphate rock exports from 2002 to 2006, the source of the data nominated as DFAT Trade Statistics. The table shows a significant decline in phosphate rock volumes between 2003 and 2006 and prices rising sharply from 2004.

AWAL asked Customs to establish from the Chinese government the basis for application of the removal of the VAT and imposition of a 10 percent tax on phosphate rock in China.

### **3.6 Phosphorous**

AWAL advised that, like phosphate rock, the export VAT rebate on phosphorous was removed prior to 15 September 2006. Phosphorous was another commodity to gain 'prohibited status' as part of a government circular dated 14 September 2006.

AWAL claimed that the removal of the VAT rebate on exports of phosphorous made phosphorous more expensive on the export markets, effectively providing Chinese STPP manufacturers with a 17 percent raw material advantage to non-Chinese STPP manufacturers.

AWAL stated that a consequence of the removal of the 17 percent VAT on phosphorous was to encourage further value-adding manufacture in China. AWAL claimed that other outcomes were that:

- (i) the domestic supply of phosphorous increases;
- (ii) domestic phosphorous prices decline due to oversupply;
- (iii) Chinese STPP manufacturing costs are reduced; and
- (iv) Chinese STPP selling prices are similarly reduced.

## **4. Chinese manufacturers and exporters of STPP**

Customs visited three STPP manufacturers (and in one case an associated exporter) in China to verify information provided to the investigation. As part of the visits, Customs gave the companies an opportunity to respond to AWAL's contention that the STPP market in China was subject to government influence and not suitable for the purposes of establishing normal values.

Two of the companies visited expressed dissatisfaction that AWAL had not made its concerns about government influence known earlier in the

investigation. One company was critical of the amount of the material deleted from the public record version of AWAL's background notes for Customs<sup>3</sup>.

The companies visited all claimed that the markets in China for phosphate rock, phosphorus, phosphoric acid, soda ash and STPP operate according to market forces and without government influence.

The Chinese companies had some knowledge of Chinese government directives to categorise industries as 'encouraged', 'restricted' or 'prohibited'. One company claimed that the industry classification was important for companies seeking to obtain a business licence. It said that it would be unlikely for a business licence to be granted to enter an industry classified as 'prohibited' or where the proposed production capacity of the new business was small.

The company said that STPP was not a 'prohibited' industry but it did not think that small capacity plants would be permitted. Another company claimed that STPP manufacturers with a capacity of less than 5,000 MT per annum or consuming less than 10,000 kilowatts per annum would not be supplied with electricity after 2007.

One manufacturer claimed that any differential pricing of electricity according to industry classifications would not impact on larger operations such as those exporting STPP to Australia. It suggested that this initiative was aimed at small capacity, high-energy consuming operations in the 'restricted' or 'prohibited' industries.

The manufacturers told Customs that all rail freight in China is provided by the State but that they received no concession below the uniform rates across China and paid higher rates for transporting dangerous goods such as phosphorus.

## 5. Submission by Chinese manufacturers

### 5.1 Jiangying Chengxing

In addition to comments made during Customs' visit, on 20 March 2007, the Chinese manufacturer Jiangyin Chengxing wrote to Customs raising a number of issues including the following relating to the market situation for STPP in China:

- Jiangyin Chengxing acknowledged that the VAT rebate was higher on STPP than phosphorus but did not see this as relevant in the context of a dumping case;
- AWAL's statement that "in the Chinese domestic market, VAT rebates are given on intermediates used in further processing" appears to be incorrect and misleading;

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<sup>3</sup> File No. C06/19541 - Public File Part 3: folio 152 to 171.

- AWAL's statement that "STPP which is exported does not carry VAT" was incorrect. Jiangying Chengxing submitted that, after the rebate on export, the exporters of STPP incur a cost of 4 percent of FOB value whereas VAT is cost neutral to the manufacturer on domestic sales;
- Customs should give no weight or importance to comments about alleged WTO member concerns as AWAL had not specified the exact nature of the concerns or evidenced the relevance of the concerns to the goods under investigation.

Jiangying Chengxing suggested that AWAL should have raised matters in its background notes to Customs within its application for anti-dumping measures to allow exporters adequate time to research the issues and thoroughly prepare responses.

Jiangying Chengxing also claimed that the public record version of AWAL's background notes had been edited to such an extent that in some cases the exporters could not tell what assertions were being made against them, thus denying them the opportunity to adequately respond.

## **5.2 Hubei Xingfa**

In a letter of 27 March 2007, the Chinese manufacturer and exporter of STPP to Australia, Hubei Xingfa, responded to AWAL's claims of government influence on the market in China. This submission was in addition to comments made by Hubei Xingfa during Customs' verification visit.

Hubei Xingfa noted that AWAL's background notes provided to Customs contained a number of assertions that could have been made at an earlier stage of the investigation. It claimed that the timing of AWAL's submission denied it the opportunity to properly examine and respond to the claims prior to the SEF.

Hubei also expressed concerns with the level of information not disclosed in the public file version of AWAL's background notes for Customs. Hubei claimed that much of the deleted information did not appear to be confidential to AWAL and that information supplied to summarise the information withheld was inadequate. Hubei claimed that because of this it had been denied the opportunity to respond to the allegations and that Customs should therefore pay little credence to AWAL's submission.

In respect to the allegations of government influence on the STPP market in China, Hubei made the following points:

- China is treated as a market economy for the purposes of anti-dumping investigations;
- the onus is on the applicant for anti-dumping measures to establish that, because of government influence, Customs should disregard information from the market in China;

- AWAL had not provided any proof of an unsuitable market situation for STPP in China;
- in the recent sodium bicarbonate anti-dumping investigation against China (a market which Hubei Xingfa claimed was similar to that of STPP), Customs had found that market economy conditions existed;
- the fact that some of Hubei Xingfa's shareholders were state owned enterprises should not, of itself, represent an unsuitable market (Hubei Xingfa cited Qantas and Telstra as examples of Australian listed companies with large government shareholdings but little or no government influence); and
- that AWAL's claims that members of the WTO have expressed concern over Chinese trading practices and export markets were general and unsubstantiated assertions with no demonstrated link to Hubei Xingfa's exports of STPP to Australia. Hubei Xingfa noted that WTO members expressed concerns about a range of trading practices in countries other than China and that it was unfair to infer that the concerns applied specifically to China and to Hubei's exports to Australia.

## 6. Other submissions

There were no submissions on this issue from any other interested party.

## 7. Customs' assessment of the market situation for STPP in China

AWAL did not allege that any form of direct government price control impacted on the STPP market in China. All evidence available to Customs indicates that market for STPP market in China is competitive and operates according to normal market forces.

AWAL's assertions on government influence relate to the costs of producing STPP in China. In its submission of 16 March 2007, AWAL stated that its application for anti-dumping measures relied on a prima facie normal value based upon prevailing input prices for key raw materials as supported by Chinese export data for phosphoric acid and soda ash. AWAL said that, should Customs establish that input costs are lower than published export prices, Customs should examine the reasons for this, including the apparent manipulation of the VAT system which AWAL claimed depressed raw material input prices.

The following addresses the issues raised by AWAL on the market situation for STPP in China.

### 7.1 Soda ash

Customs recognises that soda ash is an important raw material in the manufacture of STPP. A China chemical industry periodical article referred to by AWAL confirms Customs' understanding that soda ash is also an important

raw material for many industrial goods, including construction materials, and its production is a major user of resources in the rapidly developing Chinese economy. The article suggests that the soda ash industry has been the subject of the following government measures:

- in late 2005, the State Council issued “Interim Provisions Concerning the Promotion of Industrial Restructuring”, imposing development restrictions on small capacity soda ash units; and
- in early 2006, the NDRC issued “Circular for Strengthening Management and Promoting the Sound Development in the Soda Ash Industry.

In its submissions, AWAL did not explain how these government measures would impact on the price of soda ash or how this might lead to a market situation where sales are unsuitable for determining normal values. The article suggests that the government measures are designed to control capacity expansion in the soda ash industry for environmental protection and resource preservation reasons. The article suggests that the resulting slowing of capacity expansion in the soda ash industry and continued high demand would result in firm prices determined by the supply/demand relationship. The information referred to by AWAL does not suggest that government influence would reduce the costs of soda ash that might contribute to conclusion that sales of STPP in China are unsuitable for determining normal values.

Customs also had regard to its examination of the soda ash industry in the recent review of anti-dumping measures on sodium bicarbonate exported to Australia from China. Soda ash is a major raw material used in the production of sodium bicarbonate. In that case, the Australian industry claimed that the sodium bicarbonate market was unsuitable for establishing normal value, in part due to government influence on the soda ash industry.

During the review, Customs met with the China Soda Ash Industry Association and received a written response to questions from the Industry Division of the NDRC. Customs concluded that there was no available evidence that government legislation or regulations directly or indirectly controlled the prices of soda ash used to produce sodium bicarbonate.

## **7.2 Electricity and rail freight costs**

Electricity is a major cost component in the manufacture of phosphorus which, in turn, is a major material used in producing phosphoric acid and STPP. Customs understands that the Government determines electricity and rail freight prices in China.

AWAL provided information suggesting that producers that were not classified as ‘encouraged’ in terms of their industry or capacity could face higher electricity costs as part of the government’s policy of discouraging energy intensive or polluting enterprises.

Each of the exporters visited by Customs claimed that it paid the standard industrial rates for electricity and rail freight (noting that rail freight rates were

higher for phosphorus due to it being a dangerous good). Customs has no evidence to suggest that this is not the case. Customs has also had regard to its findings in the sodium bicarbonate review where, in response to similar suggestions by Australian industry, Customs concluded that there was no evidence that electricity and rail freight rates available in China were sold at other than market conditions or were subsidised.

### 7.3 China's VAT export rebate system

Customs understands that the VAT export rebate system applies to STPP and its intermediate materials as follows:

Phosphate rock	VAT export rebate reduced from 13% to 0% in October 2003
Phosphorus	VAT export rebate reduced to 8% from October 2003 and to 0% in early 2005
Phosphoric acid	VAT export rebate of 13%
STPP	VAT export rebate of 13%

AWAL submitted that the discriminatory removal of the VAT export rebate on intermediate products disadvantaged non-Chinese manufacturers by making exports of these products more expensive. However, an anti-dumping investigation is not concerned with ensuring that raw materials are available to all manufacturers globally on equal terms. The purpose of the investigation is to address exports at prices that are below the normal value of that product sold in the ordinary course of trade in a market suitable for determining normal values.

Information provided by AWAL states that China's reduction or elimination of VAT export rebates is a policy designed to promote value-adding, increase resource utilisation efficiency, strengthen environmental protection. Customs notes that the policy has broad application with a range of products with a zero rate of VAT export rebate.

AWAL does not contend that the prices in China for STPP or for its intermediate products (phosphate rock, phosphorus and phosphoric acid) are not set by normal market factors. Customs considers that even the most competitive markets operate in an environment subject to government policy settings, and where changes in these settings may impact on the market.

To find that a government policy change, such as the reduction of VAT export rebates on phosphate rock and phosphorus, rendered a market for a downstream product unsuitable for establishing normal values, Customs would need to be satisfied that the change caused the costs of phosphate rock and or phosphorus to no longer reflect competitive market costs.

AWAL provided no evidence of the actual impact of the VAT rebate changes on the prices of phosphate rock or phosphorus in China but submitted that the changes would have made exports more expensive and therefore less attractive for overseas buyers. This would, AWAL claimed, cause supply to be diverted to the domestic market, causing an over-supply and a lowering of domestic prices.

Customs considers that the scenario described by AWAL is a logical one to occur in the short term, all other things being equal. However, in the medium to long-term, with market forces operating, a range of other factors, including other government policy changes, could impact on the demand and supply of the products to make the pricing outcome less certain.

Customs notes that the VAT change to phosphate rock occurred in 2003 and the change applying to phosphorus in early 2005. In Customs view, there is not sufficient evidence to suggest that the VAT rebate changes produced artificially low prices or costs for STPP in 2006.

AWAL noted that on 14 September 2006, products for which export tax rebates have been removed, including phosphate rock and phosphorus, were added to the list of prohibited products for processing trade. Customs understands that commodities that fall under the prohibited category can only be imported in the course of normal trade where all duties and taxes are payable at time of importation. Customs considers that this change would have little or no impact on STPP production in China where raw materials are primarily domestically sourced.

#### **7.4 Export tax on phosphate rock**

The export tax of 10 percent on phosphate rock was introduced on 1 November 2006, nearing the end of the investigation period. There is no evidence that the tax resulted in artificially low costs or pricing for STPP in the period examined by Customs.

#### **7.5 China WTO obligations**

Customs view is that, as suggested by the Chinese exporters Jiangyin Chengxing and Hubei Xingfa, the concerns to which AWAL refers are general in nature and that AWAL has not demonstrated the relevance of these issues to the market situation for STPP in China.

### **8. Conclusion**

Having regard to all the relevant information available, Customs is not satisfied that the situation in the STPP market in China is such that sales of STPP in that market are not suitable for use in establishing normal value under s. 269TAC(1).