



Phosphate Chemicals Export Association, Inc.
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July 11, 2005

Deborah A. Garza, Chair
Jonathan R. Yarowsky, Vice Chair
Antitrust Modernization Commission
1120 G Street, NW, Suite 810
Washington, DC 20005

Dear Ms. Garza and Mr. Yarowsky:

On behalf of The Phosphate Chemicals Export Association, Inc. ("PhosChem"), I am writing in response to the Federal Register notice of May 19, 2005 requesting comments on issues being studied by the Commission. PhosChem strongly supports the Export Trading Company Act and Webb-Pomerene Acts. It respectfully urges the Commission not to recommend the elimination or limitation of these laws to the President and Congress.

As PhosChem understands the rationale of the Webb-Pomerene Act and the Export Trading Company Act, both laws are intended to provide a limited, but clear-cut, exemption from U.S. antitrust laws. The exemptions are intended to provide enhanced legal certainty deemed appropriate to promote export trade. PhosChem believes that these exemptions are fully consistent with the fundamental principles of limited U.S. antitrust jurisdiction, i.e. – U.S. antitrust laws are intended to promote important U.S. domestic competition interests and do not reach export trade activities that do not restrict these protected U.S. interests.

In that regard, the Webb-Pomerene Act permits members of U.S. industries to create joint export sales associations that facilitate cost-savings, efficiencies and risk sharing in international trade without restricting domestic competition. Such legal and efficiency enhancing export industry collaborations remain important for associations like PhosChem's whose members must deal overseas with large, often state-owned or controlled, foreign rivals and customers.

PhosChem was organized in 1975 and, since that time, has served as a full-functioning export outlet for members of the U.S. phosphate fertilizer industry pursuant to the Webb-Pomerene Act. Membership in the Association is open to any U.S. firm engaged in the production of phosphate fertilizers. PhosChem is headquartered in Lake Forest, Illinois. The current members of PhosChem are: Mississippi Phosphates Corporation, Potash Corporation and The Mosaic Company.

As the principal export outlet for its members, PhosChem helps support, directly or indirectly, thousands of U.S. jobs in the U.S. phosphate fertilizer industry. Its member companies generate significant employment in, among others, the states of Florida, North Carolina, Louisiana, Mississippi, Illinois and Minnesota.

While Association export revenues and volumes vary from year to year, PhosChem regularly generates over a half a billion dollars of phosphate fertilizer sales each year in the export market and in the recent past its annual sales have approached one billion dollars. Phosphate fertilizer exports, has often ranked among the top five exporters to China from the United States after commercial airplanes and power generation equipment, among others.

The limited exemption provided by the Webb-Pomerene Act and the Export Trading Company Act materially enhances the competitive opportunities of the U.S. phosphate fertilizer industry which, as noted above, remains an export economic environment dominated by foreign state-owned and supported producers and buyer organizations.

PhosChem's principal rival is the Moroccan state-owned phosphate company, Office Cherifien des Phosphates ("OCP") which controls two-thirds of world phosphate reserves. OCP receives strong political and economic support from its national government, particular in respect to major consuming countries like China and India. In other potential markets, OCP and other North/West African competitors receive tariff and non-tariff preferences which pose competitive challenges to U.S. phosphate producers.

In any event, China and India account for two-thirds of world phosphate fertilizer trade; both governments favor domestic producers (for example, through VAT preferences and grossly trade distortive subsidies) and domestic buyers (for example, through the restriction of WTO trading rights to state trading companies, non-tariff barriers and joint purchasing negotiation groups), all of which place U.S. producers in a very disadvantaged position unless they can work together to reduce cost and risks through lawful competitor collaborations as are permitted by the Webb-Pomerene and Export Trading Company Acts.

PhosChem believes that the joint export exemption serves the legitimate interests of the United States and makes U.S. exporters more competitive in world trade. It should not be repealed if U.S. producers are to be permitted to continue to promote U.S. export sales in a manner that is as efficient and as effective as possible.

Just as much as PhosChem supports these exemptions for the legal certainty they provide, PhosChem understands and accepts seriously its responsibility to insure that its joint export trade actions do not adversely affect domestic consumer welfare interests. It understands that the federal and state antitrust enforcement agencies remain vigilant to protect legitimate U.S. domestic interests. To that end, of course, PhosChem submits that these joint export trade exemptions provide for important degree of transparency for the benefit of antitrust enforcement agencies which would disappear if they were repealed and the current subject matter jurisdictional reach of the U.S. antitrust laws remained unchanged.

In summary, PhosChem submits that these exemptions are consistent with U.S. law, as reflected by the subject matter limits of the U.S. antitrust laws established in the Foreign Trade Antitrust Improvements Act and with U.S. antitrust policy on joint ventures favoring, generally, joint ventures, which enhance efficiency, cost-savings and risk sharing and, specifically, joint

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ventures in international trade context where American firms must compete in conditions like those in China and India, described above.

The U.S. policies supporting the Webb-Pomerene and the Export Trading Company Acts reflect the explicitly defined limitations on the reach of U.S. competition policy. For almost a century, the U.S. government has authorized properly organized and structured U.S. export associations which face foreign trade barriers. As an integral part of this government support is a requirement of transparency to insure that these associations do not prejudice protected U.S. domestic interests.

Just as these exemptions are consistent with U.S. antitrust law and policy, they are consistent with antitrust norms globally. The 1998 OECD recommendation against "hard core" cartels not only specifically exempts from its general condemnation of "naked" cartels efficiency-enhancing and risk sharing export associations sanctioned by national law but as well recognized, at least by implication, that the national legislation of every member of the OECD provided for the same sort of exemption. The WTO discussions on an international antitrust code reflects the same policy determination.

Thank you for your consideration of these comments.

Sincerely yours,



Steven H. Paxton
President

Cc: [Florida, Mississippi, Louisiana, North Carolina, Minnesota and Illinois Congressional Delegations]