

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-570-963]

Certain Potassium Phosphate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry

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

DATES: *Effective Date:* June 1, 2010.

SUMMARY: On March 8, 2010, the Department of Commerce (Department) published its preliminary affirmative determination in the countervailing duty investigation of certain potassium phosphate salts from the People's Republic of China (PRC).¹ The period of investigation (POI) is January 1, 2008 through December 31, 2008. We invited interested parties to comment on our *Preliminary Determination*, and received comments from the domestic industry. We have made no changes for the final determination. We determine that countervailable subsidies are being provided to producers and exporters of certain potassium phosphate salts from the PRC. For information on the estimated countervailing duty rates, *please see* the "Suspension of Liquidation" section, below.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street, and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3148.

SUPPLEMENTARY INFORMATION:**Case History**

The following events have occurred since the announcement of the *Preliminary Determination*, which was published in the **Federal Register** on March 8, 2010. ICL Performance Products LP and Prayon, Inc. (Petitioners) filed a critical circumstances allegation on April 6, 2010. Subsequently, on April 29, 2010, the Department issued a preliminary affirmative critical circumstances determination. *See Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical*

Circumstances in the Countervailing Duty Investigation, 75 FR 24575, 24577 (May 5, 2010).

On April 27, 2010, we received a case brief from Petitioners. We received no other case briefs and no rebuttal briefs. Petitioners' brief simply notes its agreement with the Department's preliminary countervailing duty determination, and reiterates its arguments in favor of an affirmative critical circumstances determination.² Petitioners put forth no arguments for revisions to our adverse facts available (AFA) methodology or to any other aspect of our determinations. On May 18, 2010, Petitioners withdrew their critical circumstances allegation.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the U.S. International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On November 23, 2009, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States producing monopotassium phosphate (MKP) is materially injured or threatened with material injury, and industries in the United States producing dipotassium phosphate (DKP) and tetrapotassium pyrophosphate (TKPP) are threatened with material injury by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Investigations Nos. 701-TA-473 and 731-TA-1173 (Preliminary)*, *Certain Sodium and Potassium Phosphate Salts from China*, 74 FR 61173 (November 23, 2009). The ITC found that there is no reasonable indication that an industry producing sodium tripolyphosphate (STPP) is materially injured by reason of imports alleged to be subsidized by the PRC. *Id.*

Scope of the Investigation

The phosphate salts covered by this investigation include anhydrous monopotassium phosphate (MKP), anhydrous dipotassium phosphate (DKP) and tetrapotassium pyrophosphate (TKPP), whether anhydrous or in solution (collectively "phosphate salts").

TKPP, also known as normal potassium pyrophosphate, diphosphoric acid or tetrapotassium salt, is a potassium salt with the formula $K_4P_2O_7$. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, Harmonized Tariff Schedule of the United States (HTSUS).

MKP, also known as potassium dihydrogen phosphate, KDP, or monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4 . The CAS registry number for MKP is 7778-77-0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5 . MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as dipotassium salt, dipotassium hydrogen orthophosphate or potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The products covered by this investigation include anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the investigation, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation, is January 1, 2008 through December 31, 2008.

Comments on the Preliminary Determination

As noted above, the Department received a case brief from Petitioners only, and no rebuttal briefs. Petitioners' brief simply states their agreement with the Department's preliminary AFA determination, and reiterates their arguments for finding critical circumstances, but does not offer any arguments or suggestions for modifying our determinations or methodologies in any manner. Moreover, Petitioners' affirmative statements regarding critical circumstances have become moot now

¹ See *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 75 FR 10466 (March 8, 2010) (*Preliminary Determination*).

² Because the critical circumstances allegation was not filed until April 6, 2010, we were not able to issue our determination before the due date for case briefs. We did not receive any requests to extend the due date.

that they have withdrawn their allegation (*see* below). Therefore, given Petitioners' complete concurrence with the Department's positions, we have not addressed their comments specifically.

Use of Facts Available and Adverse Facts Available

For purposes of this final determination, we relied on AFA in accordance with sections 776(a) and (b) of the Act to determine the total countervailable subsidy rates. The government of the PRC and the three mandatory company respondents did not respond to the Department's questionnaire. Because of the failure to provide requested information, we determine that the use of facts otherwise available is required, pursuant to section 776(a)(2)(C), and that, because of this lack of cooperation, the application of an adverse inference is also warranted, pursuant to section 776(b) of the Act. In determining appropriate AFA rates for the programs under investigation, we applied the methodology developed in prior CVD investigations. A full discussion of our decision to apply AFA, and the methodology we followed, is presented in the *Preliminary Determination* in the section "Application of Facts Otherwise Available," and a detailed explanation of the AFA rates determined for each program can be found in Memorandum to the File, "Application of Adverse Facts Available Rates for Preliminary

Determination," March 1, 2010. There is no new information or more recently calculated rates in final CVD determinations involving the PRC which warrant any revisions to the rates assigned in the *Preliminary Determination*.

Critical Circumstances

As noted above, Petitioners withdrew their critical circumstances allegation on May 18, 2010. Pursuant to this withdrawal, and because the Department has not "expended significant resources" in examining the allegation,³ the Department determines there is no need to make a critical circumstances determination in this investigation and is terminating the critical circumstances inquiry. We will, therefore, instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation, refund any cash deposits, and release any bond or other security previously posted, for entries from December 8, 2009 until March 8, 2010, the publication date of the *Preliminary Determination*, effectively rescinding our instructions to CBP pursuant to the preliminary affirmative critical circumstances determination.

Continuation of Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have assigned a subsidy rate to each of the three producers/exporters of the subject

merchandise that were selected as mandatory company respondents in this CVD investigation. With respect to the all-others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated. In this case, the rate calculated for the three investigated companies is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which to determine an all-others rate. As a result, we have used the AFA rate assigned to the three mandatory respondents as the all-others rate. This method is consistent with the Department's past practice. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 66 FR 37007, 37008 (July 16, 2001); *see also, Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India*, 68 FR 68356 (December 8, 2003); *Sodium Nitrite from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 38981 (July 8, 2008).

As a result, we have determined the following subsidy rates.

Producer/Exporter	Subsidy rate
Lianyungang Mupro Import Export Co Ltd	109.11 percent <i>ad valorem</i> .
Mianyang Aostar Phosphate Chemical Industry Co. Ltd	109.11 percent <i>ad valorem</i> .
Shifang Anda Chemicals Co. Ltd	109.11 percent <i>ad valorem</i> .
All-Others	109.11 percent <i>ad valorem</i> .

In accordance with section 703(d)(1)(A)(i) of the Act, we directed CBP to suspend liquidation of all entries of the subject merchandise from the PRC, which are entered or withdrawn from warehouse, for consumption on or after March 8, 2010, the date of publication of the *Preliminary Determination*. After the preliminary affirmative critical circumstances determination, we directed CBP to suspend liquidation of all entries on or after December 8, 2009 (encompassing the retroactive 90-day period) pursuant to section 703(e)(2) of the Act. As noted above, however, we will now instruct CBP to remove the suspension of

liquidation for the 90-day pre-preliminary determination period, to refund any cash deposits and release any bond or other security previously posted within the 90-day period, but to continue collecting bonds or cash deposits on all entries, entered or withdrawn from warehouse, for consumption on or after March 8, 2010.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order under section 706(a) of the Act, and instruct CBP to require cash deposits of the estimated countervailing duties. If the ITC determines that material injury to, threat of material injury to, or material

retardation of, the domestic industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose

³ *See e.g., Notice of Final Determination of Sales at Less Than Fair Value and Termination of Critical-Circumstances Investigation: Electrolytic*

Manganese Dioxide from Australia, 73 FR 47586, 47586-87 (August 14, 2008), granting a post-

preliminary determination request to withdraw a critical circumstances allegation.

such information, either publicly or under an Administrative Protective Order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 24, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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