

determination. We determine that salts from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). The estimated margins of sales at LTFV are shown in the “Final Determination Margins” section of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Katie Marksberry or Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-7906 or (202) 482-6905, respectively.

**SUPPLEMENTARY INFORMATION:**

**Case History**

The Department published its Preliminary Determination on March 16, 2010. On April 2, 2010, Petitioners filed an allegation of critical circumstances.<sup>2</sup> On April 15, 2010, we received a case brief from Petitioners. We did not receive any case or rebuttal briefs from any other interested parties. On May 5, 2010, we published the preliminary affirmative determination of critical circumstances.<sup>3</sup> On May 18, 2010, Petitioners withdrew their allegation of critical circumstances.<sup>4</sup>

**Tolling of Administrative Deadlines**

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for this final determination is now May 24, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,” dated February 12, 2010.

<sup>2</sup> See Letter from Petitioners to the Department; regarding Certain Potassium Phosphate Salts from the People’s Republic of China: Allegation of Critical Circumstances; dated April 2, 2010.

<sup>3</sup> See *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572 (May 5, 2010) (“*Prelim Critical Circumstances Determination*”).

<sup>4</sup> See letter to the Department from Petitioners, regarding Certain Potassium Phosphate Salts from the People’s Republic of China: Withdrawal of Allegation of Critical Circumstances, dated May 18, 2010.

**Scope of 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, 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 product covered by this investigation includes 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, and not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

**Comments on the Preliminary Determination**

On April 15, 2010, Petitioners submitted a case brief in which they agreed with the decisions the Department made in the *Preliminary Determination* and stated that the Department’s use of adverse facts available (“AFA”) in the *Preliminary Determination* was warranted and appropriate. No other interested party commented on the *Preliminary Determination*.

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-962]

**Certain Potassium Phosphate Salts from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry**

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

**EFFECTIVE DATE:** June 1, 2010.

**SUMMARY:** On March 16, 2010, the Department of Commerce (the “Department”) published its notice of preliminary determination of sales at less than fair value (“LTFV”) in the antidumping investigation of certain potassium phosphate salts (“salts”) from the People’s Republic of China (“PRC”).<sup>1</sup> The period of investigation (“POI”) is January 1, 2009, through June 30, 2009. We invited interested parties to comment on our preliminary determination of sales at LTFV. We made no changes for the final

<sup>1</sup> See *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 75 FR 12508 (March 16, 2010) (“*Preliminary Determination*”).

### Separate Rates

In proceedings involving non-market-economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”), and Section 351.107(d) of the Department’s regulations.

In the *Preliminary Determination*, we found that Wenda Co., Ltd., Yunnan Newswift Company Ltd., Tianjin Chengyi International Trading Co., Ltd., and Snow-Apple Group Limited, demonstrated their eligibility for, and were hence assigned, separate rate status. No party has commented on the eligibility of these companies for separate rate status. Therefore, for the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate rate status.

### Use of Facts Available, Adverse Facts Available and The PRC-Wide Rate

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information in the

requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

In the *Preliminary Determination*, the Department found that SiChuan Blue Sword Import & Export Co., Ltd. (“SiChuan Blue Sword”) did not respond to our requests for information and was therefore part of the PRC-wide entity. Additionally, in the *Preliminary Determination*, the Department found that SD BNI(LYG) Co. Ltd. (“SD BNI”), who was selected as a mandatory respondent and failed to submit the information required, would not receive a separate rate and would remain part of the PRC-wide entity. In the *Preliminary Determination* we treated PRC exporters/producers, that did not

respond to the Department’s request for information as part of the PRC-wide entity because they did not demonstrate that they operate free of government control. No additional information has been placed on the record with respect to these entities, SiChuan Blue Sword, or SD BNI after the *Preliminary Determination*.

The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. As noted above, section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also, Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) (“SAA”). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the “Final Determination Margins” section below have overcome that presumption, we are applying a single antidumping rate - the PRC-wide rate - to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of merchandise under consideration except for entries from Wenda Co., Ltd., Yunnan Newswift Company Ltd., Tianjin Chengyi International Trading Co., Ltd., and Snow-Apple Group Limited, which are listed in the “Final Determination Margins” section below.

### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information, rather than on

information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as “information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>5</sup> The SAA provides that to “corroborate” means simply that the Department will satisfy itself that the secondary information to be used has probative value.<sup>6</sup> The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>7</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>8</sup>

As total AFA the Department preliminarily selected the rate of 95.40 from the Petition.<sup>9</sup> Petitioners’ methodology for calculating the export price and normal value (“NV”) in the Petition is discussed in the *Initiation Notice*.<sup>10</sup> At the *Preliminary Determination*, because there were no margins calculated for the mandatory respondents, to corroborate the 95.40

percent margin used as AFA for the China-wide entity, to the extent appropriate information was available, we affirmed our pre-initiation analysis of the adequacy and accuracy of the information in the petition.<sup>11</sup> During our pre-initiation analysis, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioners prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value (“NV”) in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations.<sup>12</sup>

Similarly, for the final determination, we have also corroborated our AFA margin by affirming our pre-initiation analysis. Because no parties commented on the selection of the PRC-wide rate, we continue to find that the margin of 95.40 percent has probative value. Accordingly, we find that the rate of 95.40 percent is corroborated within the meaning of section 776(c) of the Act.

**Critical Circumstances**

On April 2, 2010, Petitioners submitted an allegation of critical

circumstances with respect to the merchandise under consideration. On March 5, 2010, we issued the *Preliminary Critical Circumstances Determination*, stating that we had reason to believe or suspect critical circumstances exist with respect to imports of salts from the PRC. 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,<sup>13</sup> 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 instruct U.S. Customs and Border Protection (“CBP”) to terminate the suspension of liquidation and refund any cash deposits and release any bond or other security previously posted for all imports of subject merchandise entered, or withdrawn from warehouse, for consumption between December 16, 2009, which is 90 days prior to the date of publication of the *Preliminary Determination*, and March 15, 2010.

**Final Determination Margins**

We determine that the following percentage weighted-average margins exist for the following entities for the POI:

Exporter	Supplier	Weighted-Average Margin
Snow-Apple Group Limited .....	Chengdu Long Tai Biotechnology Co., Ltd.	69.58
Tianjin Chengyi International Trading (Tianjin) Co., Limited .....	Zhenjiang Dantu Guangming Auxiliary Material Factory	69.58
Tianjin Chengyi International Trading (Tianjin) Co., Limited .....	Sichuan Shifang Hongsheng Chemicals Co., Ltd.	69.58
Wenda Co., Ltd. ....	Thermphos (China) Food Additive Co., Ltd	69.58
Yunnan Newswift Company Ltd. ....	Guangxi Yizhou Yisheng Fine Chemicals Co., Ltd.	69.58
Yunnan Newswift Company Ltd. ....	Mainzhu Hanwang Mineral Salt Chemical Co., Ltd.	69.58
Yunnan Newswift Company Ltd. ....	Sichuan Shengfeng Phosphate Chemical Co., Ltd.	69.58
PRC-Wide <sup>14</sup> .....	.....	95.40

<sup>14</sup> The PRC-wide rate includes Sichuan Blue Sword Import and Export Co., Ltd., and SD BNI (LYG) Co., Ltd.

<sup>5</sup> See SAA at 870.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller*

*Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>9</sup> See Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Sodium and Potassium Phosphate Salts from the People’s Republic of China, dated September 24, 2009.

<sup>10</sup> See *Certain Sodium and Potassium Phosphate Salts from the People’s Republic of China: Initiation*

*of Antidumping Duty Investigation*, 74 FR 54024 (October 21, 2009), (“*Initiation Notice*”).

<sup>11</sup> See Antidumping Investigation Initiation Checklist: Certain Sodium and Potassium Phosphate Salts (“*Initiation Checklist*”).

<sup>12</sup> See *id.*

<sup>13</sup> See *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.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all imports of subject merchandise entered or withdrawn from warehouse, for consumption for the PRC-wide entity and the Separate Rate Recipients on or after March 16, 2010. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above.

These suspension of liquidation instructions will remain in effect until further notice.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the merchandise under investigation. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the merchandise under investigation entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

This notice also serves as a reminder to the parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-13071 Filed 5-28-10; 8:45 am]

**BILLING CODE 3510-DS-S**

---