



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-821-801
AR: 7/1/2014 – 06/30/2015
NSR: 7/1/2014 – 06/30/2015
Public Document
AD/CVD I: MR

August 5, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Administrative and
New Shipper Reviews of the Antidumping Duty Order on Solid
Urea from the Russian Federation.

Summary

The Department of Commerce (the Department) is conducting an administrative review and a concurrent new shipper review (NSR) of the antidumping duty order on solid urea from the Russian Federation (Russia) covering the period of review (POR) July 1, 2014, through June 30, 2015. The administrative review covers one producer/exporter of the subject merchandise, MCC EuroChem¹, and the NSR covers one producer/exporter of the subject merchandise, Joint Stock Company PhosAgro-Cherepovets (PhosAgro). We preliminarily find that MCC EuroChem and PhosAgro did not make sales of subject merchandise at prices below normal value (NV).

Background

On July 1, 2015, we published in the *Federal Register* a notice of opportunity to request an administrative review of the order.² Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Ad Hoc Committee of Domestic Nitrogen Producers, and its individual members CF Industries, Inc. and PCS Nitrogen Fertilizer, L.P. (collectively, the petitioners), requested an administrative review of the antidumping duty order on solid urea from Russia on July 30, 2015, with respect to MCC EuroChem.³ Additionally,

¹ OJSC Nevinnomysskiy Azot, and OJSC NAK Azot are producing subsidiaries of MCC EuroChem.

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 37583 (July 1, 2015).

³ See letter from the petitioners to the Department, "Solid Urea from the Russian Federation: Request for Review" (July 31, 2015).



pursuant to 19 CFR 351.213(b)(2), PhosAgro requested an administrative review of itself on July 31, 2015.⁴

Pursuant to section 751(a)(2)(B)(i) of the Act, we received a timely request for a NSR of the order from PhosAgro.⁵ Based on PhosAgro's request, we initiated a NSR on August 31, 2015.⁶ On September 2, 2015, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the antidumping duty order on solid urea from Russia with respect to MCC EuroChem and PhosAgro.⁷

On November 19, 2015, PhosAgro consented to align the NSR with the concurrent administrative review.⁸ We aligned the NSR with the concurrent administrative review on November 24, 2015.⁹

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government in January. All deadlines in this segment of the proceeding have been extended by four business days.¹⁰ On March 16, 2016, we extended the deadline for the preliminary results of these reviews until August 5, 2016.¹¹ From June 15, 2016, through June 17, 2016, we conducted a sales verification of PhosAgro and from June 20, 2016, through July 1, 2016, and July 11, 2016 through July 13, 2016 we conducted a cost, home-market sales, and constructed export price sales verifications of MCC EuroChem.

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.214(j), the Secretary may, after consulting with the exporter or producer, rescind in whole or in part a review in progress under this subpart if a separate review (or a request for a review) under 19 CFR 351.213 (administrative review), 19 CFR 351.214 (new shipper review), 19 CFR 351.215 (expedited antidumping review), or 19 CFR 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section. After consulting with PhosAgro, we are rescinding, in part, the antidumping duty administrative review on solid urea from Russia covering the POR

⁴ See letter from PhosAgro to the Department, "Solid Urea from the Russian Federation: Request for Administrative Review" (July 31, 2015).

⁵ See PhosAgro's new shipper request dated July 31, 2015.

⁶ *Solid Urea From the Russian Federation: Initiation of Antidumping Duty New Shipper Review*, 80 FR 52446 (August 31, 2015).

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 53106 (September 2, 2015),

⁸ See letter from PhosAgro "Solid Urea from the Russian Federation: Alignment of New Shipper Review with Administrative Review," dated November 19, 2015.

⁹ See Memorandum to the File "Alignment of New Shipper Review of Solid Urea from the Russian Federation with the Concurrent Administrative Review of Solid Urea from the Russian Federation," dated November 24, 2015.

¹⁰ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

¹¹ See memorandum to Christian Marsh from Andre Gziryan entitled, "Solid Urea from the Russian Federation: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews; 2014-2015," dated March 16, 2016.

with respect to PhosAgro because we are conducting a NSR of PhosAgro for the period covered by the administrative review.¹²

Bona Fides Analysis

Pursuant to section 751(a)(2)(B)(iv) of the Act, any weighted average dumping margin determined in a NSR must be based solely on *bona fide* sales during the period of review.¹³ In evaluating whether sales in a NSR is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, the Department considers, *inter alia*, such factors as: (a) the timing of the sales, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm's-length basis.¹⁴ Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sales of subject merchandise."¹⁵ In *TTPC*, the Court of International Trade (CIT) affirmed the Department's decision that any factor which indicates that the sales under consideration are not likely to be typical of those which the producer will make in the future is relevant,¹⁶ and found that the weight given to each factor investigated will depend on the circumstances surrounding the sales.¹⁷ Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a sale in a NSR so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.¹⁸ Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its dumping margin calculations.¹⁹ Based on our analysis of the factors described above, we preliminarily find that PhosAgro's U.S. sales are *bona fide*.²⁰ Moreover, based on this finding and its responses to our questionnaires, we preliminarily determine that PhosAgro qualifies as a new shipper during this POR.²¹

¹² This partial rescission of administrative review with respect to PhosAgro does not affect the ongoing new shipper review of PhosAgro. Therefore, we will not issue assessment instructions as a result of the rescission of the administrative review with respect to PhosAgro. Instead, we will issue liquidation instructions and assess duties for PhosAgro's entries upon completion of the ongoing new shipper review.

¹³ On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.

¹⁴ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (*TTPC*).

¹⁵ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum at New Shipper Review of Clipper Manufacturing Ltd.).

¹⁶ See *TTPC*, 366 F. Supp. 2d at 1250.

¹⁷ *Id.* at 1263.

¹⁸ See *New Donghua*, 374 F. Supp. 2d at 1344.

¹⁹ See *TTPC*, 366 F. Supp. 2d at 1249.

²⁰ See Memorandum to the File entitled, "New Shipper Review of Solid Urea from Russia – *Bona Fides* Sales Analysis of PhosAgro," dated concurrently with this decision memorandum for more details including certain business proprietary information.

²¹ *Id.*

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether MCC EuroChem's and PhosAgro's sales of the subject merchandise from Russia to the United States were made at less than NV, the Department compared the export price (EP) and constructed export price (CEP) to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative and new-shipper reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative and new-shipper reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²²

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1).²³ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in these administrative and new-shipper reviews. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The

²² See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at Comment 1. See also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

²³ See, *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013), *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), and *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful

difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. *Results of the Differential Pricing Analysis*

MCC EuroChem

For MCC EuroChem, based on the results of the differential pricing analysis, the Department preliminarily finds that 90.85 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin.²⁴

PhosAgro

For PhosAgro, based on the results of the differential pricing analysis, we preliminarily find that 0.00 percent of the value of U.S. sales pass the Cohen's *d* test and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, we preliminarily determine to apply the A-A method for all U.S. sales to calculate the weighted-average dumping margin for PhosAgro.

Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, we will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of

²⁴ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

business, as the date of sale. The regulation provides further that we may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²⁵

MCC EuroChem

For all U.S. sales, MCC EuroChem reported contract date as the date of sale.²⁶ MCC EuroChem defines contract date or the latest addenda thereto, which coincides with shipment date for all U.S. sales during the POR, as the date on which the material terms of sale are established and no longer subject to change.²⁷ MCC EuroChem provided sample contracts for U.S. sales covered by this review, which support MCC EuroChem's contention that price and quantity are subject to change and not finalized until the date of contract.²⁸ This record evidence demonstrates that all material terms of sale as reported by MCC EuroChem are established on the date of contract, which is consistent with the date of sale established in previous administrative reviews.²⁹ Therefore, we preliminarily determine that the contract date is the appropriate date of sale for all sales to the United States.

MCC EuroChem reported invoice date as the date of sale for home market sales, explaining that price and quantity are not finalized and are subject to change until invoicing because at the date of invoice, the product is loaded for delivery, weighed, and the exact quantity is recorded for the invoice and transportation documents.³⁰ This is consistent with our regulatory presumption for invoice date as the date of sale.³¹ Thus, because the evidence does not demonstrate that the material terms of sale were established on another date, and consistent with previous reviews, we preliminarily determine that invoice date is the appropriate date of sale for all home-market sales.³²

PhosAgro

PhosAgro reported the date of invoice as the date of sale for all home market and U.S. sales.³³ Consistent with our regulatory presumption of invoice date as the date of sale and because the

²⁵ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²⁶ See EuroChem's November 6, 2016, section C questionnaire response at 59.

²⁷ *Id.*

²⁸ *Id.* at Exhibit 10.

²⁹ See *Solid Urea From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 19069 (April 9, 2015) and accompanying decision memorandum at 5, unchanged in *Solid Urea From the Russian Federation: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 38664 (July 7, 2015).

³⁰ See EuroChem's November 5, 2015, section B questionnaire response at 19.

³¹ See 19 CFR 351.401(i).

³² See footnote 22.

³³ See PhosAgro's October 13, 2015, section B questionnaire response at B-14 and section C questionnaire response

evidence does not demonstrate that the material terms of sale were established on another date,³⁴ we used PhosAgro's invoice date as the date of sale for both the home market and U.S. sales.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Russia during the POR that fit the description in the "Scope of Order" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: form, grade, nitrogen content, size, urea-formaldehyde content, other additive/conditioning agent, coating agent, and biuret content. For MCC EuroChem's and PhosAgro's respective sales of solid urea in the United States, the reported control number identifies the characteristics of solid urea, as exported by the respondents.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, we calculated EP for PhosAgro because it sold the subject merchandise to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record.³⁵ In accordance with section 772(b) of the Act, we calculated CEP for MCC EuroChem because the subject merchandise was sold in the United States by a seller affiliated with the producer and the use of export price was not otherwise indicated.³⁶

MCC EuroChem

In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under consideration is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. MCC EuroChem classified all of its sales of merchandise under consideration to the United States as CEP sales because all such sales were invoiced and sold by EuroChem's U.S. affiliate, MCC EuroChem Trading USA Corp.³⁷ We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including international freight, international brokerage and handling, marine insurance, U.S. brokerage and handling, U.S. inland freight and insurance, demurrage,

at C-10.

³⁴ See 19 CFR 351.401(i).

³⁵ See PhosAgro's September 22, 2015, section A questionnaire response at Exhibit A-17.

³⁶ See EuroChem's November 6, 2015, section B questionnaire response at Exhibit 10.

³⁷ See EuroChem's October 16, 2015, section A questionnaire response at 39.

and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.

PhosAgro

We based EP on a packed price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, and international freight.

Normal Value

A. *Home Market Viability as Comparison Market*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of the respondents' home-market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(A) and (B) of the Act. Based on this comparison, we determined that MCC EuroChem³⁸ and PhosAgro³⁹ had viable home markets during the POR. Consequently, we based NV on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade and sales made to affiliated purchasers where we find prices were made at arm's length, as described in detail below. Consistent with our practice, we also included PhosAgro's sales to affiliated parties for purposes of determining home market viability.⁴⁰

B. *Affiliated Party Transactions and Arm's-Length Test*

We may calculate NV based on a sale to an affiliated party only if we are satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁴¹ To test whether the respondents' comparison market sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party

³⁸ See EuroChem Preliminary Analysis Memorandum at 2.

³⁹ See PhosAgro Preliminary Analysis Memorandum at 3.

⁴⁰ See *Certain Oil Country Tubular Goods From Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).

⁴¹ See 19 CFR 351.403(c).

were at arm's-length prices.⁴² We included in our calculations of NV those sales to affiliated parties that were made at arm's-length prices and excluded those sales that failed the arm's-length test.

C. *Level of Trade*

Section 773(a)(1)(B) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁴ To determine whether NV sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution.⁴⁵ If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision).⁴⁶

MCC EuroChem

In the home market, MCC EuroChem reported a single channel of distribution.⁴⁷ Within this single channel of distribution, MCC EuroChem reported a single LOT for all three customer types (*i.e.*, distributors, traders, and end-users) which included strategic and economic planning, personnel training, distributor/dealer training, procurement/sourcing service, packing, order input/processing or freight/delivery services.⁴⁸ After analyzing the data on the record with respect to the selling functions performed for each customer type, we find that MCC EuroChem made all home-market sales at a single LOT.

In the U.S. market, MCC EuroChem had only CEP sales through its affiliated reseller⁴⁹ and, thus, a single LOT.⁵⁰

We found that there were significant differences between the selling activities associated with the CEP LOT and those associated with the home-market LOT. For example, the CEP LOT

⁴² See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

⁴³ See 19 CFR 351.412(c)(2).

⁴⁴ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*CTL Plate*).

⁴⁵ See 19 CFR 351.412(c)(2).

⁴⁶ See *CTL Plate*, 62 FR at 61732, and *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

⁴⁷ See EuroChem's October 16, 2015, section A questionnaire response at 33-41.

⁴⁸ *Id.*

⁴⁹ *Id.* at 2 .

⁵⁰ See section 772(b) of the Act.

involved little or no strategic and economic planning, personnel training, distributor/dealer training, procurement/sourcing service, packing, order input/processing or freight/delivery services.⁵¹ Therefore, we conclude that CEP sales constitute a different LOT from the LOT in the home market and that the home-market LOT is at a more advanced stage of distribution than the CEP LOT.

We were unable to match CEP sales at the same LOT in the home market or to make an LOT adjustment because the differences in price between the CEP LOT and the home-market LOT cannot be quantified due to the lack of an equivalent CEP LOT in the home market. Also, there are no other data on the record which would allow us to make an LOT adjustment. Because the data available do not provide an appropriate basis on which to determine an LOT adjustment and the home-market LOT is at a more advanced stage of distribution than the CEP, we made a CEP-offset adjustment to NV, in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). The CEP offset was the sum of indirect selling expenses incurred on home-market sales up to the amount of indirect selling expenses incurred on the U.S. sales.⁵²

PhosAgro

We examined the differences in selling functions reported in PhosAgro's responses to our requests for information. PhosAgro reported two LOTs in the home market: one for factory sales made to their affiliated distributors and another for their affiliates' sales made to unaffiliated customers.⁵³ For the purposes of the preliminary results, we are relying only on the sales from PhosAgro's affiliates to their unaffiliated customers because all of PhosAgro's sales in the home market were to affiliated resellers and, as a result, we are unable to determine that PhosAgro's sales to its affiliates were made at arm's-length prices. PhosAgro performed the following selling activities for this channel of distribution in the home market: strategic and economic planning, sales forecasting, sales force development, market research, solicitation of orders, technical advice, price negotiation, perform production facilities and customer liaison activities, processing of purchase orders, and accounts receivable management. We preliminarily determine that this channel of distribution constituted a single LOT in the home market.

PhosAgro made EP sales to the United States. PhosAgro reported one LOT in the U.S. market for sales from PhosAgro to unaffiliated customers.⁵⁴ PhosAgro performed the following selling activities with respect to its sales to its U.S. customers: strategic and economic planning, sales forecasting, sales force development, market research, solicitation of orders, technical advice, price negotiation, production facilities and customer liaison activities, processing of purchase orders, and accounts receivable management.⁵⁵ We examined this channel of distribution and preliminarily determined that these EP sales constitute one LOT.⁵⁶

⁵¹ See EuroChem's October 16, 2015, section A questionnaire response at 40-41.

⁵² See EuroChem Preliminary Analysis Memorandum at 7.

⁵³ See section B response of PhosAgro dated September 22, 2015, at B-23.

⁵⁴ See section C response of PhosAgro dated September 22, 2015, at C-17.

⁵⁵ See section A response of PhosAgro dated September 22, 2015, at 14 and Exhibits A-14 and A-15.

⁵⁶ *Id.*

After review of PhosAgro's selling functions, we preliminarily determine that the selling activities associated with its EP sales are at the same or a similar level of intensity as the selling activities performed for sales in the home market. The selling activities associated with the two channels of distribution did not differ in a meaningful way. Although sales forecasting is done at a lower level of intensity in the home market compared to that performed in the U.S. market, the selling function is still performed by PhosAgro and all other selling functions are performed at the same level of intensity. We compared the selling activities of the U.S. LOT with the selling activities of the home market LOT and found that these levels were substantially the same. Therefore, we preliminarily find that, during the POR, PhosAgro sold merchandise under consideration and foreign like product at the same LOT. Accordingly, the comparison of EP to NV is at the same LOT, and an LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duties law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.⁵⁷ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁵⁸ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production (COP) information from respondent companies in all AD proceedings.⁵⁹ Accordingly, the Department requested this information from MCC EuroChem and PhosAgro. We examined MCC EuroChem's and PhosAgro's cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.⁶⁰

We relied on the COP data submitted by MCC EuroChem⁶¹ and PhosAgro,⁶² except as follows:

⁵⁷ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁵⁸ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (Applicability Notice).

⁵⁹ *Id.*, 80 FR at 46794-95.

⁶⁰ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁶¹ See EuroChem Preliminary Analysis Memorandum at 3-4.

⁶² See PhosAgro Preliminary Analysis Memorandum.

For MCC EuroChem we recalculated INTEX to include exchange losses and losses on derivatives activities.

2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We did not disregard sales as below cost because we did not find that more than 20 percent of any product of MCC EuroChem's or PhosAgro's home market sales during the POR were at prices less than the COP and, in addition, such sales provided for the recovery of costs within a reasonable period of time. We, therefore, did not exclude any sales when determining the basis for NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the starting prices to home-market customers. Pursuant to section 773(a)(6)(B)(ii) of the Act, we deducted inland freight expenses MCC EuroChem and PhosAgro incurred on home-market sales. For MCC EuroChem, we made adjustments for differences in domestic and export packing expenses, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We made deductions for direct selling expenses, as appropriate.⁶³

⁶³ See EuroChem Preliminary Analysis Memorandum at 6.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange/index.html>.

Recommendation

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

August 5, 2016

(Date)