



C-570-963  
Sunset Review  
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March 2, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Certain Potassium Phosphate Salts from the People's Republic of China

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## I. SUMMARY

We have analyzed the substantive responses of the domestic interested parties in the second sunset review of the countervailing duty (CVD) *Order* covering certain potassium phosphate salts (phosphate salts) from the People's Republic of China (China).<sup>1</sup> We did not receive a response from the Government of China (GOC) or from any other interested party. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2).<sup>2</sup> We find that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the "Final Results of Review" section of this memorandum. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

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<sup>1</sup> See *Certain Potassium Phosphate Salts from the People's Republic of China: Countervailing Duty Order*, 75 FR 42682 (July 22, 2010) (*Order*).

<sup>2</sup> Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response. See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005).



## II. BACKGROUND

On November 3, 2020, Commerce published the notice of initiation of the second sunset review of the *Order*, pursuant to section 751(c) of the Act.<sup>3</sup> Commerce received a notice of intent to participate from ILC Performance Products LP (ILC) and Prayon, Inc. (Prayon) (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>4</sup> ILC and Prayon claimed interested party status under section 771(9)(C) of the Act, as both are producers of the domestic like product in the United States.

Commerce received a substantive response from the domestic interested parties<sup>5</sup> within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On December 23, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>6</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order*.

## III. HISTORY OF THE ORDER

On June 1, 2010, Commerce published its final determination that countervailable subsidies are being provided to producers and exporters of phosphate salts from China.<sup>7</sup> We determined a net countervailable subsidy rate of 109.11 percent *ad valorem* for Lianyungang Mupro Import Export Co Ltd., Mianyang Aostar Phosphate Chemical Industry Co. Ltd., Shifang Anda Chemicals Co. Ltd., and for all others.<sup>8</sup>

We found the following programs countervailable in the original investigation:

1. Preferential Tax Policies for Foreign Invested Enterprises (FIEs) (Two Free, Three Half Program)
2. Income Subsidies for FIEs Based on Geographic Location
3. Income Tax Exemption for Export-Oriented FIEs
4. Local Income Tax Exemptions or Reduction Programs for “Productive” FIEs
5. Reduced Income Tax Rate for New or High Technology Enterprises
6. Preferential Tax Policies for Research and Development by FIEs
7. Income Tax Credits on Purchases of Domestically Produced Equipment

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<sup>3</sup> See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 69585 (November 3, 2020).

<sup>4</sup> See Domestic Interested Parties’ Letter, “Potassium Phosphate Salts from the People’s Republic of China: Notice of Intent to Participate,” dated November 18, 2020.

<sup>5</sup> See Domestic Interested Parties’ Letter, “Potassium Phosphate Salts from the People’s Republic of China: Substantive Response to the Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Order and Countervailing Duty Order,” dated December 3, 2020 (Domestic Interested Parties’ Substantive Response).

<sup>6</sup> See Commerce’s Letter, “Sunset Reviews for November 2020,” dated December 23, 2020.

<sup>7</sup> See *Certain Potassium Phosphate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry*, 75 FR 30375 (June 1, 2010) (*CVD Final*), and accompanying Issues and Decision Memorandum (IDM).

<sup>8</sup> See *CVD Final*; see also *Order*, 75 FR at 42683.

8. Subsidies to Loss-Making State-Owned Enterprises (SOEs) by the GOC at the National Level
9. Grants Pursuant to the State Key Technology Renovation Project Fund
10. Grants Pursuant to the “Famous Brands” Program
11. Subsidies to the Loss-Making SOEs by the GOC at the Provincial Level
12. Reduction in Exemption from the Fixed Assets Investment Orientation Regulatory Tax
13. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment
14. VAT and Tariff Exemptions on Imported Equipment
15. Discounted Loans for Export Oriented Industries
16. Government Restraints on Exports of Yellow Phosphorus

Since the issuance of the *Order*, Commerce has not conducted any administrative reviews, new shipper reviews, scope rulings, circumvention determinations, or changed circumstances reviews with respect to this *Order*. This is the second sunset review of the CVD *Order*.<sup>9</sup> The first sunset review maintained that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies.

#### IV. SCOPE OF THE *ORDER*

The potassium phosphate salts covered by this *Order* include 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).

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 *Order* include the foregoing phosphate salts in all grades, whether food grade or technical grade. The products covered by this *Order* include anhydrous 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 *Order*, 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.

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<sup>9</sup> See *Potassium Phosphate Salts from the People’s Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order*, 80 FR 60121 (October 5, 2015); see also *Certain Potassium Phosphate Salts from the People’s Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order*, 80 FR 79305 (December 21, 2015).

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy determined in the investigation and any subsequent reviews; and (2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the *Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM).

## VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested parties.

### 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

#### Domestic Interested Parties' Comments<sup>10</sup>

Citing section 752(b)(1) of the Act, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA),<sup>11</sup> and the *Policy Bulletin*,<sup>12</sup> the domestic interested parties assert that an affirmative determination of continuation or recurrence is warranted because the subsidies at issue in the original investigation remain in existence and have not been terminated or suspended. Further, they note that the investigation rates remain in place for all exporters, because no administrative reviews or new shipper reviews of the *Order* have been requested. Additionally, the domestic interested parties note that the significant decline in imports since the imposition of the *Order* is a direct result of the efficacy of the *Order* and absent the *Order*, subsidized imports from China would likely increase significantly in volume.

#### Commerce's Position:

As stated above, in determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the SAA, Commerce will consider the net countervailable subsidies in

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<sup>10</sup> See Domestic Interested Parties' Substantive Response at 9-19 and Exhibit 1.

<sup>11</sup> See Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 888.

<sup>12</sup> See *Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Policy Bulletin*).

effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>13</sup> The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>14</sup> The presence of programs that have not been used, but have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>15</sup> Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.<sup>16</sup>

In the investigation, Commerce found that countervailable subsidies were being provided to Chinese exporters and producers of phosphate salts under the programs listed above. As indicated above, there have been no administrative reviews since issuance of the *Order*. No party submitted evidence to demonstrate that these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the programs found countervailable during the investigation. Absent argument or evidence to the contrary, we find that these countervailable programs continue to exist and be used. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies because the record indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

## 2. Net Countervailable Subsidy Rates Likely to Prevail

### Domestic Interested Parties' Comments<sup>17</sup>

The domestic interested parties assert that, consistent with the SAA and the *Policy Bulletin*, Commerce will normally select the rate determined in the original investigation, as that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. The domestic interested parties further assert there is no indication that any of the programs providing countervailable subsidies in the underlying investigation were terminated or that benefits ceased following the issuance of the *Order*. Accordingly, the domestic interested parties argue that pursuant to the principles set forth in the SAA, Commerce should report the following CVD rates to the ITC: (1) 109.11 percent for Lianyungang Mupro Import Export Co Ltd.; (2) 109.11 percent for Mianyang Aostar Phosphate Chemical Industry Co. Ltd.; (3) 109.11 percent for Shifang Anda Chemicals Co., Ltd.; and (3) 109.11 percent for all others.

### Commerce's Position:

Consistent with the SAA and legislative history, Commerce will normally provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely

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<sup>13</sup> See SAA at 888.

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying IDM at Comment 1.

<sup>16</sup> *Id.*

<sup>17</sup> See Domestic Interested Parties' Substantive Response at 16 – 19.

to prevail if the order is revoked because, as noted by the domestic interested parties, it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.<sup>18</sup> While section 752(b)(1)(B) of the Act provides that Commerce will consider whether any change in the programs which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy, Commerce has not completed an administrative review of this *Order*. Additionally, no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found in the investigation. Therefore, in this sunset review, we determine the company-specific countervailable subsidy rates likely to prevail are the rates assigned in the *Order*. The countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the *Order*, are provided in the “Final Results of Review” section of this memorandum.

### 3. Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of these subsidy programs and whether these programs constitute subsidies that fall within Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired, effective January 1, 2000.

#### *Article 3 Subsidies*

The following programs fall within the definition of an export subsidy under Article 3.1 of the SCM Agreement, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

1. Income Tax Exemption for Export-Oriented FIEs
2. Discounted Loans for Export Oriented Industries
3. Income Tax Credits on Purchases of Domestically Produced Equipment
4. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment

#### *Article 6.1 Subsidies*

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement. However, they could be subsidies described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. The subsidies could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or subsidies to cover operating losses sustained by an industry or enterprise.

5. Preferential Tax Policies for Foreign Invested Enterprises (FIEs) (Two Free, Three Half Program)
6. Income Subsidies for FIEs Based on Geographic Location

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<sup>18</sup> See SAA at 890.

7. Local Income Tax Exemptions or Reduction Programs for “Productive” FIEs
8. Reduced Income Tax Rate for New or High Technology Enterprises
9. Preferential Tax Policies for Research and Development by FIEs
10. Subsidies to Loss-Making State-Owned Enterprises (SOEs) by the GOC at the National Level
11. Grants Pursuant to the State Key Technology Renovation Project Fund
12. Grants Pursuant to the “Famous Brands” Program
13. Subsidies to the Loss-Making SOEs by the GOC at the Provincial Level
14. Reduction in Exemption from the Fixed Assets Investment Orientation Regulatory Tax
15. VAT and Tariff Exemptions on Imported Equipment
16. Government Restraints on Exports of Yellow Phosphorus

## VII. FINAL RESULTS OF REVIEW

Commerce determines that revocation of the CVD order on phosphate salts from China would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

<u>Producer/Exporter</u>	<u>Ad Valorem Subsidy Rate</u>
Lianyungang Mupro Import Export Co Ltd.	109.11
Mianyang Aostar Phosphate Chemical Industry Co. Ltd.	109.11
Shifang Anda Chemicals Co. Ltd.	109.11
All Others	109.11

**VIII. RECOMMENDATION**

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of this expedited sunset review in the *Federal Register* and notify the ITC of our findings.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

3/2/2021

X



Signed by: CHRISTIAN MARSH  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance