



C-570-963  
Sunset Review  
**Public Document**  
Operations AD CVD Ops/Office VII/JA

September 28, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

**SUMMARY**

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty order (*CVD Order*) on potassium phosphate salts (Salts) from the People's Republic of China (PRC).<sup>1</sup> 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 that we address in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

Background

On July 22, 2010, the Department of Commerce (the Department) published the CVD order on Salts from the PRC.<sup>2</sup> On, June 1, 2015, the Department initiated the first sunset review of the *CVD Order* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.218(c).<sup>3</sup> ICL Performance Products, LP and Prayon, Inc. (collectively, Petitioners) filed a timely notice of intent to participate on June 11, 2015 in accordance with 19 CFR

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

<sup>2</sup> See *CVD Order*.

<sup>3</sup> See *Initiation of Five-Year "Sunset" Reviews*, 80 FR 31012 (June 1, 2015).



351.218(d)(1). On June 20, 2015, the Department received a substantive response from Petitioners, in accordance with 19 CFR 351.218(d)(3)(i).<sup>4</sup> The Department did not receive a substantive response from the Government of the PRC (GOC) or any response from PRC producers or exporters.

In accordance with 19 CFR 351.218(e)(1)(ii)(B)(2) and(C)(2), when there are inadequate responses from respondent interested parties, we “{n}ormally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the *Federal Register* of the notice of initiation, issue final results of review based on the facts available in accordance with 19 CFR 351.308(f) (*see* section 751(c)(3)(B) of the Act and 19 CFR 351.221(c)(5)(ii)).” Consistent with Department regulations and practice, we determine that in the absence of substantive responses from the GOC and other respondent interested parties (*i.e.*, producers and exporters), the Department is conducting an expedited (120-day) sunset review of the *CVD Order*.

### History of the Order

On July 22, 2010 the Department of Commerce (the Department) published, in the *Federal Register*, the CVD order on Salts from the PRC.<sup>5</sup> In the *Final Determination* of the subject CVD investigation,<sup>6</sup> covering the calendar year 2008, the Department 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,” for the programs described in the “Nature of the Subsidy” section of this memorandum.

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
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

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<sup>4</sup> See Letter to the Department, “Potassium Phosphate Salts from the People’s Republic of China: Substantive Response to Notice of Initiation of Five Year (First Sunset) Review of the Antidumping Duty and Countervailing Duty Orders,” dated July 1, 2015, (Petitioners’ Substantive Response).

<sup>5</sup> See *CVD Order*.

<sup>6</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) (*Final Determination*).

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 *CVD Order*, no administrative reviews, new shipper reviews, changed circumstance reviews or scope determinations of this *CVD Order* have been conducted. This is the first sunset review of the *CVD Order*.

### 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<sub>2</sub>O<sub>5</sub> 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<sub>2</sub>O<sub>5</sub> 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.

### **DISCUSSION OF THE ISSUES**

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *CVD Order* would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination the Department 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, the Department shall provide to the International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the *CVD Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC 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 (ASCM).

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

### Petitioners' Comments

Petitioners argue that revocation of the *CVD Order* would likely lead to the recurrence of imports of phosphate salts, which benefit from countervailable subsidies. Petitioners state that there is no indication that any of the programs providing countervailable subsidies were terminated or that benefits ceased following the imposition of CVD duties on subject imports from the PRC in 2010. Petitioners argue that, following the imposition of this *CVD Order* no PRC exporter has requested an administrative review in order to establish that it ceased receiving countervailable benefits. Furthermore, Petitioners argue that the PRC producers themselves – the parties with the actual knowledge – have failed to submit any evidence to show that the subsidy programs were terminated or that the companies no longer receive benefits.<sup>7</sup>

### Department's Position

Section 752(b)(1) of the Act directs the Department in determining the likelihood of continuation or recurrence of a countervailable subsidy 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 Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>8</sup> The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>9</sup> Additionally, the presence of programs that have not been used, but also 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>10</sup> Where a subsidy program is found to exist, the Department will normally determine that revocation of the *CVD Order* is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.<sup>11</sup>

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<sup>7</sup> See Petitioners Substantive Response at 15.

<sup>8</sup> See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

<sup>9</sup> *Id.*

<sup>10</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 Issues and Decision Memorandum at Comment 1.

<sup>11</sup> *Id.*

As the Department has stated in other sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.<sup>12</sup> The Department has further stated that, in order to determine whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.<sup>13</sup> The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.<sup>14</sup> Where a subsidy is not bestowed pursuant to a statute, regulation or decree, the Department may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.<sup>15</sup>

As indicated above, there have been no administrative reviews nor other intervening segments of this proceeding since issuance of the *CVD Order*. Moreover, neither the GOC nor other respondent interested parties participated in this sunset review. There is no information indicating any changes in the programs. Based on the facts on the record, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies if the *CVD Order* were revoked because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist.

## **2. Net Countervailable Subsidy Likely to Prevail**

### Petitioner Comments

Petitioner states that subject imports are not able to compete since the imposition of the order and that the Department should select the rate from the original investigation.

### Department's Position

Consistent with the SAA and legislative history, the Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because it is the only calculated rate that reflects

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<sup>12</sup> See, e.g., *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying Issues and Decision Memorandum at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

<sup>13</sup> See, e.g., *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>14</sup> See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>15</sup> See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011) and accompanying Issues and Decision Memorandum at Comment 1.

the behavior of exporters and foreign governments without the discipline of an order in place.<sup>16</sup>

Section 752(b)(1)(B) of the Act provides, however, that the Department will consider whether any change in the program 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.

Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.<sup>17</sup>

In this proceeding, the Department has not conducted any administrative reviews of the *CVD Order*, and the Department has not adjusted the rates from the investigation to account for additional subsidies, program-wide changes or terminated programs.

Consistent with section 752(b)(3) of the Act, the Department will provide to the ITC the net countervailable subsidy rates shown in the section entitled “Final Results of Review” below.

### **3. Nature of the Subsidy**

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

These programs are export subsidies as described in Article 3 of the SCM Agreement.

1. Income Tax Exemption for Export-Oriented FIEs: An FIE may continue to pay half of its applicable income tax rate following the expiration of the “Two Free, Three Half” period if exports constitute 70 percent of the company’s sales. Moreover, export-oriented enterprises in specially designated zones already eligible to pay half the standard income tax rate may receive a further rate reduction through this program.

2. Discounted Loans for Export Oriented Industries: Commercial banks in the PRC are permitted to lower lending rates by 10 percent off the rates established by the People’s Bank of China on loans provided to “Honorable Enterprises for Collection of Export Receipts of Foreign Exchange” (Honorable Enterprises). An Honorable Enterprise is defined as an enterprise with: (1) an annual export volume of at least \$200 million; (2) “ratios of export receipts of foreign exchange . . . above 85 (percent);” and (3) “ratios of surrendered verification forms of export receipts . . . above 80 (percent).”

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<sup>16</sup> See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement, but 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, a grant to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. Because there is insufficient information on the record to conclusively make this determination, the Department is providing to the ITC a list of the programs for which we applied adverse facts available to the non-cooperating respondents in the investigation. We are providing the ITC with the following program descriptions:

1. Preferential Tax Policies for Foreign Invested Enterprises (FIEs)(Two Free, Three Half Program): Under Article 8 of the Foreign Invested Enterprise and Foreign Enterprise Income Tax Law, an FIE is “productive” and is scheduled to operate for not less than 10 years may be exempt from income tax in the first two years of profitability and may pay income tax at half the standard rate for the next three years. This is known as the “Two Free, Three Half” program.
2. Income Subsidies for FIEs Based on Geographic Location: FIEs located in special designated locations (*e.g.*, coastal economic development zones, special economic zones, and economic and technical development zones) pay income tax at reduced rates.
3. Income Tax Exemption for Export-Oriented FIEs: An FIE may continue to pay half of its applicable income tax rate following the expiration of the “Two Free, Three Half” period if exports constitute 70 percent of the company’s sales. Moreover, export-oriented enterprises in specially designated zones already eligible to pay half the standard income tax rate may receive a further rate reduction through this program.
4. Local Income Tax Exemptions or Reduction Programs for “Productive” FIEs: Local provinces authorize their own tax exemptions to specific enterprises, *i.e.*, “productive” FIEs, within their jurisdiction.
5. Reduced Income Tax Rate for New or High Technology Enterprises: The GOC provides tax benefits to enterprises established in designated national new- or high-technology industrial development zones, as well as to FIEs established in designated national new- or high-technology industrial development zones.
6. Preferential Tax Policies for Research and Development by FIEs: FIEs engaged in research and development may offset 150 percent from that year’s taxable income (if such expenses have increased by at least ten percent over the previous year).
7. Income Tax Credits on Purchases of Domestically Produced Equipment: The GOC offers preferential income tax policies to domestic enterprises that upgrade their manufacturing operations with Chinese-made equipment. Domestic enterprises that upgrade technology consistent with the GOC industrial policies may deduct 40 percent of the cost of equipment from their next year's income tax obligation.

8. Subsidies to Loss-Making State-Owned Enterprises (SOEs) by the GOC at the National Level: The GOC, through grants and tax forgiveness, subsidizes SOEs to promote restructuring of companies that are operating at a loss.
9. Grants Pursuant to the State Key Technology Renovation Project Fund: The purpose of this subsidy program is to promote technological renovations and improvements in key industries. Companies receive payments in the form of “project investment facility” grants covering two years’ worth of interest payments on loans to fund improvement projects or as “loan interest grants” which are calculated according to the amount of the project loan and prevailing interest rates during a one-two year period.
10. Grants Pursuant to the “Famous Brands” Program: The GOC operates a program to support the development of “famous brands.”
11. Subsidies to the Loss-Making SOEs by the GOC at the Provincial Level: Local and provincial governments, through grants and tax forgiveness, subsidize SOEs which are operating at a loss.
12. Reduction in Exemption from the Fixed Assets Investment Orientation Regulatory Tax: Salts producers in the PRC are exempted from or receive preferential income tax rates on investments in fixed assets. These tax breaks apply to both new construction and upgrades in the encouraged industries.
13. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment: FIEs receive refunds on the VAT paid for purchases of domestically produced equipment that is classified in the Encouraged Category and the Restricted B Category of the Directive Category of Foreign-Funded Industries as well as purchases from domestic markets for investment projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State, which includes the chemical industry.
14. VAT and Tariff Exemptions on Imported Equipment: The State Councils’ Circular on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) exempts both FIEs and certain domestic enterprises from paying import tariffs and VAT payments on imported equipment provided that these goods are not for resale.
15. Government Restraints on Exports of Yellow Phosphorus: Domestic prices were only slightly lower than export prices until the imposition of the special export tax in May 2008. Since that time, domestic market prices in the PRC for yellow phosphorus have been consistently far below export prices.

## **FINAL RESULTS OF REVIEW**

The Department finds that revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Exporters	Net countervailable subsidy rate (percent)
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

**RECOMMENDATION:**

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

AGREE

DISAGREE

  
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 Paul Piquado  
 Assistant Secretary  
 for Enforcement and Compliance

28 SEPTEMBER 2015  
 Date