



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-714-001]

#### **Phosphate Fertilizers from the Kingdom of Morocco: Preliminary Affirmative Countervailing Duty Determination**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of phosphate fertilizers from the Kingdom of Morocco (Morocco). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Robert Palmer or Samuel Glickstein, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-9068 or (202) 482-5307, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on July 23, 2020.<sup>1</sup> On September 2, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now November 23, 2020.<sup>2</sup> For a

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<sup>1</sup> See *Phosphate Fertilizers from the Kingdom of Morocco and the Russian Federation: Initiation of Countervailing Duty Investigations*, 85 FR 44505 (July 23, 2020) (*Initiation Notice*).

<sup>2</sup> See *Phosphate Fertilizers from the Kingdom of Morocco and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 54535 (September 2, 2020).

complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.<sup>3</sup> A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

### Scope of the Investigation

The products covered by this investigation are phosphate fertilizers from Morocco. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the *Preamble* to Commerce's regulations,<sup>4</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).<sup>5</sup> No interested party submitted timely comments on the scope of the investigation as it appeared in the *Initiation Notice*.<sup>6</sup> Therefore, no changes were made to the scope of the investigation.

### Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines

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<sup>3</sup> *See* Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Phosphate Fertilizers from the Kingdom of Morocco," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>4</sup> *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>5</sup> *See Initiation Notice*.

<sup>6</sup> Commerce's Letter, re: "Countervailing Duty Investigation of Phosphate Fertilizers from Morocco: Rejection of Untimely Filed Scope Comments," dated August 24, 2020.

that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>7</sup>

#### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated an individual estimated countervailable subsidy rate for OCP S.A., the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis*, or based entirely on facts otherwise available, the estimated weighted-average rate calculated for OCP S.A. is the preliminary rate assigned to all-other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

#### Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

<b>Company</b>	<b>Subsidy Rate</b>
OCP S.A. <sup>8</sup>	23.46 percent
All-Others	23.46 percent

#### Suspension of Liquidation

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<sup>7</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>8</sup> As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with OCP S.A.: Jorf Fertilizers Company I, Jorf Fertilizers Company II, Jorf Fertilizers Company III, Jorf Fertilizers Company IV, Jorf Fertilizers Company V, and Maroc Phosphore.

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

#### Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

#### Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.<sup>9</sup> Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.<sup>10</sup> Pursuant to 19 CFR

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<sup>9</sup> See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements). See also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006, 17007 (March 26, 2020).

<sup>10</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

#### International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, the ITC will make its final injury determination before the later of 120 days after the date of Commerce's preliminary determination or 45 days after its final determination.

#### Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: November 23, 2020.

Joseph A. Laroski Jr.,  
Deputy Assistant Secretary for Policy and Negotiations.

## Appendix I

### Scope of the Investigation

The merchandise covered by this investigation is phosphate fertilizers in all physical forms (*i.e.*, solid or liquid form), with or without coating or additives such as anti-caking agents. Phosphate fertilizers in solid form are covered whether granular, prilled (*i.e.*, pelletized), or in other solid form (*e.g.*, powdered).

The covered merchandise includes phosphate fertilizers in the following forms: ammonium dihydrogenorthophosphate or monoammonium phosphate (MAP), chemical formula  $\text{NH}_4\text{H}_2\text{PO}_4$ ; diammonium hydrogenorthophosphate or diammonium phosphate (DAP), chemical formula  $(\text{NH}_4)_2\text{HPO}_4$ ; normal superphosphate (NSP), also known as ordinary superphosphate or single superphosphate, chemical formula  $\text{Ca}(\text{H}_2\text{PO}_4)_2 \cdot \text{CaSO}_4$ ; concentrated superphosphate, also known as double, treble, or triple superphosphate (TSP), chemical formula  $\text{Ca}(\text{H}_2\text{PO}_4)_2 \cdot \text{H}_2\text{O}$ ; and proprietary formulations of MAP, DAP, NSP, and TSP.

The covered merchandise also includes other fertilizer formulations incorporating phosphorous and non-phosphorous plant nutrient components, whether chemically-bonded, granulated (*e.g.*, when multiple components are incorporated into granules through, *e.g.*, a slurry process), or compounded (*e.g.*, when multiple components are compacted together under high pressure), including nitrogen, phosphate, sulfur (NPS) fertilizers, nitrogen, phosphorous, potassium (NPK) fertilizers, nitric phosphate (also known as nitrophosphate) fertilizers, ammoniated superphosphate fertilizers, and proprietary formulations thereof that may or may not include other nonphosphorous plant nutrient components. For phosphate fertilizers that contain non-phosphorous plant nutrient components, such as nitrogen, potassium, sulfur, zinc, or other non-phosphorous components, the entire article is covered, including the non-phosphorous content, provided that the phosphorous content (measured by available diphosphorous pentoxide, chemical formula  $\text{P}_2\text{O}_5$ ) is at least 5% by actual weight.

Phosphate fertilizers that are otherwise subject to this investigation are included when commingled (*i.e.*, mixed or blended) with phosphate fertilizers from sources not subject to this investigation. Phosphate fertilizers that are otherwise subject to this investigation are included when commingled with substances other than phosphate fertilizers subject to this investigation (*e.g.*, granules containing only non-phosphate fertilizers such as potash or urea). Only the subject component of such commingled products is covered by the scope of this investigation. The following products are specifically excluded from the scope of this investigation:

- (1) ABC dry chemical powder preparations for fire extinguishers containing MAP or DAP in powdered form;
- (2) industrial or technical grade MAP in white crystalline form with available  $\text{P}_2\text{O}_5$  content of at least 60% by actual weight;
- (3) industrial or technical grade diammonium phosphate in white crystalline form with available  $\text{P}_2\text{O}_5$  content of at least 50% by actual weight;
- (4) liquid ammonium polyphosphate fertilizers;
- (5) dicalcium phosphate, chemical formula  $\text{CaHPO}_4$ ;
- (6) monocalcium phosphate, chemical formula  $\text{CaH}_4\text{P}_2\text{O}_8$ ;

- (7) trisodium phosphate, chemical formula  $\text{Na}_3\text{PO}_4$ ;
- (8) sodium tripolyphosphate, chemical formula  $\text{Na}_5\text{P}_3\text{O}_{10}$ ;
- (9) prepared baking powders containing sodium bicarbonate and any form of phosphate;
- (10) animal or vegetable fertilizers not containing phosphate fertilizers otherwise covered by the scope of this investigation;
- (11) phosphoric acid, chemical formula  $\text{H}_3\text{PO}_4$ .

The Chemical Abstracts Service (CAS) numbers for covered phosphate fertilizers include, but are not limited to: 7722-76-1 (MAP); 7783-28-0 (DAP); and 65996-95-4 (TSP). The covered products may also be identified by Nitrogen-Phosphate- Potash composition, including but not limited to: NP 11-52-0 (MAP); NP 18-46-0 (DAP); and NP 0-46-0 (TSP).

The covered merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3103.11.0000; 3103.19.0000; 3105.20.0000; 3105.30.0000; 3105.40.0010; 3105.40.0050; 3105.51.0000; and 3105.59.0000. Phosphate fertilizers subject to this investigation may also enter under subheadings 3103.90.0010, 3105.10.0000, 3105.60.0000, 3105.90.0010, and 3105.90.0050. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

## **Appendix II**

### **List of Topics Discussed in the Preliminary Decision Memorandum**

- I. Summary
- II. Background
- III. Injury Test
- IV. Subsidies Valuation
- V. Benchmarks and Interest Rates
- VI. Analysis of Programs
- VII. Recommendation

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