



DEPARTMENT OF COMMERCE

International Trade Administration

[C-821-825]

Phosphate Fertilizers from the Russian Federation: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of phosphate fertilizers from the Russian Federation (Russia).

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

FOR FURTHER INFORMATION CONTACT: George Ayache or William Horn, 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) 482-2623 or (202) 482-4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2020, Commerce published its *Preliminary Determination*.¹ On December 21, 2020, Commerce released its Post-Preliminary Analysis.² For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.³ The Issues and Decision Memorandum is a public document and is

¹ See *Phosphate Fertilizers from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination*, 85 FR 76524 (November 30, 2020) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

² See Memorandum, “Decision Memorandum for the Post-Preliminary Analysis of the Countervailing Duty Investigation of Phosphate Fertilizers from the Russian Federation,” dated December 21, 2020 (Post-Preliminary Analysis).

³ See Memorandum, “Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Phosphate Fertilizers from the Russian Federation,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

made available to the public 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 Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

Scope of the Investigation

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

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination*. Therefore, no changes were made to the scope of the investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines 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.⁴ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts available pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because one or more respondents did not act to the best of their ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. For further information, see the section “Use of Facts Otherwise Available and Adverse Inferences” in the accompanying Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.⁵

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to Industrial Group Phosphorite LLC (Phosphorite) and Joint Stock Company Apatit (JSC Apatit)’s subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy Rate <i>ad valorem</i> (percent)
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⁴ *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.

⁵ *See* Commerce’s Letters, “Countervailing Duty Investigation of Phosphate Fertilizers from the Russian Federation: Supplemental Questionnaire in Lieu of On-Site Verification,” dated December 18, 2020; *see also* EuroChem Group’s Letter, “Phosphate Fertilizers from Russia,” dated December 28, 2020; and PhosAgro PJSC’s Letter, “Countervailing Duty Investigation of Phosphate Fertilizers from Russia: PhosAgro PJSC In Lieu-of Verification Questionnaire Response,” dated December 29, 2020.

Industrial Group Phosphorite LLC ⁶	47.05
Joint Stock Company Apatit ⁷	9.19
All Others	17.20

All-Others Rate

We continue to calculate the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company’s publicly-ranged data for the value of their exports to the United States of subject merchandise, in accordance with section 705(c)(5)(A)(i) of the Act.⁸

Disclosure

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

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection 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 November 30, 2020, the date of publication of the *Preliminary Determination* in the *Federal Register*.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and require a cash deposit of estimated countervailing

⁶ Commerce has found the following companies to be cross-owned with Phosphorite: Mineral and Chemical Company EuroChem, JSC; NAK Azot, JSC; EuroChem Northwest, JSC; Joint Stock Company Kovdorksy GOK; EuroChem-Energo, LLC; EuroChem-Usolsky Potash Complex, LLC; EuroChem-BMU, LLC; JSC Nevinnomyssky Azot; and EuroChem Trading Rus, LLC.

⁷ Commerce has found the following companies to be cross-owned with JSC Apatit: PhosAgro PJSC; PhosAgro-Belgorod LLC; PhosAgro-Don LLC; PhosAgro-Kuban LLC; PhosAgro-Kursk LLC; PhosAgro-Lipetsk LLC; PhosAgro-Orel LLC; PhosAgro-Stavropol LLC; PhosAgro-Volga LLC; PhosAgro-SeveroZapad LLC; PhosAgro-Tambov LLC; and Martynovsk AgrokhimSnab LLC.

⁸ For discussion of the calculation of this rate, see Memorandum, “Countervailing Duty Investigation of Phosphate Fertilizers from the Russian Federation: Final Determination Calculation of the All-Others Rate,” dated February 8, 2021.

duties for entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of phosphate fertilizers from Russia. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured or threatened with material injury. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: February 8, 2021.

Christian Marsh,
Acting Assistant Secretary
for Enforcement and Compliance.

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 pentaoxide, chemical formula P_2O_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 P_2O_5 content of at least 60% by actual weight;
- (3) industrial or technical grade diammonium phosphate in white crystalline form with available P_2O_5 content of at least 50% by actual weight;
- (4) liquid ammonium polyphosphate fertilizers;
- (5) dicalcium phosphate, chemical formula CaHPO_4 ;
- (6) monocalcium phosphate, chemical formula $\text{CaH}_4\text{P}_2\text{O}_8$;

- (7) trisodium phosphate, chemical formula Na_3PO_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 H_3PO_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 Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Use of Facts Otherwise Available and Adverse Inferences
- IV. Subsidies Valuation
- V. Benchmarks and Interest Rates
- VI. Analysis of Programs
- VII. Analysis of Comments
 - Comment 1: Whether Commerce's Rejection of PhosAgro's Extension Request to Submit Case and Rebuttal Briefs Was Unreasonable
 - Comment 2: Whether the Mining Rights for Less than Adequate Remuneration (LTAR) Program Is Countervailable
 - Comment 2a: Whether the Mining Rights for LTAR Program Constitutes a Financial Contribution
 - Comment 2b: Whether the Mining Rights for LTAR Program Is Specific
 - Comment 2c: Whether the Mining Rights for LTAR Program Confers a Benefit
 - Comment 2d: Whether Mining Rights Provided Prior to the Non-Market Economy "Cut-off" Date Should Be Included in the Mining Rights for LTAR Calculation
 - Comment 2e: Whether Commerce Should Include Freight, Value Added Taxes (VAT), and Import Duties in the Mining Rights Benchmark
 - Comment 2f: Whether the Calculation Methodology of the Mining Rights for LTAR Program Was Appropriate
 - Comment 3: Whether the Natural Gas for LTAR Program Is Countervailable
 - Comment 3a: Whether PJSC Gazprom (Gazprom) Is a Government Authority that Provides a Financial Contribution
 - Comment 3b: Whether Oil Company Rosneft, Public Joint Stock Company (Rosneft) Is a Government Authority that Provides a Financial Contribution
 - Comment 3c: Whether the Saint Petersburg International Commodity Exchange (SPIMEX) Is a Government Authority that Provides a Financial Contribution
 - Comment 3d: Whether the Provision of Natural Gas by Gazprom Is Specific
 - Comment 3e: Whether the Provision of Natural Gas by SPIMEX Is Specific
 - Comment 3f: Whether the Provision of Natural Gas for LTAR Confers a Benefit
 - Comment 3g: Whether Commerce Should Adjust the Natural Gas Benchmark to "Tier One"
 - Comment 3h: Whether Commerce Should Adjust the Natural Gas Benchmark to "Tier Two"
 - Comment 3i: Whether Commerce Should Change the Data Relied Upon in its Natural Gas Benchmark "Tier Three" Analysis
 - Comment 3j: Whether Commerce Should Adjust the Natural Gas Benchmark Data in its "Tier Three" Analysis.
 - Comment 3k: Whether Commerce Should Use a VAT Inclusive Sales Denominator
 - Comment 3l: Whether 19 CFR 351.525(b)(6) Applies to EuroChem's Natural Gas for LTAR
 - Comment 3m: Whether Commerce Should Consider the Relative Consumption of Natural Gas in the Production of Subject Merchandise for Purposes of Attribution
 - Comment 3n: Whether Commerce Should Use EuroChem's 2019 Audited Financials for Its Sales Denominators

- Comment 3o: Whether the Delivery Cost of SPIMEX Natural Gas from EuroChem-Energo LLC (Energo) to JSC Nevinnomyssky Azot (Nevinka) and EuroChem Northwest JSC (EuroChem NW) Should Be Considered in Any Natural Gas Subsidy Calculation
- Comment 4: Whether the Tax Incentives for Mining Operations – Income Tax Deduction for Exploration Expenses Program Is Specific
- Comment 5: Whether the Income Tax Deduction for Research and Development (R&D) Expenses Is Specific
- Comment 6: Whether the Regional Support of Industrial Development Programs, the Special Investment Contract (SPIC) with Perm Krai, and the Preferential Debt Financing of Projects Aimed at Introducing the Best Available Technologies Program Are Specific
- Comment 7: Whether Commerce Used the Appropriate Denominator to Calculate PhosAgro’s Subsidy Rates

VIII. Recommendation

[FR Doc. 2021-03010 Filed: 2/12/2021 8:45 am; Publication Date: 2/16/2021]