

Department of Commerce

International Trade Administration

(C570963)

Certain Potassium Phosphate Salts from the People's Republic of China:  
Preliminary Affirmative Countervailing Duty Determination and Alignment of Final  
Countervailing Duty Determination with Final Antidumping Duty Determination

AGENCY:

Import Administration, International Trade Administration, Department of  
Commerce.

SUMMARY:

The Department of Commerce (the Department) preliminarily determines that  
countervailable subsidies are being provided to producers and exporters of  
certain potassium phosphate salts from the People's Republic of China  
(PRC).<sup>1</sup> For information on the estimated subsidy rates, see the  
Suspension of Liquidation section of this notice. See the Disclosure and Public  
Comment section, below, for procedures on filing comments regarding this  
preliminary determination.

<sup>1</sup>The name of this investigation was changed from Certain Sodium and Potassium  
Phosphate Salts from the People's Republic of China to Certain Potassium  
Phosphate Salts from the People's Republic of China as a result of the U.S.  
International Trade Commission's (ITC) preliminary determination of no material  
injury or threat of material injury with regard to imports of sodium  
tripolyphosphate from the PRC. See the section Case History, below; see also  
Memorandum to the File, Certain Potassium Phosphate Salts from the People's  
Republic of China, dated November 20, 2009, a public document on file in the  
Department's Central Records Unit (CRU) in Room 1117 of the main Commerce  
building. Public versions of all memoranda cited in this notice are on file in  
the CRU.

EFFECTIVE DATE:

(Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT:

Andrew Huston or Gene Calvert, AD/CVD Operations, Office 6, Import  
Administration, International Trade Administration, U.S. Department of Commerce,  
14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202)  
4824261 and (202) 4823586, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On October 14, 2009, the Department initiated a countervailing duty (CVD) investigation of Certain Sodium and Potassium Phosphate Salts from the PRC. See Certain Sodium and Potassium Phosphate Salts From the People's Republic of China: Initiation of Countervailing Duty Investigation, 74 FR 54778 (October 23, 2009) (Initiation Notice). On November 9, 2009, the Department selected Hubei Xingfa Chemicals Group Co., Ltd. (Xingfa), and Jiangsu Chengxing PhosphChemicals Co., Ltd. (Jiangyin Chengxing) as mandatory company respondents. See Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Selection of Respondents for the Countervailing Duty Investigation of Certain Sodium and Potassium Phosphate Salts from the People's Republic of China, dated November 9, 2009. On November 10, 2009 the Department issued a CVD questionnaire to the Government of the People's Republic of China (GOC), requesting that the GOC forward the company sections of the questionnaire to Xingfa and to Jiangyin Chengxing.

In its initiation, the Department determined that there was a single class or kind of merchandise. See Countervailing Duty Initiation Checklist: Certain Sodium and Potassium Phosphate Salts, dated October 19, 2009 (Initiation Checklist). On November 21, 2009, the ITC issued its preliminary determination and found that there were four domestic like products: Sodium Tripolyphosphate (STPP), Monopotassium Phosphate (MKP), Dipotassium Phosphate (DKP) and Tetrapotassium Pyrophosphate (TKPP). See Investigations Nos. 701TA473 and 731TA1173 (Preliminary), Certain Sodium and Potassium Phosphate Salts from China, 74 FR 61173 (November 23, 2009) (ITC Salts Preliminary). The ITC determined that the industry producing MKP is materially injured or threatened with material injury, and that industries producing DKP and TKPP are threatened with material injury. The ITC made a negative determination regarding STPP, finding no reasonable indication that the industry producing STPP is materially injured or threatened with material injury.

As a result of the ITC's negative determination for STPP, and comments received from Xingfa and Jiangyin Chengxing, the Department rescinded its selection of Xingfa and Jiangyin Chengxing as mandatory company respondents because these companies produced and exported only, or mostly, STPP. See Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Reselection of Respondents in the Countervailing Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China, dated December 3, 2009 (Reselection Memorandum). The Department also changed the name of this investigation to Certain Potassium Phosphate Salts from the People's Republic of China. See Memorandum to the File, Certain Potassium Phosphate Salts from the People's Republic of China, dated November 20, 2009. In the Reselection Memorandum, based on U.S. Customs and Border Protection (CBP) data for potassium phosphate salts, the Department then selected Lianyungang Mupro Import Export Co., Ltd. (Mupro), Mianyang Aostar Phosphate Chemical Industry Co., Ltd. (Aostar), and Shifang Anda Chemicals Co., Ltd. (Anda), the largest (by volume) publicly identifiable Chinese producers/exporters of subject merchandise during the period of investigation (POI), as the new mandatory company respondents in this investigation. See Reselection Memorandum. The Department informed the GOC of its decision on December 3, 2009, and issued CVD questionnaires to Mupro, Aostar, and Anda (hereinafter, mandatory company respondents) on December 4, 2009, confirming receipt thereof through FedEx. See Memorandum to the File, Certain Potassium Phosphate Salts from the People's Republic of China Respondent Questionnaire Proof of Delivery, dated December 15, 2009. Neither the GOC, nor the three mandatory company respondents, submitted

any responses to the Department's questionnaires.

At the request of ICL Performance Products LP and Prayon, Inc. (Petitioners), on November 25, 2009, we postponed the preliminary determination in this investigation until February 21, 2010, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). See Certain Potassium Phosphate Salts From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation, 74 FR 63722 (December 4, 2009). On February 12, 2010, the Department exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. See Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, regarding Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010. Based on this memorandum, the revised deadline for the preliminary determination of this investigation is now February 28, 2010. However, since this date falls on a weekend, the date of signature for this preliminary determination is March 1, 2010.

On February 18, 2010, Petitioners requested that the final determination of this CVD investigation be aligned with the final determination in the companion antidumping duty (AD) investigation, in accordance with section 705(a)(1) of the Act.

#### Injury Test

Because the PRC is a Subsidies Agreement Country within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On November 9, 2009 the ITC transmitted its preliminary determination to the Department. On November 23, 2009, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States producing MKP is materially injured or threatened with material injury, and industries in the United States producing DKP and TKPP are threatened with material injury by reason of allegedly subsidized imports from the PRC of subject merchandise. See ITC Salts Preliminary. As noted above, the ITC found that there is no reasonable indication that an industry producing STPP is materially injured by reason of imports alleged to be subsidized by the PRC. See ITC Salts Preliminary.

#### Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

In addition to this CVD investigation, there is a companion AD investigation. See Certain Sodium and Potassium Phosphate Salts From the People's Republic of China: Initiation of Antidumping Duty Investigation, 74 FR 54024 (October 21, 2009). The CVD investigation and the AD investigation have the same scope with regard to the merchandise covered. As noted above, on February 18, 2010, the Petitioners submitted a letter requesting alignment of the final CVD determination with the final determination in the companion AD investigation of Certain Potassium Phosphate Salts from the People's Republic of China, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4). Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the due date for the final CVD determination with

the due date for the final AD determination, which is currently scheduled to be issued no later than May 24, 2010.

#### Scope of the Investigation

The phosphate salts covered by this investigation include anhydrous MKP, anhydrous DKP and 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 7320345. 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).

MKP, also known as potassium dihydrogen phosphate, KDP, or monobasic potassium phosphate, is a potassium salt with the formula  $KH_2PO_4$ . The CAS registry number for MKP is 7778770. MKP is typically 22.7% phosphorus, 28.7% potassium and 52%  $P_2O_5$ . MKP is classified under heading 2835.24.0000, 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 7758114. 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 investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The products covered by this investigation include anhydrous MKP and 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 investigation, 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.

#### Scope Comments

As explained in the preamble to the Department's regulations, we set aside a period of time in the Initiation Notice for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of publication of that notice. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997); and Initiation Notice, 74 FR at 54779. No such comments were filed on the record of either this investigation or the companion antidumping duty investigation.

#### Period of Investigation

The period covered by this investigation (i.e., the POI) is calendar year 2008 (January 1, 2008 through December 31, 2008).

#### Application of Facts Otherwise Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply facts otherwise available if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in a form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding or; (D) provides information that cannot be verified as provided by section 782(i) of the Act. In the instant case, the GOC did not respond to the Department's November 10, 2009 CVD investigation questionnaire and the three mandatory company respondents, Mupro, Aostar, and Anda, did not respond to the Department's December 04, 2009 CVD investigation questionnaire. As a result, the GOC and the three mandatory company respondents did not provide the requested information that is necessary for the Department to determine whether the mandatory company respondents benefitted from countervailable subsidies and to calculate a CVD rate for this preliminary determination. Therefore, in reaching this preliminary determination, pursuant to section 776(a)(2)(C) of the Act, the Department has based the CVD rates for Mupro, Aostar, and Anda on facts otherwise available.

#### Application of an Adverse Inference

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because the GOC and the mandatory company respondents chose not to respond to the Department's CVD investigation questionnaire, the Department preliminarily determines that the GOC, Mupro, Aostar, and Anda did not cooperate to the best of their ability in this investigation and that, in selecting from among the facts available, an adverse inference is warranted (i.e., adverse facts available (AFA)), pursuant to section 776(b) of the Act.

#### Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. In this case, no appropriate information was placed on the record of this investigation from which to select appropriate AFA rates for any of the subject programs, and, because this is an investigation, we have no previous segments of this proceeding from which to draw potential AFA rates. Therefore, we are applying the policy developed in prior CVD investigations of the PRC. See, e.g., Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 38981 (July 8, 2008) (Sodium Nitrite from the PRC) to the 16 programs under investigation.

Specifically, with regard to income tax reduction or exemption programs, information from the petition indicates that during the POI, the standard income tax for corporations in China was 30 percent; there was an additional local income tax rate of three percent. See the September 24, 2009 Letter to the Secretary of Commerce, Petition for the Imposition of Antidumping and Countervailing Duties on Certain Sodium and Potassium Phosphate Salts from the People's Republic of China, Volume 4, Exhibit CVD1. To determine the program rate for the five alleged income tax programs under which companies received either a reduction of the income tax rate, or an exemption from income tax, we have applied an adverse inference that Mupro, Aostar, and Anda each paid no

income taxes during the POI. Therefore, the highest possible countervailable subsidy rate for the five national, provincial, and local income tax programs subject to this investigation combine to total 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for the 5 income tax programs (i.e., the five income tax programs combined provided a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to other types of tax programs.

For programs other than those involving income tax exemptions and reductions, we applied the highest nonde minimis rate calculated for the same or similar program in another PRC CVD investigation. Absent an above de minimis subsidy rate calculated for the same or similar program, we applied the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the mandatory company respondents. See, e.g., *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012, 37013 (July 27, 2009); see also *Sodium Nitrite from the PRC*.

For a discussion of the application of the individual AFA rates for programs preliminarily determined to be countervailable, see Memorandum to the File, *Application of Adverse Facts Available Rates for Preliminary Determination*, dated concurrently with this notice (PRC Salts Calculation Memorandum). Attachment II of this memorandum contains relevant sections of *China CFS Final; Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum; and *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) and accompanying Issues and Decision Memorandum, which contain the public information concerning subsidy programs, including the subsidy rates, upon which we are relying as AFA.

#### Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. See SAA at 870. The SAA provides that to corroborate secondary information, the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869870.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on companyspecific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a

countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as adverse facts available. See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained that contradicts the relevance of the information relied upon in a prior China CVD investigation. Therefore, in the instant case, the Department preliminarily finds that the information used has been corroborated to the extent practicable.

#### Programs Preliminarily Determined to be Countervailable

As discussed above, as adverse facts available, we are making the adverse inference that Mupro, Aostar, and Anda each received countervailable subsidies under the 16 subsidy programs that the Department included in its initiation. For a description of these 16 programs, see the Initiation Checklist. For the identification of the source of each program's AFA rate for this countervailing duty investigation, see PRC Salts Calculation Memorandum at Attachment II.

Listed below are the AFA rates applicable to each program.

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#### Subsidy Rate

##### Income Tax Rate Exemption/Reduction Programs

1. Two Free, Three Half Tax Exemption for Foreign Invested Enterprises (FIEs)
2. Income Tax Subsidies for FIEs based on Geographic Location
3. Income Tax Exemption Programs for Export Oriented FIEs
4. Local Income Tax Exemptions or Reduction Programs for Productive FIEs
5. Reduced Income Tax Rate for High- and NewTechnology Enterprises  
33.00&percnt;

##### GOC Tax Credit Programs

6. Preferential Tax Policies for Research and Development by FIEs  
1.51&percnt;
7. Income Tax Credit on Purchases of Domestically Produced Equipment  
1.51&percnt;

##### GOC Grant Programs

8. Subsidies to LossMaking StateOwned Enterprises (SOEs) by the GOCat the National Level  
13.36&percnt;
9. Grants Pursuant to the State Key Technology Renovation Project Fund

13.36&percent;

10. Grants Pursuant to the Famous Brands Program  
13.36&percent;

Provincial Grant Program

11. Subsidies to LossMaking SOEs by the GOC at the Provincial Level  
13.36&percent;

Indirect Tax Exemption/Reduction Programs

12. Reduction in or Exemption from the Fixed Assets Investment Orientation Tax  
1.51&percent;

13. Value Added Tax (VAT) Refund for FIEs Purchasing Domestically Produced  
Equipment  
1.51&percent;

VAT and Tariff Exemption on Imported Equipment

14. VAT and Tariff Exemptions on Imported Equipment  
1.51&percent;

Preferential Export Lending

15. Discounted Loans for Export Oriented Industries (Honorable Industries)  
1.76&percent;

Export Restraints

16. Export Restraints on Yellow Phosphorus  
13.36&percent;

Summarizing these rates yields a total CVD subsidy rate of 109.11&percent; ad  
valorem.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have assigned a  
subsidy rate to each of the three producers/exporters of the subject merchandise  
that were selected as mandatory company respondents in this CVD investigation.  
We preliminarily determine the total countervailable subsidy to be:

<GPOTABLE COLS="2" OPTS="L2,i1" CDEF="s50,26">

Producer/Exporter

Countervailable Subsidy Rate

Lianyungang Mupro Import Export Co Ltd.  
109.11 percent ad valorem

Mianyang Aostar Phosphate Chemical Industry Co. Ltd.  
109.11 percent ad valorem

Shifang Anda Chemicals Co. Ltd.  
109.11 percent ad valorem

AllOthers  
109.11 percent ad valorem

With respect to the allothers rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an allothers rate for exporters and producers not individually investigated. In this case, the rate calculated for the three investigated companies is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which to determine an allothers rate. As a result, we have used the AFA rate assigned for Mupro, Aostar, and Anda as the allothers rate. This method is consistent with the Department's past practice. See, e.g., Final Affirmative Countervailing Duty Determination: Certain HotRolled Carbon Steel Flat Products From Argentina, 66 FR 37007, 37008 (July 16, 2001); see also Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India, 68 FR 68356 (December 8, 2003); see also Sodium Nitrite from the PRC.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of the subject merchandise from the PRC, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating 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, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

#### Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the information on which it relied to determine the subsidy rates for this preliminary determination within five days of its announcement. No party has submitted a notice of appearance on behalf of the GOC or the mandatory company respondents, and questionnaire responses were not submitted in this investigation by either the GOC or the three mandatory company respondents. Thus, the Department does not intend to conduct verification proceedings in this countervailing duty investigation. For these reasons, the due date for interested parties to submit case briefs will be 50 days from the date of

publication of the preliminary determination. See 19 CFR 351.309(c)(i). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages, and a table of statutes, regulations, and cases cited pursuant to 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case briefs are filed in accordance with 19 CFR 351.309(d).

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request, pursuant to 19 CFR 351.301(c), within 30 days of the publication of this notice in the Federal Register, to the Assistant Secretary for Import Administration, Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Pursuant to 19 CFR 351.310(c), parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants and; (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: March 1, 2010.

Carole A. Showers,

Acting Deputy Assistant Secretary  
for Import Administration.

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