

Trade Zones Board (the Board) adopts the following Order:

The Foreign–Trade Zones (FTZ) Board (the Board) has considered the application (filed 03/17/2010) submitted by the Southern California Logistics Airport Authority, grantee of FTZ 243, requesting reissuance of the grant of authority for said zone to the City of Victorville, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board’s regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the City of Victorville as the new grantee of Foreign–Trade Zone 243, subject to the FTZ Act and the Board’s regulations, including Section 400.28. The Secretary of Commerce, as Chairman of the Board, is hereby authorized to issue an appropriate Board Order.

Signed at Washington, DC, this 20th day of April 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration/Alternate Chairman Foreign–Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–10621 Filed 5–4–10; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 28–2010]

Foreign–Trade Zone 29 - Louisville, Kentucky, Application for Subzone, Louisville Bedding Company (Household Bedding Products), Louisville and Munfordville, Kentucky

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Louisville & Jefferson County Riverport Authority, grantee of FTZ 29, requesting special–purpose subzone status for the bedding products manufacturing facilities of Louisville Bedding Company (LBC) located in Louisville and Munfordville, Kentucky. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 26, 2010.

The LBC facilities (530 employees) consist of three sites: *Site 1* - manufacturing plant and warehouse (26.1 acres) located at 10400 Bunsen

Way, Louisville; *Site 2* - warehouse (4.3 acres) located at 100 Quality Street, Munfordville; and, *Site 3* - manufacturing plant and warehouse (27.7 acres) located at 660 National Turnpike, Munfordville, Kentucky. The facilities are used to manufacture household bedding products, including mattress pads and pillows (up to 10 million pillows and 10 million mattress pads annually) for the U.S. market and export. LBC is requesting authority to utilize foreign–origin wide roll (80 inches and wider), high thread count (180 threads per inch and higher) cotton, polyester, and synthetic woven fabric and pillow shells (classified under HTSUS Headings 5208, 5210, 5512, 5513, and 6307; duty rate range: 7 - 14.9%) to be cut, sewn, quilted and assembled into the bedding products noted above under FTZ procedures.

FTZ procedures could exempt LBC from customs duty payments on the foreign–origin fabrics and pillow shells used in export production. On its shipments for the domestic market, the finished household bedding products would be entered for consumption from the proposed subzone classified under HTSUS 9404.90, and LBC is seeking authority to elect the various finished bedding product duty rates (4.4 - 7.3%, *ad valorem*) for the foreign–origin fabric and pillow shell material inputs. Domestic–status fibers would be used to fill the foreign pillow shells. The application indicates that the savings from FTZ procedures would help improve the facilities’ international competitiveness.

In accordance with the Board’s regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board’s Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is July 6, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 19, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board’s Executive Secretary at the address listed above and in the “Reading Room” section of the Board’s website,

which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482–1378.

Dated: April 26, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–10614 Filed 5–4–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–962]

Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik at (202) 482–6905, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On March 16, 2010, the Department of Commerce (“Department”) published its preliminary determination in the antidumping duty investigation of certain potassium phosphate salts (“salts”) from the People’s Republic of China (“PRC”). See *Certain Potassium Phosphate Salts From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 75 FR 12508 (March 16, 2010) (“*Preliminary Determination*”).

On April 2, 2010, Petitioners¹ filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of the merchandise under consideration.

In accordance with 19 CFR 351.206(c)(1), when a critical circumstances allegation is filed 30 days or more before the scheduled date of the final determination (as was done in this case), the Department will issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Because the critical circumstances allegation in this case was submitted after the preliminary determination was published, the Department must issue

¹ ICL Performance Products LP and Prayon, Inc.

our preliminary findings of critical circumstances not later than 30 days after the allegation was filed. See 19 CFR 351.206(c)(2)(ii).

Legal Framework

Section 733(e)(1) of the Tariff Act of 1930, as amended (“Act”), provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and; (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ * * * have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.

Allegation

In their allegation, Petitioners contend that, based on the dumping margins assigned by the Department in the *Preliminary Determination*, importers knew or should have known that the merchandise under consideration was being sold at less than fair value (“LTFV”). Petitioners also contend that, based on the preliminary determination of injury by the U.S. International Trade

Commission (“ITC”), there is a reasonable basis to impute importers’ knowledge that material injury is likely by reason of such imports. In their allegation, Petitioners included import statistics for the three different “like products” covered by the scope of this investigation for the period between June 2009 and January 2010. See Petitioners’ Allegation, dated April 2, 2010, at 10–11.

Analysis

The Department’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to the Department, such as: (1) The evidence presented in Petitioners’ critical circumstances allegation; (2) import statistics released by the ITC, and (3) shipment information submitted to the Department by the respondents selected for individual examination.² Here, in determining whether the above statutory criteria have been satisfied in this case, we examined: (1) The evidence presented in Petitioners’ April 2, 2010, allegation; and (2) evidence obtained since the initiation of this investigation, and (3) the ITC’s preliminary injury determination.

Section 733(e)(1)(A)(i) of the Act: History of Dumping and Material Injury by Reason of Dumped Imports in the United States or Elsewhere of the Subject Merchandise

In determining whether a history of dumping and material injury exists, the Department generally has considered current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country. *Id.* In this case, the Department is not aware of any antidumping duty order on subject merchandise from the PRC in any country. Therefore, the Department finds no history of injurious dumping of subject merchandise from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 73 FR 31970 (June 5, 2008) (“Carbon Steel Pipe”); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049 (January 14, 2009) (“SDGE”).

Section 733(e)(1)(A)(ii): The Importer Knew or Should Have Known That Exporter Was Selling at Less Than Fair Value and That There Was Likely To Be Material Injury

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC’s preliminary injury determination.

The Department normally considers margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.³ The Department preliminarily determined margins of 69.58 percent for the non-selected separate-rate applicants and 95.40 percent for the PRC-wide entity, which includes the mandatory respondents. Therefore, as we preliminarily determined margins greater than 25 percent for all producers and exporters, we preliminarily find, with respect to all producers and exporters, that there is a reasonable basis to believe or suspect that importers knew, or should have known, that exporters were selling subject merchandise at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.⁴ Here, the ITC found that “there is a reasonable indication that an industry producing monopotassium phosphate

³ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002); *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 5606 (February 3, 2005).

⁴ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002); *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 5606 (February 3, 2005).

(“MKP”), is materially injured or threatened with material injury.”⁵ The ITC also found that “there is a reasonable indication that industries producing dipotassium phosphate (‘DKP’) and tetrapotassium pyrophosphate (‘TKPP’), are threatened with material injury.” *Id.* Where the ITC finds threat of material injury, the Department also considers such factors as: (1) The extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and (2) the magnitude of the dumping margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely.⁶ In this case, import volume data from ITC’s Dataweb shows an increase of 86.1 percent in salts imports from the PRC during the comparison period, more than five times the increase needed to find massive imports. *See* Petitioners’ Allegation at 10. Furthermore, the preliminary dumping margins are significantly greater than 25 percent. Therefore, the Department preliminarily finds that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of sales at LTFV of subject merchandise from the PRC.

Section 733(e)(1)(B): Whether There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

Pursuant to 19 CFR 351.206(h)(2), the Department will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. The Department normally considers a “relatively short period” as the period beginning on the date the proceeding begins and ending at least three months later. *See* 19 CFR 351.206(i). For this reason, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the

petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”).

In their April 2, 2010, allegation, Petitioners maintained that importers, exporters, or foreign producers gained knowledge that this proceeding was possible when the petition for an antidumping duty investigation was filed on September 24, 2009. *See* Petitioners’ April 2, 2010, submission at 5–9. Moreover, Petitioners noted that when a petition is filed in the second half of a month, the month following the filing is treated as part of the post-petition period. Petitioners also included in their allegation U.S. import data collected from the ITC’s Dataweb. Based on this data, Petitioners provided data for a four-month base period (June 2009 through September 2009) and a four-month comparison period (October 2009 through January 2010) in showing whether imports were massive.

Based on the date of the filing of the petition, *i.e.*, September 24, 2009, which is in the second half of the month, the Department agrees with Petitioners that October 2009 is the month in which importers, exporters, or producers knew or should have known an antidumping duty investigation was likely, and falls within the comparison period. According to 19 CFR 351.206(i), the base and comparison periods normally should be at least three months.

Adverse Facts Available (“AFA”)

In this investigation, the Department selected SD BNI(LYG) Co. Ltd. (“SD BNI”) and Sichuan Blue Sword Import & Export Co., Ltd. (“Sichuan Blue Sword”) as mandatory respondents in this investigation.⁷ In the *Preliminary Determination*, the Department determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department’s request for information, including Sichuan Blue Sword, one of the mandatory respondents. Therefore, we treated these PRC exporters/producers, including Sichuan Blue Sword, as part of the PRC-wide entity because they did not qualify for a separate rate. *See Preliminary Determination* at 75 FR 12508, 12512. Further, information on the record indicates that the PRC-wide entity was non-cooperative because certain

companies did not respond to our requests for information. *Id.* As a result, pursuant to section 776(a)(2)(A) and 776(b) of the Act, we preliminarily found that the use of AFA was warranted to determine the PRC-wide rate. *Id.* As AFA, we preliminarily assigned to the PRC-wide entity a rate of 95.40 percent, which is the highest margin alleged in the Petition. *Id.*

Furthermore, pursuant to sections 776(a)(2)(A), (B), and (C) and 776(b) of the Act, we preliminarily applied AFA to SD BNI, the other mandatory respondent, because we found that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to SD BNI. We preliminarily found that SD BNI failed to provide the information requested by the Department in a timely manner and in the form required, and significantly impeded the Department’s ability to calculate an accurate margin for SD BNI. The Department was unable to calculate a margin without the necessary information, requiring the application of facts otherwise available to SD BNI for the purpose of the *Preliminary Determination*. *Id.* at 12513 Therefore, because SD BNI was selected as a mandatory respondent and failed to submit the information required, SD BNI did not receive a separate rate and remains part of the PRC-wide entity. *Id.*

PRC-Wide Entity

Because the PRC-wide entity did not respond to the Department’s antidumping questionnaire, we did not obtain shipment data from the PRC-wide entity for purposes of our critical circumstances analysis and therefore there is no verifiable information on the record with respect to its export volumes. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Furthermore, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department

⁵ *See Investigation Nos. 701-TA-473 and 731-TA-1173 (Preliminary) Certain Sodium and Potassium Phosphate Salts From China*, 74 FR 61173 (November 23, 2009) (“*ITC Prelim*”).

⁶ *See, e.g., Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999) at Comment 2 (where the Department considered other sources of information, including press reports regarding rising imports, falling domestic prices resulting from rising imports and domestic buyers shifting to foreign suppliers).

⁷ *See* “Memorandum to James C. Doyle, Director, Office IX, from Katie Marksberry, Case Analyst, through Catherine Bertrand, Program Manager, Office IX; regarding Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People’s Republic of China,” dated November 13, 2009.

may apply an adverse inference. The PRC-wide entity did not respond to the Department's request for information. Thus, we are using facts available, in accordance with section 776(a) of the Act, and, pursuant to section 776(b) of the Act, we also find that AFA is warranted so that the PRC-wide entity does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Accordingly, we preliminarily find that there were massive imports of merchandise from the PRC-wide entity.

Further, in some cases the Department has also considered the import volume from the ITC Dataweb as further evidence supporting an affirmative determination of critical circumstances based on AFA.⁸ Here, we find that the ITC Dataweb import statistics further support the Department's determination that the volume of imports of subject merchandise in the post-petition period are consistent with an AFA finding that these imports were massive.

Separate-Rate Applicants

Because it has been the Department's practice to conduct its massive imports analysis of separate rate companies⁹ based on the experience of investigated companies, we did not request monthly shipment information from the three separate-rate applicants. However, where mandatory respondents have received AFA, we have not imputed those adverse inferences of massive imports to the non-individually examined companies receiving a separate rate. Instead, the Department has relied upon the ITC Dataweb import statistics where appropriate in determining whether there have been massive imports for the separate-rate companies. Accordingly, as the basis for determining whether imports were massive for these separate-rate companies, we are relying on ITC Dataweb import statistics as evidence that imports in the post-petition period were massive for those companies. As stated above, in this case, import volume data shows an increase of 86.1 percent of salts imports from the PRC during the comparison period. See Petitioners' Allegation at 10. Thus, pursuant to section 351.206(h) of the Department's regulations, we determine

⁸ See, e.g., *Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard Pipe and Pressure Pipe from the Czech Republic*, 65 FR 33803 (May 25, 2000) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic*, 65 FR 39363 (June 26, 2000) and accompanying Issues and Decision Memorandum.

⁹ See, e.g., *Carbon Steel Pipe and SDGE*.

that this increase, being greater than 15 percent, shows that imports in the comparison period were massive for the separate-rate companies.

Critical Circumstances

Record evidence indicates that importers of salts knew, or should have known, that exporters were selling the merchandise at LTFV, and that there was likely to be material injury by reason of such sales. In addition, record evidence indicates that the PRC-wide entity and the separate-rate applicants had massive imports during a relatively short period. Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from the PRC-wide entity (which includes SD BNI and Sichuan Blue Sword) and the separate-rate companies (Snow-Apple Group Limited, Tianjin Chengyi International Trading (Tianjin) Co., Limited, Wenda Co., Ltd., and Yunnan Newswift Company Ltd.) in this antidumping duty investigation. See section 733(f) of the Act and 19 CFR 351.206(c)(2)(ii).

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, we are directing CBP to suspend liquidation of any unliquidated entries of subject merchandise from the PRC entered, or withdrawn from warehouse for consumption, on or after December 16, 2009, which is 90 days prior to the date of publication of the *Preliminary Determination in the Federal Register*.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination.

Public Comment

Since this determination is being made subsequent to the due dates for public comment as published in our notice of preliminary determination of sales at LTFV, we will accept written comments limited to this preliminary determination of critical circumstances if they are submitted to the Assistant Secretary for Import Administration no later than five days after the publication of this notice.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 351.206(c)(2)(ii).

Dated: April 29, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-10583 Filed 5-4-10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-963]

Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has preliminarily determined that critical circumstances exist with respect to imports of certain potassium phosphate salts ("phosphate salts" or "subject merchandise") from the People's Republic of China ("PRC").

DATES: *Effective Date:* May 5, 2010

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) 482-4261 and (202) 482-3586, respectively.

SUPPLEMENTARY INFORMATION:

Background

This investigation was initiated on October 14, 2009. 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). The products covered by this investigation and the title of this investigation were modified 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 *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*, 75 FR 10466 (March 8, 2010) (*Preliminary Determination*), at the section "Case History." As mandatory company respondents in this investigation, the Department selected Lianyungang Mupro Import Export Co., Ltd. ("Mupro"); Mianyang Aostar Phosphate Chemical Industry Co., Ltd.