

on the record, there have been no changes made to our adverse facts available (AFA) determination in the *Preliminary Results*. For a discussion of the issues, see the Issues and Decision Memorandum.

### Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>3</sup> Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that the sole respondent did not act to the best of its ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>4</sup> For a full description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available, pursuant to sections 776(a) and (b) of the Act, see the Issues and Decision Memorandum.

### Final Results of Administrative Review

As a result of this review, we determine that the following net countervailable subsidy rate exists for the period January 1, 2021, through December 31, 2021:

Company	Subsidy rate (percent <i>ad valorem</i> )
Jindal Poly Films Limited .....	116.96

### Disclosure

Normally, Commerce discloses its calculations and analysis performed in connection with the final results to interested parties within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). However, because we are applying total AFA in the calculation of the benefit for Jindal in these final results, and the rate is unchanged from the rate assigned in the *Preliminary Results*, there are no calculations to disclose.

<sup>3</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>4</sup> See sections 776(a) and (b) of the Act.

### Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed company with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon the publication of these final results, shall remain in effect until further notice.

### Assessment Rates

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

### Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or 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 sanctionable violation.

### Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 23, 2024.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

### Appendix

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

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Use of Facts Otherwise Available and Adverse Inferences
- V. Discussion of the Issues
  - Comment 1: Whether Jindal Failed To Cooperate to the Best of Its Ability
  - Comment 2: Whether Commerce Acted Arbitrarily in Applying Adverse Facts Available (AFA) to Jindal
  - Comment 3: Whether the AFA Rate is Reasonable
  - Comment 4: Whether the Advanced Authorization Program (AAP) and Duty Drawback (DDB) Schemes are Countervailable
- VI. Recommendation

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-821-825]

#### Phosphate Fertilizers From the Russian Federation: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination and Amended Countervailing Duty Order

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

**SUMMARY:** On January 19, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *The Mosaic Company v. United States*, Consol. Court No. 21-00117, sustaining the U.S. Department of Commerce's (Commerce) remand redetermination pertaining to the countervailing duty (CVD) investigation of phosphate fertilizers from the Russian Federation (Russia) covering the period of investigation, January 1, 2019, through December 31, 2019. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and the resulting CVD order with respect to the countervailable subsidy rates assigned to Industrial Group Phosphorite LLC (EuroChem), Joint Stock Company Apatit (JSC Apatit), and all others.

**DATES:** Applicable January 29, 2024.

**FOR FURTHER INFORMATION CONTACT:** Shane Subler 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) 482-6241 or (202) 482-4868, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 16, 2021, Commerce published its final determination in the CVD investigation of phosphate fertilizers from Russia.<sup>1</sup> Commerce calculated countervailable subsidy rates of 47.05 percent for EuroChem, 9.19 percent for JSC Apatit, and 17.20 percent for all other producers/exporters of phosphate fertilizers in Russia.<sup>2</sup> Commerce subsequently published the CVD order on phosphate fertilizers from Russia.<sup>3</sup>

JSC Apatit, EuroChem, and the petitioner<sup>4</sup> appealed Commerce's *Final Determination*. On September 2, 2022, the CIT remanded the *Final Determination* to Commerce, directing Commerce to: (1) adjust the final total sales calculation for EuroChem to the proper figures and explain the calculation; (2) either remove the added value-added tax (VAT) and import duties from the natural gas benchmark price or offer further explanation for why, when tier one and tier two benchmark prices are rejected, it was reasonable to add additional VAT and import duties; and (3) either explain why Commerce was unable to countervail recurring subsidies from mining licenses granted by the Government of Russia (GOR) prior to Russia's designation as a market economy on April 1, 2002, or abandon the cut-off date methodology.<sup>5</sup>

In the *First Remand Results*, issued in December 2022, Commerce adjusted the final total sales calculation to the proper figures and explained the calculation further, removed the added VAT and import duties from the natural gas benchmark price, and revised the subsidy calculation for the Provision of

Mining Rights for Less Than Adequate Remuneration (LTAR) program by countervailing recurring subsidies from mining licenses granted by the GOR prior to Russia's designation as a market economy on April 1, 2002.<sup>6</sup> Consequently, Commerce made changes to EuroChem's and JSC Apatit's final subsidy rates from the investigation, as well as the all-others rate.<sup>7</sup>

In its *Second Remand Order*, issued on July 11, 2023, the CIT remanded certain aspects of Commerce's *First Remand Results* for further explanation or reconsideration.<sup>8</sup> Specifically, the CIT directed Commerce to: (1) explain why reconciling phosphate rock cost information to the financial statements of JSC Apatit's parent company, PhosAgro PJSC, was sufficient, or seek further information from JSC Apatit; (2) explain why it found a submission by EuroChem to be supported, and respond to the petitioner's specific objections regarding this submission; and (3) explain the selection of profit before tax in the benefit calculation for the GOR's provision of mining rights.<sup>9</sup>

On October 11, 2023, Commerce issued the *Second Remand Results*.<sup>10</sup> In the *Second Remand Results*, Commerce: (1) explained how JSC Apatit reconciled its phosphate rock cost information to its financial statements in a submission filed after the *First Remand Results*; (2) explained how a translated submission by EuroChem after the *First Remand Results* supported the cost reconciliations that it previously provided; and (3) explained why the use of profit before tax in the benefit calculation for the Provision of Mining Rights for LTAR program was appropriate.<sup>11</sup> Based on this analysis, Commerce made no changes to the subsidy rates calculated for EuroChem, JSC Apatit, and all others in the *First*

*Remand Results*.<sup>12</sup> On January 19, 2024, the CIT sustained Commerce's *Second Remand Results*.<sup>13</sup>

**Timken Notice**

In its decision in *Timken*,<sup>14</sup> as clarified by *Diamond Sawblades*,<sup>15</sup> the Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's January 19, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

**Amended Final Determination**

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to EuroChem, JSC Apatit, and all others as follows:

Company	Subsidy rate <sup>16</sup> (percent <i>ad valorem</i> )
EuroChem <sup>17</sup> .....	23.77
JSC Apatit <sup>18</sup> .....	14.30
All Others .....	16.30

**Amended CVD Order**

Because there is now a final court decision, Commerce is amending its *Final Determination and Order*. As a result of this amended final determination, Commerce is hereby

<sup>12</sup> *Id.* at 31.

<sup>13</sup> See *The Mosaic Company v. United States*, Consol. Court No. 21-00117, Slip Op. 24-04 (CIT January 19, 2024).

<sup>14</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>15</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>16</sup> See *First Remand Results* at 33.

<sup>17</sup> Commerce found the following companies to be cross-owned with EuroChem in the *Final Determination*: Mineral and Chemical Company EuroChem, JSC; NAK Azot, JSC; EuroChem Northwest, JSC; Joint Stock Company Kovdorskys GOK; EuroChem-Energo, LLC; EuroChem-Usolsky Potash Complex, LLC; EuroChem-BMU, LLC; JSC Nevinnomyssky Azot; and EuroChem Trading Rus, LLC. See *Final Determination*, 87 FR at 9480.

<sup>18</sup> Commerce found the following companies to be cross-owned with JSC Apatit in the *Final Determination*: 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. See *Final Determination*, 87 FR at 9480.

<sup>1</sup> See *Phosphate Fertilizers from the Russian Federation: Final Affirmative Countervailing Duty Determination*, 86 FR 9479 (February 16, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum.

<sup>2</sup> *Id.*, 86 FR at 9480.

<sup>3</sup> See *Phosphate Fertilizers from the Kingdom of Morocco and the Russian Federation: Countervailing Duty Orders*, 86 FR 18037 (April 7, 2021) (*Order*).

<sup>4</sup> The petitioner is The Mosaic Company.

<sup>5</sup> See *The Mosaic Company, et al v. United States*, Consol. Court No. 21-00117, Slip Op. 22-103 (CIT September 2, 2022) (*First Remand Order*), at 33-34, 39, and 41.

<sup>6</sup> See *Final Results of Redetermination Pursuant to Court Remand, The Mosaic Company, Phosagro PJSC, JSC Apatit, Industrial Group Phosphorite LLC v. United States, The Mosaic Company, Phosagro PSJC, JSC Apatit, Industrial Group Phosphorite LLC*, Consol. Court No. 21-00117 (CIT September 2, 2022), dated December 16, 2022 (*First Remand Results*), available at <https://access.trade.gov/resources/remands/22-103.pdf>.

<sup>7</sup> *Id.* at 33.

<sup>8</sup> See *The Mosaic Company v. United States*, Consol. Court No. 21-00117, Slip Op. 23-99 (CIT July 11, 2023) (*Second Remand Order*).

<sup>9</sup> See *Second Remand Order* at 16-20.

<sup>10</sup> See *Final Results of Redetermination Pursuant to Court Remand, The Mosaic Company, Phosagro PJSC, JSC Apatit, Industrial Group Phosphorite LLC v. United States, The Mosaic Company, Phosagro PSJC, JSC Apatit, Industrial Group Phosphorite LLC*, Consol. Court No. 21-00117 (CIT July 11, 2023), dated October 11, 2023 (*Second Remand Results*), available at <https://access.trade.gov/resources/remands/23-99.pdf>.

<sup>11</sup> See, generally, *id.*

updating JSC Apatit's and EuroChem's *ad valorem* subsidy rates. Additionally, because the all-others rate was based on JSC Apatit's and EuroChem's rates, Commerce is also updating the all-others rate.

### Cash Deposit Requirements

For EuroChem and all others, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). For JSC Apatit, however, the cash deposit rate has been superseded by the cash deposit rate calculated in the subsequent administrative review of the CVD order on phosphate fertilizers from Russia.<sup>19</sup> Thus, we are not implementing an amended cash deposit rate for JSC Apatit. This notice will not affect the current cash deposit rate for JSC Apatit.

### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by JSC Apatit and certain cross-owned companies<sup>20</sup> that were entered, or withdrawn from warehouse, during the period November 30, 2020, through December 31, 2021. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: January 23, 2024.

#### Abdelali Elouaradia,

*Deputy Assistant Secretary for Enforcement and Compliance.*

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<sup>19</sup> See *Phosphate Fertilizers from the Russian Federation: Final Results of Countervailing Duty Administrative Review; 2020-2021*, 88 FR 76182 (November 6, 2023).

<sup>20</sup> These cross-owned companies are PhosAgro Public Joint Stock Company; Limited Liability Company PhosAgro-Region; Limited Liability Company PhosAgro-Belgorod; Limited Liability Company PhosAgro-Don; Limited Liability Company PhosAgro-Kuban; Limited Liability Company PhosAgro-Lipetsk; Limited Liability Company PhosAgro-Kursk; Limited Liability Company PhosAgro-Orel; Limited Liability Company PhosAgro-Stavropol; Limited Liability Company PhosAgro-Volga; Limited Liability Company PhosAgro-SeveroZapad; Limited Liability Company PhosAgro-Tambov; and Limited Liability Company PhosAgro-Sibir.

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-557-825]

### Certain Paper Shopping Bags From Malaysia: Postponement of Final Determination of Sales at Less Than Fair Value Investigation

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of certain paper shopping bags (shopping bags) from Malaysia until May 17, 2024, and is extending the provisional measures from a four-month period to a period of not more than six months.

**DATES:** Applicable January 29, 2024.

**FOR FURTHER INFORMATION CONTACT:** Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4313.

#### SUPPLEMENTARY INFORMATION:

#### Background

On June 20, 2023, Commerce initiated an LTFV investigation of imports of paper bags from Malaysia.<sup>1</sup> The period of investigation is April 1, 2022, through March 31, 2023. On January 3, 2024, Commerce published its preliminary determination in this LTFV investigation of paper bags from Malaysia.<sup>2</sup>

#### Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by the exporters or producers who account for a significant proportion of exports of the subject merchandise, or in

<sup>1</sup> See *Certain Paper Shopping Bags from Cambodia, the People's Republic of China, Colombia, India, Malaysia, Portugal, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 88 FR 41589 (June 27, 2023).

<sup>2</sup> See *Certain Paper Shopping Bags from Malaysia: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value*, 89 FR 333 (January 3, 2024) (*Preliminary Determination*).

the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months, in accordance with section 733(d) of the Act.

On January 5, 2024, Nanwang Pack (M) Sdn. Bhd. (Nanwang) and Hexachase Packaging Sdn Bhd, Malaysia (Hexachase), mandatory respondents in this investigation, requested that Commerce postpone the deadline for final determination until no later than 135 days from the publication of the *Preliminary Determination*, and extend the application of the provisional measures from a four-month period to a period of not more than six months.<sup>3</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination was affirmative; (2) the request for postponement was made by the exporters and producers who accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination until no later than 135 days after the date of publication of the *Preliminary Determination*, and extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, Commerce will issue its final determination no later than May 17, 2024.

This notice is issued and published pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: January 19, 2024.

#### Abdelali Elouaradia,

*Deputy Assistant Secretary for Enforcement and Compliance.*

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<sup>3</sup> See Hexachase's Letter, "Request to Postpone the Final Determination in the matter of case no A-557-825," dated January 5, 2024; see also Nanwang's Letter, "Request to Extend Final Determination," dated January 5, 2023.