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 companies [9] 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 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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[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.*

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.

("Aostar"); and Shifang Anda Chemicals Co., Ltd. ("Anda") (collectively, "the mandatory company respondents"). On December 4, 2009, the Department issued countervailing duty ("CVD") investigation questionnaires to the Government of the People's Republic of China ("GOC") and to the mandatory company respondents. Neither the GOC nor the three mandatory company respondents submitted any responses to the Department's questionnaires. As such, our preliminary determination was based on the application of adverse facts available ("AFA") in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended ("the Act"). *See Preliminary Determination.*

On April 6, 2010, ICL Performance Products LP and Prayon, Inc. (collectively, "Petitioners"), alleged that critical circumstances exist with respect to imports of certain potassium phosphate salts from the PRC. *See* Petitioners' April 6, 2010 submission ("Allegation of Critical Circumstances"). In accordance with 19 CFR 351.206(c)(2)(ii), when a critical circumstances allegation is filed later than 20 days before the scheduled date of the preliminary determination (as was done in this case), the Department must issue its preliminary determination of critical circumstances not later than 30 days after the petitioner submits the allegation.

Period of Investigation

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

Scope of the Investigation

The phosphate salts covered by this investigation include anhydrous Monopotassium Phosphate (MKP), anhydrous Dipotassium Phosphate (DKP) and Tetrapotassium Pyrophosphate (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 7320–34–5. 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 7778–77–0. 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 7758–11–4. 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.

Allegation of Critical Circumstances

In their Allegation of Critical Circumstances, Petitioners contend that there have been massive imports over a relatively short period of certain potassium phosphate salts from the PRC since the filing of the petition. Petitioners have provided import statistics released by the U.S. International Trade Commission ("ITC") and shipment information for the merchandise under investigation. *See* Allegation of Critical Circumstances, at 6–7. Petitioners argue that these data demonstrate that imports of subject merchandise from the PRC have increased more than the fifteen percent required to be considered "massive" under 19 CFR 351.206(h)(2).

In addition, Petitioners allege that the phosphate salts industry in the PRC has benefitted from subsidies that are inconsistent with the World Trade Organization's Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement"). *See* Allegation of Critical Circumstances at 2–3.[1]

In accordance with 19 CFR 351.206(c)(2)(ii), because the petitioners submitted a critical circumstances allegation later than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination within 30 days after the petitioner submits the allegation. *See, e.g., Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364 (October 15, 1998). *Critical Circumstances Analysis*

Section 703(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) The alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.,* those prohibited under Article 3 of the Subsidies Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination Carbon and Certain Alloy Steel Wire Rod from Germany,* 67 FR 55808, 55809 (August 30, 2002).

Section 351.206(h)(1) of the Department's regulations 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, the Department will not consider imports to be massive unless imports during the "relatively short period" ("comparison period") have increased by at least fifteen percent compared to imports during an "immediately preceding period of comparable duration" ("base period"). *See* 19 CFR 351.206(h)(2).

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding commences (*i.e.,* the date the petition is filed) and ending at least three months later. However, if the Department finds that importers, 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

[1] Specifically, Petitioners cite export subsidies and import substitution subsidies which the Department preliminarily determined to be countervailable in the instant investigation, such as Income Tax Exemption Programs for Export Oriented Industries; Income Tax Credit on Purchases of Domestically Produced Equipment; Value Added Tax Refund for FIEs Purchasing Domestically Produced Equipment; and Discount Loans for Export Oriented Industries. *See Preliminary Determination,* 75 FR at 10469.

not less than three months from that earlier time. *See* 19 CFR 351.206(i).

Application of Facts Available to the Critical Circumstances Analysis for the Mandatory Company Respondents

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 the 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, as referenced above, the GOC did not respond to the Department's November 10, 2009 CVD investigation questionnaire, and the three mandatory respondent companies, Mupro, Aostar, and Anda, did not respond to the Department's December 4, 2009 CVD investigation questionnaire. Because the GOC and the mandatory company respondents have decided to not participate in this investigation, we have made this preliminary determination with respect to critical circumstances on facts otherwise available, pursuant to section 776(a)(2)(C) of the Act.

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. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because the GOC and the mandatory company respondents chose not to respond to the Department's CVD investigation questionnaire, we have determined that the GOC and the mandatory company respondents did not cooperate to the best of their ability in this investigation and that, in selecting from among the facts available, with respect to critical circumstances, an adverse inference is warranted, pursuant to section 776(b) of the Act. As such, we are making an adverse inference that Mupro, Aostar, and Anda each benefitted from import substitution and export subsidies, which are inconsistent with the Subsidies Agreement, and that these companies have had "massive imports" over a "relatively short period." Given the nature of these allegations, and the lack of cooperation from the GOC and the mandatory company respondents, we preliminarily determine that critical circumstances exist for Mupro, Aostar, and Anda, pursuant to sections 703(e) and 776(a) and (b) of the Act, and 19 CFR 351.206(c)(2)(ii).

Critical Circumstances Analyses for All Other Producers/Exporters

To determine whether all other PRC producers/exporters of the subject merchandise under investigation have benefitted from countervailable subsidies that are inconsistent with the Subsidies Agreement, we are basing our finding on the decision applied to Mupro, Aostar, and Anda, and, therefore, find that all other producers/exporters have benefitted from import substitution and export subsidies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan,* 72 FR 67271, 67274 (November 28, 2007) (*Glycine from Japan*). In the *Preliminary Determination,* the subsidies determined to be countervailable included subsidy programs that are inconsistent with the Subsidies Agreement, such as export subsidy programs (*e.g.,* Income Tax Exemption Programs for Export Oriented Industries and Discount Loans for Export Oriented Industries), and import substitution subsidy programs (*e.g.,* Income Tax Credit on Purchases of Domestically Produced Equipment and Refund for FIEs Purchasing Domestically Produced Equipment). *See Preliminary Determination,* 75 FR at 10469.

To determine whether there are "massive imports" over a "relatively short period," for all other producers/exporters, we have relied on U.S. import statistics. In their Allegation of Critical Circumstances, Petitioners have provided ITC monthly import statistics for the merchandise under investigation for the period June 2009 through January 2010. Consistent with *Glycine from Japan,* we are using the ITC monthly import statistics to determine whether there are "massive imports" with respect to all other producers/exporters. Based on our analyses of these import data, we preliminarily find that imports of subject merchandise from the PRC did increase by more than fifteen percent during the "relatively short period" (*i.e.,* between June 2009 through September 2009, and October 2009 through January 2010). Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for all other PRC producers/exporters of subject merchandise.

Conclusion

Given the analysis above, we preliminarily determine that critical circumstances exist for imports of certain potassium phosphate salts from the PRC, pursuant to section 703(e)(1) of the Act. We will make our final determination concerning critical circumstances for imports of certain potassium salts from the PRC when we make our final countervailing duty determination, currently scheduled for no later than May 24, 2010.

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 8, 2009, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register.**

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the ITC of this preliminary determination.

Public Comment

Because this preliminary determination is being made subsequent to the deadline for public comment as set forth in the *Preliminary Determination,* 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 in accordance with the filing requirements set forth in 19 CFR 351.303.

This preliminary determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: April 29, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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