New Trade Case on Imports of Phosphate Fertilizers from Morocco and Russia

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New U.S. countervailing duty ("CVD") petitions were filed on June 26, 2020, by The Mosaic Company against imports of phosphate fertilizers from Morocco and Russia.

The merchandise covered by this Petition includes phosphate fertilizers. Phosphate fertilizers contain phosphate as a primary constituent and are used primarily in agricultural applications to provide nutrients to plants. There are four main types of phosphate fertilizers: MAP, DAP, SSP/NSP, and TSP, each of which differs slightly in chemical structure and properties but is primarily characterized by its phosphorous content. Other types of phosphate fertilizers include nitrogen, phosphate, sulfur (NPS) fertilizers; nitrogen, phosphorous, potassium (NPK) fertilizers; and proprietary formulations thereof, such as Mosaic's Microessentials product. All phosphate fertilizers contain phosphorous (P), measured in units of available phosphorous pentoxide (P2O5), one of the three primary nutrients for plants along with nitrogen and potassium. Many phosphate fertilizers also contain nitrogen and may also contain secondary nutrients such as calcium and sulfur. Please see the scope section below for a full review of subject merchandise.

The petition includes CVD (unfair subsidy) allegations against Morocco and Russia. The Department of Commerce ("DOC") and the International Trade Commission ("ITC") will conduct the investigations. Within the next 45 days, the ITC will determine if there is a reasonable indication that the imports are injuring the U.S. industry. If the ITC finds that standard is met, then the cases will move to the DOC which will calculate the preliminary CVD duty margins.

The DOC's preliminary determinations are currently scheduled for September 21, 2020 (CVD), which are the dates when importers will be required to deposit the calculated duties upon the products' entry in the U.S. market.

There are strict statutory deadlines associated with these proceedings and affected companies are advised to prepare as soon as possible. If this product is of interest to you, please let us know so that we can provide you with additional information as it becomes available.

The following are key facts about this trade case:

Petitioners: The Mosaic Company

Foreign Producers/Exporters and US Importers: Please contact us for a listing of individual companies named in the petition.

Alleged AD and CVD margins: Petitioner has alleged the following CVD margins:

- Morocco: a CVD margin of at least 71.5 percent; and
- Russia: a CVD margin of at least 30.72 percent.

Merchandise covered by the scope of the case:

The merchandise covered by these investigations is phosphate fertilizers in all physical forms (i.e., solid or liquid form), with or without coating or additives such as anti-caking agents. Phosphate fertilizers in solid form are covered whether granular, prilled (i.e., pelletized), or in other solid form (e.g., powdered).

The covered merchandise includes phosphate fertilizers in the following forms: ammonium dihydrogenorthophosphate or monoammonium phosphate (MAP), chemical formula NH4H2PO4; diammonium hydrogenorthophosphate or diammonium phosphate (DAP), chemical formula (NH4)2HPO4; normal superphosphate (NSP), also known as ordinary superphosphate or single superphosphate, chemical formula Ca(H2PO4) · CaSO4; concentrated superphosphate, also known as double, treble, or triple superphosphate (TSP), chemical formula Ca(H2PO4)2 · H2O; and proprietary formulations of MAP, DAP, NSP, and TSP.

The covered merchandise also includes other fertilizer formulations incorporating phosphorous and non-phosphorous plant nutrient components, whether chemically-bonded, granulated (e.g., when multiple components are incorporated into granules through, e.g., a slurry process), or compounded (e.g., when multiple components are compacted together under high pressure), including nitrogen, phosphate, sulfur (NPS) fertilizers, nitrogen, phosphorous, potassium (NPK) fertilizers, and proprietary formulations thereof that may or may not include other non-phosphorous plant nutrient components. For phosphate fertilizers that contain non-phosphorous plant nutrient components, such as nitrogen, potassium, sulfur, zinc, or other non-phosphorous components, the entire article is covered, including the non-phosphorous content, provided that the phosphorous content (measured by diphosphorous pentaoxide, chemical formula P2O5) is at least 5% by weight.

Phosphate fertilizers that are otherwise subject to this investigation are included when commingled (i.e., mixed or blended) with phosphate fertilizers from sources not subject to this investigation. Phosphate fertilizers that are otherwise subject to this investigation are included when commingled with substances other than phosphate fertilizers subject to this investigation (e.g., granules containing only non-phosphate fertilizers such as potash or urea). Only the subject component of such commingled products is covered by the scope of this investigation.

The Chemical Abstracts Service (CAS) numbers for covered phosphate fertilizers include, but are not limited to 7722-76-1 (MAP); 7783-28-0 (DAP); and...
65996-95-4 (TSP). The covered products may also be identified by Nitrogen-Phosphate-Potash composition, including but not limited to NP 11-52-0 (MAP); NP 18-46-0 (DAP); and NP 0-46-0 (TSP).

The covered merchandise is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings 3103.11.0000; 3103.19.0000; 3105.20.0000; 3105.30.0000; 3105.40.0010; 3105.40.0050; 3105.51.0000; and 3105.59.0000. Phosphate fertilizers subject to these investigations may also enter under subheadings 3103.90.0010, 3105.10.0000, 3105.60.0000, 3105.90.0010, and 3105.90.0050. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

If you have any questions regarding the content of this alert, please contact Mark Ludwikowski (mludwikowski@clarkhill.com; 202-640-6680), Kevin Williams (kwilliams@clarkhill.com; 312-985-5907), William Sjoberg (wsjoberg@clarkhill.com; 202-772-0924), Courtney Gayle Taylor (cgtaylor@clarkhill.com; 202-552-2350); or another member of Clark Hill's International Trade Business Unit.