

Commerce Sets Final Duties On Russian, Moroccan Fertilizer

By Asher Stockler

Law360 (February 10, 2021, 4:52 PM EST) -- The U.S. Department of Commerce on Tuesday affirmed duties on imports of phosphate fertilizers from Russia and Morocco, making a final determination that the two governments are improperly subsidizing producers and exporters.

The subsidy rates assessed by Commerce range from 9.19% for the Russian mining company Joint Stock Co. Apatit to 47.05% for the Russian phosphate producer Industrial Group Phosphorite LLC. The Moroccan firm OCP SA was given a subsidy rate of 19.97%.

In making the final determination on countervailing duties, Commerce found that Morocco was providing OCP mining rights at less than fair value, improperly boosting exports with tax incentives, and reducing tax fines and penalties.

Commerce made similar determinations as to the Russian firms, finding that the Russian government provided natural gas at less than fair value and implemented industrial-development programs that were unfairly targeted.

However, the department adjusted its arithmetic in response to an objection by the Russian firms, which had complained that the department was overstating the benefits accrued through mining rights. In its final determination, Commerce said it corrected the "clerical error" by using the appropriate value of extraction payments.

"We are pleased that the errors in the preliminary decision were corrected," Dan Cannistra, an attorney for JSC Apatit, said in a statement. "However, we still have some methodological concerns with the final results. We look forward to resolving those issues as well."

Attorneys for Industrial Group Phosphorite, part of the EuroChem Group, and OCP did not return requests for comment Tuesday.

Commerce's decision to assess the countervailing duties on the phosphate fertilizer imports follows a petition last June from U.S. fertilizer producer The Mosaic Co.

"The domestic phosphate fertilizer industry is reeling from an unprecedented surge in subsidized, low-priced imports from Morocco and Russia," attorneys for Mosaic said in the petition. "The domestic industry's losses and declines — most notable in terms of production, shipments, prices, profits, market

share, and employment — are unsustainable on the current trajectory."

The petition said that imports of phosphate fertilizers from the two countries soared by 48% from 2017 to 2019, in part because of government subsidies.

Mosaic said that it was forced to shutter its 2 million ton phosphate fertilizer facility in Plant City, Florida, which used to employ 430 workers.

According to U.S. Census Bureau statistics, \$729.4 million worth of phosphate fertilizer from Morocco and \$299.4 million of phosphate fertilizer from Russia were imported into the United States in 2019.

The U.S. International Trade Commission is scheduled next month to make its determination as to whether U.S. producers have been harmed by the imports. If that decision is also affirmative, Commerce can proceed with imposing a final duty order.

Mosaic is represented by David J. Ross, Patrick J. McLain, Sarah S. Sprinkle, Stephanie E. Hartmann and Semira Nikou of WilmerHale.

OCP SA is represented by William R. Isasi of Covington & Burling LLP.

EuroChem North America Corp. is represented by Peter J. Koenig of Squire Patton Boggs LLP.

PhosAgro PJSC is represented by Daniel Cannistra of Crowell & Moring LLP.

The investigations are Phosphate Fertilizers from the Kingdom of Morocco and the Russian Federation, investigation numbers C-714-001 and C-821-825, in the U.S. Department of Commerce.

--Editing by Bruce Goldman.