

## DEPARTMENT OF COMMERCE

[C-508-605]

**Industrial Phosphoric Acid From Israel: Preliminary Results of Countervailing Duty Administrative Review**

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

**ACTION:** Notice of preliminary results and final partial rescission of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on industrial phosphoric acid from Israel for the period January 1, 1999 through December 31, 1999. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section. Interested parties are invited to comment on these preliminary results. See *Public Comment* section of this notice.

**EFFECTIVE DATE:** August 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Dana Mermelstein, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3964 or (202) 482-1391, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On August 19, 1987, the Department published in the **Federal Register** (52 FR 31057) the countervailing duty order on industrial phosphoric acid from Israel. On August 16, 2000, the Department published a notice of "Opportunity to Request Administrative Review" (65 FR 49962) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1, 1999 through December 31, 1999, on October 2, 2000 (65 FR 58733). In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review

covers Rotem-Amfert Negev Ltd. (Rotem).

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations are to 19 CFR part 351 (2000).

**Scope of the Review**

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

**Subsidies Valuation Information***Period of Review*

The period for which we are measuring subsidies is calendar year 1999.

*Allocation Period*

In *British Steel plc. v. United States*, 879 F.Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, as it was articulated in the General Issues Appendix appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) (GIA). In accordance with the Court's decision, on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL). This remand determination was affirmed by the Court on June 4, 1996. See *British Steel plc. v. United States*, 929 F.Supp. 426, 439 (CIT 1996) (*British Steel II*).

However, in administrative reviews in which the Department examines non-recurring subsidies received prior to the POR which have been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not practicable to reallocate those subsidies over a different period of time. When a countervailing duty rate in earlier segments of a proceeding was calculated based on a certain allocation period and

resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. (See, e.g., *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997)).

In this administrative review, the Department is considering non-recurring subsidies previously allocated in earlier administrative reviews under the old practice, non-recurring subsidies also previously allocated in recent administrative reviews under the new practice, and non-recurring subsidies received during the POR to which the current countervailing duty regulations apply. Under these circumstances, and as discussed below, the Department is using different allocation periods depending upon the date of receipt of the non-recurring subsidy. For non-recurring subsidies received prior to the 1995 administrative review (the first review for which the Department implemented the *British Steel I* decision), the Department is using the original allocation period of 10 years. For non-recurring subsidies received since 1995, Rotem has submitted in each subsequent administrative review, including this one, AUL calculations based on depreciation and values of productive assets reported in its financial statements. In accordance with the Department's practice, we derived Rotem's company-specific AUL for each respective administrative review since 1995, by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to depreciation for a 10-year period. In the current review, this methodology has resulted in an AUL of 23 years. Pursuant to section 351.524(d)(2) of the Department's regulations, this company-specific AUL rebuts the presumptive use of the IRS tables. Therefore, for the purposes of these preliminary results, non-recurring subsidies received during the POR will be allocated over 23 years.

*Privatization*

Israel Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993, 1994, 1995, 1997 and 1998. In this administrative review, the Government of Israel (GOI) and Rotem reported that additional shares of ICL were sold in 1999. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the

companies in which ICL holds an ownership interest. See *Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel*, 61 FR 53351, 53352 (October 11, 1996) (1994 *Final Results*). In this review and prior reviews of this order, the Department found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations.

On December 4, 2000, the Department announced a new privatization approach in a remand determination following the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Delverde Srl v. United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) (*Delverde III*). The Department applied this new approach in the final results of the prior administrative review of this order. See *Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel*, 66 FR 15839 (March 21, 2001) (1998 *Final Results*). Under this approach, the first requirement is to determine whether the person to which the subsidies were given is, in fact, distinct from the person that produced the subject merchandise exported to the United States. If the two persons are distinct, the original subsidies may not be attributed to the new producer/exporter. The Department would, however, consider whether any subsidy had been bestowed upon that producer/exporter as a result of the change-in-ownership transaction. On the other hand, if the original subsidy recipient and the current producer/exporter are considered to be the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "person" that is the firm under investigation or review. Assuming that the original subsidy had not been fully amortized under the Department's normal allocation methodology as of the period of review (POR), the Department would then continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of

assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale entity to be the same person as the pre-sale entity if, based on the totality of the factors considered, we determine that the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Using the approach described above, we have analyzed the information provided by the GOI and Rotem to determine whether the subsidies received by Rotem continued to benefit Rotem during the POR. By applying this approach to the facts and circumstances of the instant countervailing duty administrative review of industrial phosphoric acid from Israel and the relevant privatization of ICL and its subsidiary, Rotem, we find that the pre-sale and post-sale entities are not distinct persons. Specifically, Rotem still maintains its plants and uses the same production facilities to manufacture and sell the same products; continues to rely on the same suppliers and customer base; and employs largely the same personnel and management. See the Department's June 13, 2001, letter to Rotem (with attached Change in Ownership Analysis Memorandum from the 1998 administrative review) and the 1998 *Final Results* and accompanying Decision Memorandum (section entitled Change in Ownership), for a complete discussion of our analysis of ICL's and Rotem's privatization. Therefore, we determine that the subsidies provided to Rotem, prior to the privatization of ICL, continue to benefit Rotem after ICL's privatization.

#### Grant Benefit Calculations

To calculate the benefit for the POR, we followed the same methodology used in the final results of prior administrative reviews. We converted Rotem's shekel-denominated grants into U.S. dollars, using the exchange rate in effect on the dates the grants were received. We then applied the grant methodology to determine the benefit for the POR. See e.g., *Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13633 (March 20, 1998) (1995 *Final Results*).

As a result of our privatization approach and our determination that Rotem continues to benefit from subsidies received prior to the privatization of ICL, the non-recurring

subsidies allocated over time in the instant and previous administrative reviews are no longer reduced by the pass-through percentages calculated under our old repayment methodology. Therefore, the full value of the benefit allocable to the 1999 POR from non-recurring subsidies is being used to calculate Rotem's net subsidy rate.

#### Discount Rates

We considered Rotem's cost of long-term borrowing in U.S. dollars as reported in the company's financial statements for use as the discount rate used to allocate the countervailable benefit over time. However, this information includes Rotem's borrowing from its parent company, ICL, and thus does not provide an appropriate discount rate. Therefore, we have turned to ICL's cost of long-term borrowing in U.S. dollars in each year from 1984 through 1999 as the most appropriate discount rate. ICL's interest rates are shown in the notes to the company's financial statements, public documents which are in the record of this review. See *Comment 9* in the 1995 *Final Results*.

#### Analysis of Programs

##### I. Programs Conferring Subsidies

##### A. Encouragement of Capital Investments Law (ECIL)

The ECIL program is designed to encourage the distribution of the population throughout Israel, to create new sources of employment, to aid the absorption of immigrants, and to develop the economy's production capacity. To be eligible for benefits under the ECIL, including investment grants, capital grants, accelerated depreciation, reduced tax rates, and certain loans, applicants must obtain approved enterprise status. Investment grants cover a percentage of the cost of the approved investment, and the amount of the grant depends on the geographic location of eligible enterprises. For purposes of the ECIL program, Israel is divided into three zones; Development Zones A and B, and the Central Zone. In *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel*, 52 FR 25447 (July 7, 1987) (*IPA Investigation*), the Department found the ECIL grant program to be de jure specific because the program limits the availability of grants to enterprises located only in Development Zones A and B. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination.

Rotem is located in Development Zone A, and received ECIL investment and capital grants in disbursements over a period of years for several projects. In past reviews, we have treated these grants as non-recurring. The guidelines set forth in section 351.524 of Department's regulations support finding these grants to be non-recurring. As explained in the "Allocation Period" section above, for grants that have been allocated in prior administrative reviews, we are continuing to use the allocation period assigned to these grants. For grants received during the POR, we have used the AUL calculated by Rotem in this review. To calculate the benefit for the POR, we followed the same methodology used in the final results of the 1995 administrative review, as indicated in the "Grant Benefit Calculations" section above.

In prior reviews of this order, we applied the methodology described in our proposed countervailing duty regulations when determining whether to allocate non-recurring grants over time or expense them in the year of receipt ("the 0.5 percent test"). Accordingly, grant disbursements exceeding 0.5 percent of a company's sales in the year of receipt were allocated over time while grants below or equal to 0.5 percent of sales were countervailed in full ("expensed") in the year of receipt (*see* Countervailing Duties (Proposed Rules), 54 FR 23366, 23384 (section 355.49(a)(3)) (May 31, 1989)). However, section 351.524 (b)(2) of our current regulations directs us to conduct the 0.5 percent test based on the company's sales in the year of authorization rather than the year of receipt. Where possible, we applied this new regulation; however, we did not redo the 0.5 percent test for disbursements received prior to the POR because we had already calculated a benefit stream for those disbursements in prior administrative reviews.

Pursuant to section 351.504(c) of our regulations, we used our standard grant methodology as noted above in the "Grant Benefit Calculations" section to calculate the countervailable subsidy from ECIL grants. We allocated some of these grants over time because they met the 0.5 percent test, as described above, and expensed others in the POR that did not pass this test.

To calculate the total subsidy in the POR, we first summed the grant amounts allocated to 1999. To derive the subsidy rates, as discussed in the 1995 *Final Results*, we attributed ECIL grants that were tied to a particular facility over the sales of the product produced by that facility plus sales of all products into which that product

may be incorporated. The Department's practice is to countervail the value of the subsidies at the time they are provided to the company without regard to their actual use by that same company or their effect on its subsequent performance. *See* section 771(5)(C) of the Act which states that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists." *See* also section 351.525 of the Department's regulations on attribution of subsidy to a product. Accordingly, we attributed ECIL grants to Rotem's phosphate rock mines to total sales; we attributed grants to Rotem's green acid facility to total sales minus direct sales of phosphate rock; and, finally, we attributed grants to Rotem's IPA facilities to sales of IPA, MKP, fertilizers, and "IPA-Akonomika" and MKP-HCL (by-products of IPA production which contribute to Rotem's sales revenue). We summed the rates obtained on this basis, and preliminarily determine the net countervailable subsidy from ECIL grants to be 4.57 percent *ad valorem* for the POR.

#### B. Infrastructure Grant Program

During the 1999 review period, Rotem received an infrastructure grant to initiate and establish industrial areas in a certain geographical zone. Rotem previously received grants under this program during the 1996, 1997 and 1998 PORs. In the 1996 administrative review, the Department determined that infrastructure grants were specifically provided to Rotem, and that they conferred a benefit. *See Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13633 (March 20, 1998). No new information or evidence of changed circumstances has been submitted to warrant reconsideration.

In past reviews, we determined these grants to be "non-recurring." The guidelines set forth in section 351.524 of the Department's regulations support finding these grants to be non-recurring. Therefore, we calculated the benefit under this program using the methodology for non-recurring grants noted above in the "Grant Benefit Calculations" section. On this basis, we preliminarily determine the net subsidy from this program to be 0.21 percent *ad valorem* for the POR.

#### C. Encouragement of Industrial Research and Development Grants (EIRD)

During the 1999 review period, Rotem received five EIRD disbursements. Among these disbursements, two were tied to research unrelated to IPA or any

of its inputs. *See* section 351.525(b)(5) of the Department's countervailing duty regulations concerning the attribution of subsidies. In this review, we preliminarily determine that the three remaining disbursements received by Rotem were tied to research related to the production of IPA. Rotem previously received grants under this program for research related to IPA or its inputs during the 1995 and 1996 PORs. In the 1995 *Final Results*, we determined that EIRD grants were specifically provided to Rotem, and that they conferred a benefit. Therefore, we calculated the benefit under this program using the methodology for non-recurring grants noted above in the "Grant Benefit Calculations" section. On this basis, we preliminarily determine the net subsidy from this program to be 0.02 percent *ad valorem* for the POR.

#### II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producer and/or exporter of the subject merchandise did not apply for or receive benefits under these programs during the POR:

- A. Environmental Grant Program
- B. Reduced Tax Rates under ECIL
- C. ECIL Section 24 loans
- D. Dividends and Interest Tax Benefits under Section 46 of the ECIL
- E. ECIL Preferential Accelerated Depreciation

#### III. Other Program Examined

##### Labor Training Grant

In its questionnaire response, Rotem reported that it had received a very small labor training grant as payment for hiring and training conducted in a prior period. In previous administrative reviews, we have found that this program was not used (*see, e.g., 1994 Final Results* and *1996 Final Results*). Under section 351.524 of the Department's regulations, grants for worker training are normally considered recurring and are expensed in the year of receipt. For purposes of this administrative review, we expensed this labor training grant and have found that any subsidy which could be calculated for this program would be so small (significantly less than 0.005 percent *ad valorem*) that there would be no impact on the overall subsidy rate. Accordingly, because there would be no impact on the overall subsidy rate in the instant review, we do not consider it necessary to address the issue of specificity for purposes of this administrative review and have not further considered this program. *See Final Results of*

*Countervailing Duty Administrative Review: Live Swine from Canada*, 63 FR 2210, 2211 (January 14, 1998) (regarding the Department's methodology in calculating the de minimis rate).

#### Preliminary Results of Review

In accordance with 19 CFR 351.213(b), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 1999 through December 31, 1999, we preliminarily determine the net subsidy for Rotem to be 4.80 percent ad valorem. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above.

As a result of the International Trade Commission's determination that revocation of this countervailing duty order would not likely lead to continuation or recurrence of material injury to an industry in the United States in the reasonably foreseeable future, the Department, pursuant to section 751(d)(2) of the Act, revoked the countervailing duty order on IPA from Israel. *See Revocation Countervailing Duty Order: Industrial Phosphoric Acid from Israel*, 65 FR 114 (June 13, 2000). Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation was January 1, 2000. Accordingly, the Department has instructed Customs to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The Department, however, will complete this instant administrative review of subject merchandise entered during 1999, prior to the effective date of revocation.

#### Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the

issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief. These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: August 24, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082001C]

#### Bottlenose Dolphin Take Reduction Team Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Take Reduction Team for Western North Atlantic coastal bottlenose dolphins (BDTRT) will hold its first meeting to develop a take reduction plan as described in the Marine Mammal Protection Act (MMPA). Input will be sought from the BDTRT on a peer review process for all data related to stock structure, abundance, and human-caused mortality and serious injury rates. The BDTRT will focus on reducing bycatch in the following fisheries: Mid-Atlantic coastal gillnet, North Carolina inshore gillnet, Southeast Atlantic gillnet,

Southeastern U.S. Atlantic shark gillnet, Atlantic blue crab trap/pot, Mid-Atlantic haul/beach seine, North Carolina long haul seine, North Carolina roe mullet stop net, and Virginia pound net.

**DATES:** The meeting will be held on September 12, 2001, starting at 9 a.m. and continue on September 13, 2001, starting at 8:30 a.m.

**ADDRESSES:** The BDTRT meeting will be held at the Sheraton International Hotel Baltimore Washington International (BWI) Airport, 7032 Elm Road, Baltimore, MD 21240; Phone: (410) 859-3300; Fax: (410) 859-0565.

**FOR FURTHER INFORMATION CONTACT:** Kathy Wang, Southeast Region, 727-570-5312, or Emily Hanson, Office of Protected Resources, 301-713-2322, x101.

**SUPPLEMENTARY INFORMATION:** Section 117 of the MMPA requires that NMFS complete stock assessment reports for all marine mammal stocks within U.S. waters. Each draft stock assessment report, based on the best scientific information available, shall, among other things, categorize the status of the stock as one that either has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population or is a strategic stock, with a description of the reasons therefore. In addition, each report shall estimate the potential biological removal (PBR) level for the stock, describing the information used to calculate it, including the recovery factor.

The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the PBR level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; or, (3) which is listed as a threatened or endangered species under the ESA or is designated as depleted under the MMPA.

The MMPA defines a stock as depleted if that species or population is below its optimum sustainable population or if it is a species or population stock that is listed as endangered or threatened under the ESA.

The MMPA defines the PBR level to mean the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable