

Hi ,

Following up on my note from last week, the US Court of International Trade issued a ruling on the second case that our client, OCP North America, had filed regarding phosphate fertilizer.

The Court remanded the case back to the US International Trade Commission. [This article](#) provides a summary of the decision.

In addition, OCP's statement may be found [here](#).

We look forward to working with you on this further and would be pleased to respond to any questions you may have in the meantime.

Kind regards,

Hunt Shipman

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# Appeal on Moroccan Phosphate Duties

Court Orders International Trade Commission to Review Its Ruling on Phosphate Import Tariffs  
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By Chris Clayton , DTN Ag Policy Editor

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OMAHA (DTN) -- A judge for the U.S. Court of International Trade has ruled the International Trade Commission needs to reexamine its 19.97% countervailing duty placed on phosphate imports from Morocco more than two years ago.

Judge Stephen Vaden for the U.S. Court of International Trade finally handed down a decision in a case that was heard before the trade court in June 2022.

Moroccan fertilizer company OCP North America and other fertilizer companies have been fighting the tariffs that were initially slapped on imports from Morocco by the International Trade Commission (ITC) in spring 2021. The ITC had ruled Morocco and Russia unfairly subsidized fertilizer production. The ruling placed 19.97% tariffs on Moroccan phosphate for at least five years. It's taken two-and-a-half years just for the appeals process to play out. The tariffs and complaints revolved around Moroccan phosphate imports from 2017 to 2020.

Vaden, a former general counsel for USDA under the Trump administration, pointed out testimony and previous briefs noting there were changes in domestic supply as phosphate imports increased. Vaden noted the ITC didn't adequately consider that "domestic producers closed facilities resulting in decreased fertilizer production." For instance, Mosaic had shuttered a 2-million-metric-ton fertilizer facility in Florida at the end of 2017.

Mosaic had indicated that plant closure would affect about 1 million tons of U.S. market share. OCP North American and others cited that the increase imports between 2017-2019 was 753,938 short tons -- which did not exceed the 1 million-short-ton supply gap that Mosaic created when it closed its Plant City facility.

A second factor cited by Vaden was problems moving fertilizer through the river system. Starting in fall 2018, abnormally high rainfall resulted in "massive flooding and prolonged river closures along the Mississippi River system that stranded fertilizer barges and resulted in delayed, destroyed or abandoned plantings, especially in the Midwest and Great Plains regions."

Vaden indicated those rainfall patterns affected three straight seasons of fertilizer applications "and caused a large decrease in demand for fertilizer, negatively impacting prices and leading to a rise in inventories that lasted through 2019." Once normal weather resumed in spring 2020, those trends on prices and inventory reversed.

Vaden said the ITC relied heavily on the increase in imports in 2019, which "was key to the Commission's finding that subject imports, and not the weather, were responsible for the domestic industry's poor performance during the period of investigation."

Vaden's ruling stated, "Although the record did indicate that subject imports increased during the first quarter of 2019, it nonetheless reflects an overall decline in 2019 relative to 2018."

Leading up to last year's hearing, five major commodity groups were clamoring for the ITC to reverse its decision, especially as nearly every fertilizer was hitting record price levels in 2021 and 2023. Farm groups also filed a brief in November 2021 arguing the tariffs have given Mosaic Co. "near-monopoly" status when it comes to phosphate fertilizer. The groups are the National Corn Growers Association, the Agricultural Retailers Association, the American Soybean Association, the National Cotton Council and the National Sorghum Producers.

In a statement Friday, Mosaic defended the ITC's original ruling. Mosaic also added that in most cases remanded to the ITC, "the original finding of injury is affirmed." Mosaic noted the court's decision doesn't change any of the countervailing duties on phosphate.

"The basic facts that led to countervailing duties on imports from Morocco and Russia remain unchanged," said Joc O'Rourke, Mosaic's chief executive officer. "We will continue to participate actively before the agencies and the courts to defend the original findings."

OCP welcomed the decision, saying the company prevailed on its objections to the commission's findings that the original decision was "factually unsupported" and yet "undergirds the Commission's determination across all statutory factors."

OCP added the company looks forward to continuing to cooperate with the commission as it reconsiders its determination on the basis of the court's ruling.

"We remain strongly committed to supporting U.S. farmers, and we look forward to being able once again to serve as a trusted source for reliable supply of crop nutrients which are vital to U.S. agriculture," OCP stated.

Vaden's ruling and remand back to the International Trade Commission also laid out that the ITC has 120 days to review the decision and hand down another ruling. With responses from plaintiffs and intervenors, it could take seven months for a final decision, effectively rolling into next spring's planting season.

Like other fertilizers, MAP and DAP prices were higher in 2021 and 2022. As DTN's Retail Fertilizer Trends notes, both fertilizers have seen prices continue to tick downward over the past year. DAP, at \$710 a ton, is down 25% while MAP, at \$742 a ton, is down by 27%.

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