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**BEFORE THE  
UNITED STATES DEPARTMENT OF COMMERCE  
AND THE  
UNITED STATES INTERNATIONAL TRADE COMMISSION**

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**PHOSPHATE FERTILIZERS FROM MOROCCO AND RUSSIA**

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**PETITIONS FOR THE IMPOSITION OF  
COUNTERVAILING DUTIES PURSUANT TO  
SECTION 701 OF THE TARIFF ACT OF 1930, AS AMENDED  
ON BEHALF OF THE MOSAIC COMPANY**

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**VOLUME II: MOROCCO COUNTERVAILING DUTY**

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**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. BACKGROUND ON OCP GROUP .....1

III. PERIOD OF INVESTIGATION AND ALLOCATION PERIOD FOR NON-RECURRING  
SUBSIDIES .....7

IV. ESTIMATION OF SUBSIDY BENEFITS .....8

V. SUBSIDY ALLEGATIONS.....8

    A. PROGRAMS INVOLVING THE PROVISION OF GOODS AND SERVICES FOR  
    LTAR .....9

        1. Provision of Phosphate Mining Rights for LTAR .....9

        2. Provision of Phosphogypsum Waste Disposal Services for LTAR.....14

    B. PROGRAMS INVOLVING THE DIRECT TRANSFERS OF FUNDS OR  
    POTENTIAL DIRECT TRANSFER OF FUNDS .....18

        1. Arrangement of Bond Issuances and Government Purchases, and Direction of  
        Purchases, of Bonds .....19

        2. Direct Government Loans.....30

        3. Government Loan Guarantees .....32

    C. TAX PROGRAMS .....34

        1. VAT Tax Reform.....34

        2. Tax Incentives for Export Operations – Reduction in Income Tax .....38

VI. CONCLUSION.....39

**PETITIONS REGARDING  
PHOSPHATE FERTILIZERS FROM MOROCCO AND RUSSIA**

**I. INTRODUCTION**

This volume presents information reasonably available to Petitioner, The Mosaic Company (“Mosaic” or “Petitioner”), demonstrating that the Government of Morocco (“GOM”) is providing countervailable subsidies, within the meaning of section 771(5) of the Tariff Act of 1930, as amended (the “Act”), 19 USC § 1677(5), to the sole Moroccan producer of phosphate fertilizers, OCP Group (also known as OCP S.A. and referred to hereinafter as “OCP Group” or “OCP”). Pursuant to section 701(a) of the Act, 19 USC § 1671(a), the U.S. Department of Commerce (the “Department”) shall impose a countervailing duty on merchandise imported from a “Subsidies Agreement” country where: (1) the government or any public entity in the country at issue is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of subject merchandise; and (2) an industry in the United States is materially injured or threatened with material injury by reason of subject imports. As discussed in detail below, the OCP Group benefits massively from numerous countervailable subsidies provided by the GOM and other public entities in Morocco. Moreover, as demonstrated in Volume I of this Petition, subject imports from Morocco are causing material injury to the domestic phosphate fertilizer industry.<sup>1</sup> Accordingly, the Department should initiate a countervailing duty (“CVD”) investigation of imports of phosphate fertilizers from Morocco.

**II. BACKGROUND ON OCP GROUP**

Morocco’s phosphate industry is dominated by a single company: the state-owned OCP Group (formerly the Office Chérifien des Phosphates), which has exclusive access to Morocco’s

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<sup>1</sup> Volume I of this Petition also provides the general information required under section 351.202 of the Department’s regulations, 19 C.F.R. § 351.202, and section 207.11 of the U.S. International Trade Commission’s (the “Commission”) regulations, 19 C.F.R. § 207.11, and a description of the subject merchandise.

phosphate mineral reserves.<sup>2,3</sup> The Office Chérifien des Phosphates was founded in 1920, when the GOM issued an edict (Dahir of January 27, 1920) declaring that prospecting for and the exploitation of phosphates was to be exclusively reserved to the Government.<sup>4</sup> The GOM issued a separate edict in August 1920 (Dahir of August 7, 1920) announcing the creation of the Office Chérifien des Phosphates as a state monopoly charged with the exploration, management, and exploitation of the phosphate reserves of Morocco.<sup>5</sup> When the GOM issued revised mining regulations in 1951 (Dahir of April 16, 1951), it protected the monopoly granted to the Office Chérifien des Phosphates over research and operations of phosphate reserves.<sup>6</sup> The Office Chérifien des Phosphates became the OCP Group in 1975.<sup>7</sup>

In 2008, the GOM transformed the OCP Group into a Société Anonyme (public limited liability company) pursuant to Law No. 46-07 (of February 26, 2008).<sup>8</sup> The law provides that OCP's shares may be held only by State establishments and corporations.<sup>9</sup> The law also maintains OCP's monopoly on the exploitation, distribution, and commercialization of

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<sup>2</sup> See OCP, *The Slurry Pipeline Revolution* at 3, attached as Exhibit II-1.

<sup>3</sup> The names and addresses of known Moroccan phosphate fertilizer producers are provided in Exhibit I-19 to Volume I of this Petition.

<sup>4</sup> Dep't of Commerce, I.C. 6266, *Information Circular on Mining Laws of French Morocco* at 1 (1930), attached as Exhibit II-2; *id.* at 7 (“Article 2 of this edict reads as follows: ‘Prospecting for and exploitation of phosphates are exclusively reserved to the Government.’”).

<sup>5</sup> Dep't of Commerce, I.C. 6266, *Information Circular on Mining Laws of French Morocco* at 1 (1930), attached as Exhibit II-2; *id.* at 7-8 (“By the Edict of August 7, 1920, the Cherifien Phosphate Office was established, charged with the exploration, management, and exploitation of the phosphates of Morocco.”).

<sup>6</sup> See OCP, *Summary of the Final Prospectus* at 35 (Dec. 2016), attached as Exhibit II-3.

<sup>7</sup> See Sophia Maazouz, *Tout Savoir Sur L'OCP: L'Office Chérifien des Phosphates*, AgriMaroc.ma (Nov. 14, 2016), <https://www.agrimaroc.ma/l-ocp-l-office-cherifien-des-phosphates/>, attached as Exhibit II-4.

<sup>8</sup> See Sophia Maazouz, *Tout Savoir Sur L'OCP: L'Office Chérifien des Phosphates*, AgriMaroc.ma (Nov. 14, 2016), <https://www.agrimaroc.ma/l-ocp-l-office-cherifien-des-phosphates/>, attached as Exhibit II-4; Organisation for Economic Co-Operation and Development (“OECD”), *OECD Investment Policy Reviews: Morocco* at 82 (2010), attached as Exhibit II-5.

<sup>9</sup> Organisation for Economic Co-Operation and Development (“OECD”), *OECD Investment Policy Reviews: Morocco* at 82 (2010), attached as Exhibit II-5.

phosphates and their byproducts.<sup>10</sup> Although the law provides that the conditions for such exploitation were to be set in a separate contract concluded with the State, publicly available information indicates that no such contract has been concluded.<sup>11</sup>

As provided in Law No. 46-07, the GOM is the OCP Group's majority shareholder and state-owned corporations—including OCP itself—control all remaining shares in the company. The GOM holds a 94.12% ownership stake in OCP.<sup>12</sup> As noted in OCP's 2018 bond prospectus, the remaining shares are held by Banque Centrale Populaire S.A. ("BCP") (0.92%), Société d'Aménagement et de Développement Vert ("SADV") (0.88%), Infra Maroc Capital (2.98%), and Upline Infrastructure Fund (1.10%).<sup>13</sup> BCP is a partially-privatized state bank.<sup>14</sup> The Upline Infrastructure Fund is managed by Upline Group,<sup>15</sup> a business bank that manages investments for BCP.<sup>16</sup> SADV is wholly-owned by OCP. Infra Maroc Capital is wholly-owned by BCP.<sup>17</sup> Thus, as a 2015 bond prospectus states explicitly, "the Moroccan State has the ability to control the operations of the Group," *i.e.*, OCP.<sup>18</sup>

Publicly available information indicates not only that OCP is owned and controlled by the GOM, but also that the government is heavily involved in its business operations. Given its legal form and its predominantly state-owned capital, OCP is governed by Moroccan laws

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<sup>10</sup> See OCP, Summary of the Final Prospectus at 36 (Dec. 2016), attached as Exhibit II-3 ("Law no 46-07 relative to the transformation of the Office Chérifien des Phosphates into a joint stock company, promulgated by dahir no 1-08-5 of February 26<sup>th</sup> 2008. Article 2 of this law specifies that the main purpose of OCP SA is the use of a monopoly over research and operations of phosphate reserves granted by the State under article 6 of the Dahir of April 16<sup>th</sup>, 1951 on mining regulation{.}").

<sup>11</sup> World Bank Group, Creating Markets in Morocco at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>12</sup> See OCP, Consolidated Financial Statements at 30 June 2019, at 38, attached as Exhibit II-7.

<sup>13</sup> See OCP, Summary of the Prospectus at 39 (Apr. 2018), attached as Exhibit II-8.

<sup>14</sup> World Bank Group, Creating Markets in Morocco at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>15</sup> Upline Group, Upline Infrastructure Fund,

<http://www.uplinegroup.gbp.ma/En/Ourbusinesslines/Privateequity/Pages/Presentation.aspx> (last visited May 26, 2020), attached as Exhibit II-9.

<sup>16</sup> LinkedIn, Upline Group, About Us, <https://www.linkedin.com/company/upline-group/about/> (last visited May 26, 2020), attached as Exhibit II-10.

<sup>17</sup> OCP, Prospectus at 32 (Apr. 20, 2015), attached as Exhibit II-11.

<sup>18</sup> OCP, Prospectus at 32 (Apr. 20, 2015), attached as Exhibit II-11.

pertaining to the State's financial control over public companies and other organizations (Law No. 69-00) and nominations to senior government posts (Law No. 02-12).<sup>19</sup> OCP's Board of Directors is composed almost exclusively of government officials, including: the Interior Minister; the Minister of Industry, Investment, Trade, and Digital Economy; the Minister of Foreign Affairs and International Cooperation; the Minister Delegate to the Head of Government in charge of General Affairs and Governance; the Minister of Economy and Finance; the Minister of Energy, Mines and Sustainable Development; and the General Secretary of the Ministry of Agriculture and Fisheries.<sup>20</sup> Only two of the ten board members are *not* government officials, namely the Chairman and CEO of OCP and the President and CEO of BCP,<sup>21</sup> which, as noted above, is a partially privatized state bank.<sup>22</sup> All OCP directors are reportedly appointed by the government or the king of Morocco.<sup>23</sup>

OCP is the largest company in Morocco (public or private), with approximately 20,000 employees.<sup>24</sup> OCP is a fully-integrated phosphate fertilizer producer with operations at every stage from mining to processing to sales of phosphate products, including phosphate rock, phosphoric acid, and phosphate fertilizers.<sup>25</sup> OCP's phosphate mining activities are located at four main sites: Khouribga, Gantour, and Youssoufia in Morocco, and Phosboucraa in Moroccan-occupied Western Sahara.<sup>26</sup> OCP has two primary phosphate processing facilities, located at Safi and Jorf Lasfar in Morocco, which process its phosphate rock into phosphoric

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<sup>19</sup> OCP, Summary of the Final Prospectus at 36 (Dec. 2016), attached as Exhibit II-3.

<sup>20</sup> See OCP, Our Governance, <https://www.ocpgroup.ma/en/who-we-are/our-governance> (last visited May 26, 2020), attached as Exhibit II-12.

<sup>21</sup> See *id.*

<sup>22</sup> World Bank Group, Creating Markets in Morocco at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>23</sup> World Bank Group, Creating Markets in Morocco at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>24</sup> World Bank Group, Creating Markets in Morocco at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>25</sup> See OCP, The Slurry Pipeline Revolution at 5, attached as Exhibit II-1; WTO Secretariat, *Trade Policy Review, Kingdom of Morocco*, WTO Doc. WT/TPR/S/329, at 104 (Dec. 7, 2015), attached as Exhibit II-13.

<sup>26</sup> OCP, 2019 Sustainability Report at 27, attached as Exhibit II-14.

acid and phosphate-based fertilizers.<sup>27</sup> OCP produces and exports four major types of phosphate-based fertilizer: MAP, DAP, TSP, and NPK.<sup>28</sup> OCP also has a vast developmental mandate from the GOM that includes the promotion of agriculture, employment, and the overall chemical industry sector in the country.<sup>29</sup>

In 2008, OCP launched a comprehensive Industrial Transformation Strategy to transform its operations to extract greater value-added from its phosphate rock mining operations. The plan aims to double the extraction capacity of OCP's phosphate mines and triple its phosphate processing capacity by 2025 in order to raise OCP's world market share for phosphates and their byproducts from 21% to 40%, with the ultimate objective of allowing OCP to regulate supply and demand and control prices.<sup>30</sup> The strategy initially called for investment of MAD 145 billion<sup>31</sup> (\$14.6 billion) and, as of 2017, had reportedly mobilized a total of MAD 200 billion<sup>32</sup> (\$20.2 billion) financed through debt and equity.<sup>33</sup> One of the key projects OCP implemented as part of its Industrial Transformation Strategy was construction of a slurry pipeline from its mines in Khouribga to its processing facilities near the port of Jorf Lasfar, now the longest slurry pipeline in the world—a project that required MAD 4.5 billion (\$455 million) in investment.<sup>34</sup> Another key project is construction of the chemical complex at Jorf Lasfar, which includes a

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<sup>27</sup> OCP, 2019 Sustainability Report at 27, attached as Exhibit II-14; OCP, Summary of the Final Prospectus at 41 (Dec. 2016), attached as Exhibit II-3.

<sup>28</sup> See OCP, Summary of the Final Prospectus at 41 (Dec. 2016), attached as Exhibit II-3.

<sup>29</sup> World Bank Group, Creating Markets in Morocco at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>30</sup> See OCP, The Slurry Pipeline Revolution at 7, attached as Exhibit II-1; WTO Secretariat, *Trade Policy Review, Kingdom of Morocco*, WTO Doc. WT/TPR/S/329, at 104 (Dec. 7, 2015), attached as Exhibit II-13.

<sup>31</sup> See OCP, The Slurry Pipeline Revolution at 7, attached as Exhibit II-1.

<sup>32</sup> See OCP, 2017 Annual Report at 22, attached as Exhibit II-15.

<sup>33</sup> See OCP, Summary of the Final Prospectus at 34 (Dec. 2016), attached as Exhibit II-3.

<sup>34</sup> See OCP, The Slurry Pipeline Revolution at 21, attached as Exhibit II-1.

group of integrated phosphate fertilizer plants and a seawater desalination plant—a project that required at least MAD 40 billion (\$4 billion) in investment.<sup>35</sup>

OCP continues to make significant investments in its phosphate mining and processing operations to achieve its ultimate goal of doubling mining capacity and tripling phosphate fertilizer processing capacity by 2025. In 2017, OCP commissioned several flagship projects pursuant to its Industrial Transformation Strategy, including: two new phosphate rock mines; two new washing plants; adaptation of two existing washing plants to the slurry pipeline; one new downstream plant for drying phosphate rock at Jorf Lasfar; the extension of existing mines and washing plants; and increased mining capacity and construction of new beneficiation units in Gantour.<sup>36</sup> When OCP completed construction of its fourth plant at its Fertilizer Industrial Complex in Jorf Lasfar in 2017, it announced plans to build an additional six new plants in order to raise its total phosphate fertilizer production capacity to 18 million tons by 2025.<sup>37</sup> OCP has also announced plans for a major industrial development project in Phosboucraa for the period 2014-2022. OCP has stated that, as part of its long-term investment program for the region, it will improve its phosphate operations through mining investments, building a new flotation/washing unit, and upgrading extraction equipment; diversify its product portfolio and develop the regional business ecosystem by installing a phosphate fertilizer production plant; and contribute to the socioeconomic development of the region.<sup>38</sup>

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<sup>35</sup> WTO Secretariat, *Trade Policy Review, Kingdom of Morocco*, WTO Doc. WT/TPR/S/329, at 104 (Dec. 7, 2015), attached as Exhibit II-13.

<sup>36</sup> OCP, 2017 Annual Report at 22, attached as Exhibit II-15.

<sup>37</sup> Lahssen Moqana, *Morocco's Fertilizer Industry Receives \$3 Bln Investment Boost*, Asharq Al-Awsat (Nov. 25, 2017), attached as Exhibit II-16.

<sup>38</sup> OCP, 2019 Sustainability Report at 27, attached as Exhibit II-14. *See also* Western Sahara Resource Watch Report, P for Plunder: Morocco's Export of Phosphates from Occupied Western Sahara at 9 (2019), attached as Exhibit II-17.

In order to finance its ambitious industrial strategy, OCP launched a three-pronged Capital Expenditure Program (“CapEx”) that, according to the Moroccan Capital Market Authority (“AMMC”), has pumped billions in cash into OCP.<sup>39</sup> The CapEx program consisted of: (1) arrangement of bond issuances and government or government-directed purchases of the bonds; (2) direct government loans; and (3) government loan guarantees. Petitioner believes that OCP benefited from these and other countervailable subsidies provided by the GOM, as detailed below.

### III. PERIOD OF INVESTIGATION AND ALLOCATION PERIOD FOR NON-RECURRING SUBSIDIES

The period of investigation (“POI”) in a countervailing duty case is normally the most recently-completed fiscal year for the governments and producers or exporters in question.<sup>40</sup> The Department has clarified that it will normally “set the POI according to the fiscal year of the individual exporters or producers.”<sup>41</sup> OCP’s fiscal year is January 1 through December 31.<sup>42</sup> Accordingly, the Department should establish the POI in this case as January 1 to December 31, 2019.

Petitioner’s allegations relate to benefits received during calendar year 2019 as well as non-recurring benefits received prior to January 1, 2019. Consistent with the Department’s practice of allocating non-recurring subsidies over time,<sup>43</sup> these subsidies received prior to 2019 benefited the subject merchandise during the POI. The subsidy allegations in this Petition presume a 10-year allocation period in accordance with the Internal Revenue Service (“IRS”)

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<sup>39</sup> OCP, Summary of the Final Prospectus at 34 (Dec. 2016), attached as Exhibit II-3.

<sup>40</sup> 19 C.F.R. § 351.204(b)(2).

<sup>41</sup> *Final Rule: Antidumping Duties; Countervailing Duties*, 62 Fed. Reg. 27,296, 27,309 (Int’l Trade Admin. May 19, 1997).

<sup>42</sup> See OCP, Consolidated Financial Statements at 31 Dec. 2019, at 11, attached as Exhibit II-18.

<sup>43</sup> See 19 C.F.R. § 351.524(b)(1) (“The Secretary will normally allocate a non-recurring benefit to a firm over the number of years corresponding to the average useful life (“AUL”) of renewable physical assets as defined in paragraph (d)(2) of this section.”).

guidelines for depreciating productive assets used in mining of metallic and non-metallic minerals and the milling, beneficiation, and other primary preparation of such materials.<sup>44</sup>

#### IV. ESTIMATION OF SUBSIDY BENEFITS

As discussed below, Petitioner estimates a subsidy benefit of 71.5% *ad valorem* for the Provision of Mining Rights for Less Than Adequate Remuneration program. Petitioner does not have access to business proprietary information from the respondent to calculate the total subsidy benefit resulting from all of the programs alleged in this petition. Petitioner has used the best information that is publicly available, where possible, to estimate subsidy benefits for the programs alleged in this petition, as discussed below. As is evident, the subsidy allegations included in this petition will result in a total *ad valorem* subsidy rate that is well above the Department's *de minimus* threshold.

#### V. SUBSIDY ALLEGATIONS

OCP—the sole Moroccan producer of phosphate fertilizers—benefits from a wide range of countervailable subsidies, including the provision of mining rights and waste disposal services for less than adequate remuneration (“LTAR”); loans and loan guarantees; government bond purchases; and tax rebates and incentives. As discussed below, the information that is reasonably available to Petitioner indicates that each of these programs constitutes a countervailable subsidy within the meaning of section 771(5) of the Act.<sup>45</sup> Petitioner reserves the right to supplement these subsidy allegations, or make new subsidy allegations, as information becomes available during the course of the investigation, as provided for under the Department's regulations.<sup>46</sup>

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<sup>44</sup> U.S. IRS, Pub. 946, How to Depreciate Property, App. B tbl.B-2 (2019), attached as Exhibit II-19.

<sup>45</sup> 19 U.S.C. § 1677(5).

<sup>46</sup> 19 C.F.R. §§ 351.301(c)(2)(iv), .311.

## A. PROGRAMS INVOLVING THE PROVISION OF GOODS AND SERVICES FOR LTAR

The GOM provides countervailable subsidies to OCP through the provision of goods and services for less than adequate remuneration, notably including mining rights for phosphate, as detailed below.

### 1. Provision of Phosphate Mining Rights for LTAR

At the time OCP's predecessor, the Office Chérifien des Phosphates, was founded in 1920, prospecting for and the exploitation of phosphates was to be exclusively reserved to the Government, pursuant to Dahir of January 27, 1920,<sup>47</sup> and the Office Chérifien des Phosphates was granted a monopoly on the exploration, management, and exploitation of the phosphates reserves of Morocco, pursuant to Dahir of August 7, 1920.<sup>48</sup> As recently as 2014, Morocco's mining sector was governed by the Mining Law of 1951, the 1957 Mining Regulations, and the Mining Code Bill No. 1-73-412 of 12 August 1973.<sup>49</sup> This legal framework provided that all minerals were the property of the State, and rights to explore and exploit minerals were granted by permit and license by the State, but the Office Chérifien des Phosphates retained its monopoly on phosphate production.<sup>50</sup>

Morocco revised its mining laws in 2015, pursuant to Law No. 33-13; however, this new, more market-oriented legal framework covers "all mineral substances *with the exception of*

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<sup>47</sup> Dep't of Commerce, I.C. 6266, Information Circular on Mining Laws of French Morocco at 1 (1930), attached as Exhibit II-2; *id.* at 7 ("Article 2 of this edict reads as follows: 'Prospecting for and exploitation of phosphates are exclusively reserved to the Government.'").

<sup>48</sup> Dep't of Commerce, I.C. 6266, Information Circular on Mining Laws of French Morocco at 1 (1930), attached as Exhibit II-2; *id.* at 7-8 ("By the Edict of August 7, 1920, the Cherifien Phosphate Office was established, charged with the exploration, management, and exploitation of the phosphates of Morocco.").

<sup>49</sup> See USAID, Country Profile: Property Rights and Resource Governance – Morocco at 17, attached as Exhibit II-20.

<sup>50</sup> See USAID, Country Profile: Property Rights and Resource Governance – Morocco at 17, attached as Exhibit II-20; OCP, Summary of the Final Prospectus at 35 (Dec. 2016), attached as Exhibit II-3 ("Pursuant to article 2 of the company's charter, the Company's purpose is: {t}he use of a monopoly over research and operations of phosphate reserves granted by the State under article 6 of the Dahir of 9 Rejeb 1370 (16 April 1951) on mining regulation . . .").

phosphates (*reserved for the State*) and construction materials.”<sup>51</sup> Accordingly, the GOM has sovereign rights over phosphate mining, and, pursuant to Law No. 46-07 (of February 26, 2008), has granted OCP a monopoly on the exploitation, distribution, and commercialization of phosphates and their byproducts in Morocco.<sup>52</sup>

Petitioner requests that the Department investigate the GOM’s provision of phosphate mining rights to OCP for LTAR.

**a. Financial Contribution**

The GOM has sovereign rights over phosphates in Morocco and it provides OCP exclusive mining rights to access these resources. Accordingly, the GOM’s granting of phosphate mining rights to OCP constitutes a financial contribution in the form of the provision of a good within the meaning of section 771(5)(D)(iii) of the Act.<sup>53</sup>

**b. Benefit**

The GOM’s provision of phosphate mining rights accords a benefit to OCP because the government provides those rights for less than adequate remuneration.<sup>54</sup> Section 351.511(a)(2) of the Department’s regulations provides a hierarchy for identifying a suitable benchmark for measuring the adequacy of remuneration for government-provided goods and services in order of preference: (1) market prices from actual transactions within the country under investigation (tier one); (2) world market prices that would be available to purchasers in the country under

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<sup>51</sup> *Mining in Morocco: a Legal Snapshot*, DLA Piper (July 13, 2017), <https://www.dlapiper.com/en/africa/insights/publications/2017/07/mining-in-morocco-a-legal-snapshot/> (emphasis added), attached as Exhibit II-21.

<sup>52</sup> World Bank Group, *Creating Markets in Morocco* at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>53</sup> *See id.*; 19 U.S.C. § 1677(5)(D)(iii). *See also Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 Fed. Reg. 40,295 (July 14, 2008), and accompanying Issues and Decision Memorandum at 18, 20; *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 Fed. Reg. 62,594 (Oct. 20, 2014), and accompanying Issues and Decision Memorandum at 25.

<sup>54</sup> 19 U.S.C. § 1677(5)(E)(iv); 19 C.F.R. § 351.511(a)(1).

investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).<sup>55</sup> The Department’s first preference is to use a tier one benchmark, which in this case would require market-determined prices for mining licenses resulting from actual transactions in Morocco.<sup>56</sup> However, there are no private, market-determined prices for phosphate mining rights in Morocco because the GOM retains sovereign rights over phosphates and has granted a monopoly on exploitation of phosphates to OCP.<sup>57</sup>

The Department’s second preference is to use a tier two, world market price benchmark.<sup>58</sup> However, as the Department found in *Certain Cold-Rolled Steel Flat Products from Russia*, mining licenses are goods that do not lend themselves to a comparison to world market prices, because it is not reasonable to conclude that such prices for mining licenses would be available to purchasers in Morocco.<sup>59</sup>

Accordingly, the Department should rely on a tier three benchmark and examine whether the value of the resource acquired with the mining rights—in this case phosphate ore—is market-based under section 351.511(a)(2)(iii) of its regulations.<sup>60</sup> This is consistent with the approach the Department took in *Certain Cold-Rolled Steel Flat Products from Russia* and *Hot Rolled Steel from India*. Under a tier three methodology, the Department finds it “appropriate to conduct a benefit analysis based not on mining rights *per se*, but on the value of the underlying good conveyed via the mining rights.”<sup>61</sup> Because there are no market prices for “the underlying

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<sup>55</sup> 19 C.F.R. § 351.511(a)(2).

<sup>56</sup> 19 C.F.R. § 351.511(a)(2)(i).

<sup>57</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 Fed. Reg. 49,935 (Int’l Trade Admin. July 29, 2016), and accompanying Issues and Decision Memorandum at 28 (“*Certain Cold-Rolled Steel Flat Products from the Russian Federation*, Final I&D Memo”).

<sup>58</sup> 19 C.F.R. § 351.511(a)(2)(ii).

<sup>59</sup> See *Certain Cold-Rolled Steel Flat Products from the Russian Federation*, Final I&D Memo at 29.

<sup>60</sup> 19 C.F.R. § 351.511(a)(2)(iii).

<sup>61</sup> See *Certain Cold-Rolled Steel Flat Products from the Russian Federation*, Final I&D Memo at 30.

good,” *i.e.*, phosphate ore, in Morocco, Petitioner has obtained market prices for phosphate rock that are comparable to prices based on market principles, in accordance with Department practice.<sup>62</sup> Based on Petitioner’s experience, phosphate ore is not a traded commodity, because it typically contains high levels of impurities and would be prohibitively expensive to transport in an unrefined state. The process of removing impurities from phosphate ore and converting it to phosphate rock is called beneficiation.<sup>63</sup> Beneficiation of phosphate rock removes impurities in the ore such as sand, clay, carbonates, organics, and iron oxide. Beneficiation typically involves one or more of the following processes: washing and screening (wet or dry) to separate oversize material and remove sand and clays; flotation of fine ore to remove silica; and calcination to remove organic matter.<sup>64</sup> After beneficiation, the phosphate rock can be used to produce phosphate fertilizer or sold on the global market. For example, OCP reports its global sales of phosphate rock in its financial results.<sup>65</sup> Accordingly, phosphate rock is an appropriate proxy to use for the price of phosphate ore.

Petitioner obtained pricing information for phosphate rock from *Argus Reports* and CRU, reputable sources that the Department has used in the past.<sup>66</sup> *Argus Reports* and CRU collect pricing information from a variety of countries with varying qualities of phosphate rock.<sup>67</sup> The phosphate content or grade of phosphate rock can be measured by its Bone Phosphate of Lime (“BPL”).<sup>68</sup> *Argus Reports* has price data points for Jordan, India, north Africa, and Algeria.<sup>69</sup>

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<sup>62</sup> See, e.g., *Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination*, 83 Fed. Reg. 9834 (Mar. 8, 2018), and accompanying Issues and Decision Memorandum at Comment 5.

<sup>63</sup> IPNI, *Phosphorous Fertilizer Production and Technology* at 9, attached as Exhibit II-22.

<sup>64</sup> See *id.* at 9-12.

<sup>65</sup> See, e.g., OCP, 2017 Annual Report at 18, attached as Exhibit II-15.

<sup>66</sup> See, e.g., *Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination*, 83 Fed. Reg. 9834 (Mar. 8, 2018), and accompanying Issues and Decision Memorandum at Comment 5.

<sup>67</sup> See Exhibit II-23, *Argus Phosphate Prices*, and Exhibit II-24, *CRU Phosphate Rock Prices*.

<sup>68</sup> Michael R Rahm Consulting LLC, *A Comparison of Peru’s Bayóvar Phosphate Rock with Alternatives* at 3, attached as Exhibit II-25.

<sup>69</sup> See Exhibit II-23, *Argus Phosphate Prices*.

CRU has pricing points from Morocco, India, Egypt, Jordan, Peru, and Algeria.<sup>70</sup> Phosphate rock prices from Jordan and India are for phosphate rock with a BPL quality most comparable to phosphate rock from Morocco.<sup>71</sup> Accordingly, Petitioner used phosphate rock prices from Jordan and India to calculate a benchmark.

The terms of the Jordanian prices are f.o.b., whereas the terms of the Indian prices include freight.<sup>72</sup> Using *Argus Reports*, Petitioner added freight to the Jordanian price to calculate the price that OCP would have had to pay according to market principles in Morocco (*i.e.*, the good must be shipped to Morocco).<sup>73</sup> The average benchmark price is \$119.92 per ton.<sup>74</sup> Petitioner is unable to obtain the actual prices that OCP pays for the phosphate rock. Accordingly, Petitioner estimated the price OCP paid based on its financial statement and other public information.<sup>75</sup> The estimated price paid is \$21.03 per ton.<sup>76</sup> Using OCP's global financial statement, which is conservative because it includes offshore revenue, Petitioner calculates a subsidy rate of 71.5% *ad valorem*.<sup>77</sup>

Thus, the GOM's provision of mining rights for less than adequate remuneration accords a benefit to the recipient Moroccan phosphate fertilizer producer, OCP.

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<sup>70</sup> See Exhibit II-24, CRU Phosphate Rock Prices.

<sup>71</sup> See Argus Media, *Argus Phosphates: Methodology and Specifications Guide* at 9-10 (Apr. 2020), attached as Exhibit II-26; Michael R Rahm Consulting LLC, *A Comparison of Peru's Bayóvar Phosphate Rock with Alternatives* at 4, attached as Exhibit II-25 (stating that phosphate rock from Morocco and Jordan are of a comparable grade).

<sup>72</sup> See Exhibit II-23, *Argus Phosphate Prices*, and Exhibit II-24, CRU Phosphate Rock Prices.

<sup>73</sup> See 19 U.S.C. § 1677(5)(E)(iv) (providing that the adequacy of remuneration must take into account prevailing market conditions, including transportation costs). Petitioner used average world shipping rates as reported in *Argus Reports* to calculate a per-ton shipping rate from Jordan to Morocco. See Exhibit II-27, *Phosphate Rock Freight Rates*.

<sup>74</sup> See Exhibit II-28, OCP's Estimated Subsidy Rate.

<sup>75</sup> See Exhibit II-29, *Estimated Price of Phosphate Rock for OCP*.

<sup>76</sup> Petitioner calculated this price based on OCP's 2019 financial statements. See Exhibit II-29, *Estimated Price of Phosphate Rock for OCP*. The figure is corroborated by OCP's 2016 earnings call. See OCP, *Full Year and 4Q 2016 Earnings Conference Call Presentation* at 2 (Mar. 23, 2017), attached as Exhibit II-30 ("Rock production cost reduced from \$34/T to less than \$20/T").

<sup>77</sup> See Exhibit II-28, OCP's Estimated Subsidy Rate.

**c. Specificity**

The GOM's granting of a monopoly on phosphates mining to OCP is *de jure* specific, within the meaning of section 771(5A)(D)(iii) of the Act.<sup>78</sup> Moreover, as the Department has determined in prior investigations, mining rights are, as a matter of fact, provided to a limited number of industries or enterprises, and are thus specific under section 771(5A)(D)(iii)(I) of the Act.<sup>79</sup>

**2. Provision of Phosphogypsum Waste Disposal Services for LTAR**

Moroccan law prohibits the dumping of pollutants in water without prior authorization from the GOM. In particular, Morocco's Law No. 10-95 on Water, Art. 52, states that:<sup>80</sup>

No discharges, spills, disposals, and direct or indirect releases into surface or groundwater that are likely to modify its physical characteristics, to include thermal, radioactive, chemical, biological or bacteriological properties, may be effected without previous authorization granted by the basin agency after conducting an inquiry. . . . This authorization gives rise to the payment of fees under the terms set through normal regulatory channels.

Similarly, Article 37 of Law No. 81-12 prohibits discharges causing pollution of the Moroccan coast above certain limits, unless authorized by the competent Moroccan governmental authority.<sup>81</sup> It also provides that such authorization gives rise to payment of a fee to be collected in accordance with the laws on collection of public debts.<sup>82</sup>

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<sup>78</sup> 19 U.S.C. § 1677(5A)(D)(iii).

<sup>79</sup> See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 Fed. Reg. 40,295 (July 14, 2008), and accompanying Issues and Decision Memorandum at 18; *Certain Cold-Rolled Steel Flat Products from the Russian Federation*, Final I&D Memo at 28.

<sup>80</sup> Dahir (Royal Decree) No. 1-95-154 of 18 Rabii I 1416 (16 Aug. 1995) promulgating Law No. 10-95 on Water, Official State Gazette No. 4325 of 20 Sept. 1995, art. 52, attached as Exhibit II-31.

<sup>81</sup> Dahir (Royal Decree) No. 1-15-87 of 29 Ramadan 1436 (16 July 2015) promulgating Law No. 81-12 on the Coasts, Official State Gazette No. 6404 of 15 Oct. 2015, art. 37, attached as Exhibit II-32.

<sup>82</sup> See *id.*

Gypsum, or phosphogypsum, is a radioactive byproduct generated from phosphate fertilizer production. The disposal of phosphogypsum in water emissions results in the release of a considerable amount of toxic impurities, including phosphorous and fluorine compounds, cadmium, mercury, lead, and other heavy metals, and radionuclides.<sup>83</sup> Consequently, in the normal course, a producer of phosphate fertilizer must recycle the phosphogypsum byproduct or manage it as hazardous or non-hazardous industrial waste—depending on the level of radiation—through such mechanisms as backfilling in mine pits and dry or wet stacking.<sup>84</sup>

That is not the case for OCP, however. According to publicly available information, it appears that OCP dumps phosphogypsum produced from its phosphate fertilizer operations in the Atlantic Ocean and other waters near its plants at Safi and Jorf Lasfar. For example, according to its 2013 Activity Report, OCP's phosphate fertilizer plant at Jorf Lasfar produces phosphogypsum waste at a rate of 30m<sup>3</sup>/s which it discharges into the ocean through a series of offshore pipes.<sup>85</sup> A 2006 study by Morocco's national fisheries research institute (INRH) found significant contamination of cadmium in shellfish around OCP's water emissions points.<sup>86</sup> Another study from 2013 recorded high levels of heavy metal contamination in saltwater lagoons near OCP sites.<sup>87</sup>

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<sup>83</sup> Int'l Finance Corp., Environmental, Health, and Safety Guidelines: Phosphate Fertilizer Plants & Manufacturing at 5, 7 (Apr. 2007), attached as Exhibit II-33.

<sup>84</sup> *See id.* at 8.

<sup>85</sup> OCP, Activity Report 2013, at 41, 47, attached as Exhibit II-34.

<sup>86</sup> *See* Samir Benbrahim, et al., *Survey of the Carriers Influencing the Geographical and Temporal Distribution of Contamination by Heavy Metals Along the Atlantic Moroccan Coasts: the Case of Mercury, Lead and Cadmium* at 43, Institut National de Recherche Halieutique (INRH) (Mar. Life, Vol. 16, 2006), attached as Exhibit II-35. *See also* Natasha White, *Toxic Shadow: Phosphate Miners in Morocco Fear They Pay a High Price*, The Guardian (Dec. 16, 2015), attached as Exhibit II-36.

<sup>87</sup> *See* Z. Idardare, et al., *Evaluation de la Contamination Métallique dans deux Lagunes Marocaines: Khnifiss et Oualidia* at 41, Rev. Mar. Sci. Agron. Vét. (2013), attached as Exhibit II-37. *See also* Natasha White, *Toxic Shadow: Phosphate Miners in Morocco Fear They Pay a High Price*, The Guardian (Dec. 16, 2015), attached as Exhibit II-36.

The GOM is presumably aware of OCP’s phosphogypsum dumping, given publicly available information about this practice and OCP’s role as a prominent state-owned company in Morocco. Indeed, OCP’s disposal of phosphogypsum in Morocco’s waters is conducted openly, as confirmed by OCP’s discussion of its practice of “phosphogypsum (PG) spills into the marine environment” in its 2019 sustainability report.<sup>88</sup> It therefore appears that the GOM has granted OCP permission to dump phosphogypsum pollutants in the Atlantic Ocean and other bodies of water. However, our research has not uncovered publicly available information as to the precise form and terms of this permission from the GOM. Public reports also suggest that the GOM may not collect fines and fees established by law for pollution discharges into bodies of water.<sup>89</sup>

**a. Financial Contribution**

The GOM’s granting of permission to OCP to dump phosphogypsum waste from its phosphate fertilizer operations in bodies of water constitutes a financial contribution in the form of the provision of a good or services within the meaning of section 771(5)(D)(iii) of the Act.<sup>90</sup> Normally, a phosphate fertilizer producer itself stores or otherwise disposes of phosphogypsum from its production operations.<sup>91</sup> The industry standard method for doing so is to stack the phosphogypsum on land in what is known as a “gypstack,” which is an engineered structure that must be constructed and then managed both during the operation of the facility and after its closure.<sup>92</sup> By permitting OCP to dump phosphogypsum in Morocco’s waters, the GOM provides

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<sup>88</sup> OCP, 2019 Sustainability Report at 125, attached as Exhibit II-14.

<sup>89</sup> See United Nations Economic Commission for Europe & United Nations Economic Commission for Africa, Morocco: Environmental Performance Reviews, ECE/CEP/170, at xxvi (2014), attached as Exhibit II-38 (“*Fines and sanctions for non-compliance with environmental standards (notably for air, water and waste), even if stipulated in the legislation, are not applied in general, and neither are emissions charges. . . .* {T}he regulations for the establishment of various taxes, even those that have been partially established by the legislation are slow to be implemented: e.g., fees for discharges, flows, direct and indirect deposits into surface or ground water.”).

<sup>90</sup> See *id.*; 19 U.S.C. § 1677(5)(D)(iii).

<sup>91</sup> See Mosaic 2019 Annual Report on SEC Form 10-K at F-27, attached as Exhibit II-39.

<sup>92</sup> See Mosaic 2019 Annual Report on SEC Form 10-K at F-27, attached as Exhibit II-39 (“Processing of phosphate rock with sulfuric acid generates phosphogypsum that is stored in Gypstacks.”); OCP, 2019 Sustainability Report at 98, attached as Exhibit II-14 (referring to OCP’s “goal” of starting phosphogypsum stacking by 2023).

a valuable waste disposal service for OCP. If the GOM did not provide this service, OCP would need to store or otherwise dispose of its phosphogypsum waste itself or through a third party.

Alternatively, to the extent that the GOM does not collect fees or fines to which it is otherwise entitled (*e.g.*, if, despite what the available information indicates, the GOM has not granted OCP permission to dump phosphogypsum waste from its phosphate fertilizer operations but has instead exempted OCP from the general obligation to pay fees for dumping in violation of Moroccan law), this constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of foregone revenue that is otherwise due.<sup>93</sup>

**b. Benefit**

The GOM's provision of phosphogypsum waste disposal services accords a benefit to OCP because the government provides those services for less than adequate remuneration.<sup>94</sup> Information regarding the terms of GOM's issuance of permission to OCP to dump phosphogypsum waste is not publicly available. Moreover, Petitioner does not believe there are available private, market-determined prices for the waste disposal services at issue because the GOM retains sovereign rights over its waters. Nor are there world market prices for this service because other governments typically hold sovereign rights over their own waters, and in any event, the standard practice for phosphate fertilizer producers is to store phosphogypsum on land in gypstacks, as discussed above. At a minimum, however, the existence of a benefit is clear from the significant phosphogypsum storage costs that OCP avoids by dumping into Morocco's waters, as compared to the costs incurred by a phosphate fertilizer producer like Mosaic that maintains gypstacks. For example, at the end of 2019, Mosaic carried \$660.2 million in

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<sup>93</sup> 19 U.S.C. § 1677(5)(D)(ii).

<sup>94</sup> 19 U.S.C. § 1677(5)(E)(iv); 19 C.F.R. § 351.511(a)(1).

gypstack closure costs for its Florida and Louisiana facilities on its balance sheet.<sup>95</sup> Thus, the GOM's provision of phosphogypsum waste disposal services for less than adequate remuneration accords a benefit to the recipient Moroccan phosphate fertilizer producer, OCP.

Alternatively, to the extent the GOM does not collect fees or fines to which it is otherwise entitled (*e.g.*, if, despite what the available information indicates, the GOM has not granted OCP permission to dump phosphogypsum waste from its phosphate fertilizer operations but has instead exempted OCP from the general obligation to pay fees for dumping in violation of Moroccan law), this program confers a benefit in the amount of the government revenue foregone, within the meaning of section 771(5)(E) of the Act.<sup>96</sup>

**c. Specificity**

Based on publicly available information, this program appears to be *de facto* specific, within the meaning of section 771(5A)(D)(iii) of the Act,<sup>97</sup> either because the recipients of the subsidy are limited in number—as OCP is the sole phosphate fertilizer producer in Morocco and thus the only entity dumping phosphate gypsum waste—or because OCP is a predominant user of the subsidy.<sup>98</sup>

**B. PROGRAMS INVOLVING THE DIRECT TRANSFERS OF FUNDS OR POTENTIAL DIRECT TRANSFER OF FUNDS**

The GOM provides countervailable subsidies to OCP pursuant to its CapEx program to fund its ambitious investment strategy and achieve its ultimate goal of doubling phosphate mining capacity and tripling phosphate processing capacity by 2025. These subsidies take three

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<sup>95</sup> See Mosaic 2019 Annual Report on SEC Form 10-K at F-70, attached as Exhibit II-39.

<sup>96</sup> 19 U.S.C. § 1677(5)(E).

<sup>97</sup> 19 U.S.C. § 1677(5A)(D)(iii).

<sup>98</sup> See 19 U.S.C. § 1677(5A)(D)(iii)(I), (II).

forms: (1) arrangement of bond issuances and government or government-directed purchases of the bonds; (2) direct government loans; and (3) government loan guarantees.

### **1. Arrangement of Bond Issuances and Government Purchases, and Direction of Purchases, of Bonds**

The GOM provides subsidized financing to OCP to fund its CapEx program through the arrangement of bond issuances and GOM purchases of, or direction of private entities to purchase, such bonds. In 2016, OCP announced plans to raise MAD 5 billion (\$505 million) through issuance of domestic perpetual bonds.<sup>99</sup> These are subordinate bonds, which means they are unsecured and, in the case of borrower default or liquidation, bondholders would be prioritized lower than other classes of bonds.<sup>100</sup> The AMMC, Morocco’s capital market authority, approved OCP’s maximum issuance amount of MAD 5 billion in perpetual subordinated bonds on December 9, 2016.<sup>101,102</sup> CDG Capital—a subsidiary of the Caisse de Dépôt et de Gestion (“CDG”)<sup>103</sup>—acted as the financial advisor and global coordinator, placement agent, custodian, and entity in charge of registration for the bond issuance.<sup>104</sup> CDG is a state-owned financial institution that invests in national projects of high priority<sup>105</sup> and is responsible for managing savings funds which require special protection.<sup>106</sup> Morocco’s Court of

<sup>99</sup> Aziz El Yaakoubi, *Moroccan Phosphate Producer OCP to Raise \$500 Mln in Domestic Bond Issue*, Reuters (Nov. 29, 2016), <https://af.reuters.com/article/idAFL8N1DU41P>, attached as Exhibit II-40.

<sup>100</sup> See James Chen, *Subordinated Debt Definition*, Investopedia (Apr. 30, 2020), <https://www.investopedia.com/terms/s/subordinateddebt.asp>, attached as Exhibit II-41.

<sup>101</sup> AMMC, Annual Report 2016, at 59, attached as Exhibit II-42.

<sup>102</sup> OCP also issued a bond on the domestic stock market in 2011 – the terms of this bond are unknown to the Petitioner – and it may have issued additional bonds in 2014. See Souhail Karam, *Morocco’s OCP Raises \$1.55 Billion in Debut Sale of Bonds Abroad*, Bloomberg News (Apr. 16, 2014), attached as Exhibit II-43.

<sup>103</sup> United Nations Environment Programme Finance Initiative, CDG Capital, <https://www.unepfi.org/member/cdg-capital/#:~:text=CDG%20Capital%20is%20a%20major,institutional%20investor%20in%20the%20country> (last visited June 10, 2020), attached as Exhibit II-44.

<sup>104</sup> OCP, Summary of the Final Prospectus at 1 (Dec. 2016), attached as Exhibit II-3.

<sup>105</sup> World Economic Forum, Caisse de Dépôt et de Gestion (CDG), <https://www.weforum.org/organizations/caisse-de-depot-et-de-gestion-cdg> (last visited May 27, 2020), attached as Exhibit II-45.

<sup>106</sup> Tarek Bazza, *Court of Auditors Slams CDG, Depository of Moroccan Social Security*, Morocco World News (Jan. 9, 2019), <https://www.moroccoworldnews.com/2019/01/262874/morocco-court-auditors-cdg/>, attached as Exhibit II-46.

Auditors has found that the CDG lacks risk control and monitoring mechanisms and engages in irregular behavior such as making equity investments in some of its own subsidiaries and holdings.<sup>107</sup> According to its 2018 annual report, CDG Capital works to support the GOM's numerous sectoral plans for driving economic growth and its National Sustainable Development Strategy through providing financing in connection with the capital markets.<sup>108</sup> In keeping with the CDG's commitment to the economic development of Morocco, CDG Capital has made it a priority to support major players in Morocco's economy engaging in large-scale investment projects,<sup>109</sup> such as OCP.

OCP completed the subordinated bond issuance on December 16, 2016, issuing 50,000 bonds with a nominal value of MAD 100,000 each for a total of MAD 5 billion (\$505 million). The bonds were set at rates lower than the market rate for subordinated bonds at the time of issuance. OCP based its rates on "primary market Treasury bond" yields<sup>110</sup> with risk premiums depending on the tranche, as shown in the table below. The highest interest rate available to bond purchasers was for Tranche A, at 4.07%:<sup>111</sup>

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<sup>107</sup> Tarek Bazza, *Court of Auditors Slams CDG, Depository of Moroccan Social Security*, Morocco World News (Jan. 9, 2019), <https://www.moroccoworldnews.com/2019/01/262874/morocco-court-auditors-cdg/>, attached as Exhibit II-46.

<sup>108</sup> CDG Capital Groupe, *Rapport D'Activité et de Responsabilité Sociale 2018*, at 35, attached as Exhibit II-47.

<sup>109</sup> CDG Capital Groupe, *Rapport D'Activité et de Responsabilité Sociale 2018*, at 36, attached as Exhibit II-47; *see also* CDG, *About Us*, <https://www.cdgcapital.ma/fr/propos-de-nous> (last visited May 27, 2020), attached as Exhibit II-48.

<sup>110</sup> OCP, *Summary of the Final Prospectus* at 1 (Dec. 2016), attached as Exhibit II-3.

<sup>111</sup> OCP, *Summary of the Final Prospectus* at 1 (Dec. 2016), attached as Exhibit II-3; OCP, *Consolidated Financial Statements* at 31 Dec. 2016, at 50, attached as Exhibit II-49.

### Interest Rates for OCP's 2016 Perpetual Subordinated Bond Issuance

	Tranche A (Unlisted)	Tranche B (Listed)	Tranche C (Unlisted)	Tranche D (Listed)	Tranche E (Unlisted)	Tranche F (Listed)
Interest Rate	10-year resettable in reference to the 10-year rate based on the primary market Treasury bond yield curve as at 31 October 2016 i.e 3.07% for the first 10 years, increased by a risk premium, i.e between 3.77% and 4.27% for the first 10 years.		Annually resettable, in reference to the 52-week rate based on the primary market Treasury bond yield curve (money market base) as at November 21 2016, i.e 2.28% for the first year, increased by a risk premium, i.e between 2.98% and 3.48%.		5-year resettable, in reference to the 5-year rate based on the primary market Treasury bond yield curve as at November 14, 2016, i.e 2.67%, increased by a risk premium i.e between 3.37% and 3.87% for the first 5 years.	
Risk Premium	70 to 120 bps					
1st Optional Redemption	December 23, 2026					

Source: OCP, Summary of the Final Prospectus at 1 (Dec. 2016), attached as Exhibit II-3.

OCP ultimately issued perpetual bonds as follows: MAD 1,683.3 million at 4.07% on unlisted tranche A and listed tranche B; MAD 3,021.1 million at 3.28% on unlisted tranche C; and MAD 295.6 million at 3.67% on unlisted tranche E.<sup>112</sup> Thus, the subordinated bonds OCP issued in 2016 offered approximately a 1% risk premium over Moroccan sovereign bonds, which significantly undervalued the risk involved with the purchase of these subordinated bonds. By comparison, in its debut international bond sale in 2014, OCP reportedly sold \$1.25 billion of 10-year bonds at a yield of 5.75—about 3.1 percentage points higher than similar-maturity U.S. Treasuries—and \$300 million of 30-year bonds at a yield of 7.375 percent—or 3.9 percentage points higher than similar Treasuries.<sup>113</sup> According to an analysis by New York University Corporate Finance professor Aswath Damodaran, private equity bonds in Morocco should command a 5% risk premium over Moroccan sovereign bonds.<sup>114</sup> At the time of the first subordinated bond issuance in 2016, Fitch Ratings downgraded OCP's outlook from stable to

<sup>112</sup> OCP, Consolidated Financial Statements at 31 Dec. 2016, at 50, attached as Exhibit II-49.

<sup>113</sup> See Souhail Karam, *Morocco's OCP Raises \$1.55 Billion in Debut Sale of Bonds Abroad*, Bloomberg News (Apr. 16, 2014), attached as Exhibit II-43.

<sup>114</sup> See ctrypremJuly18.xlsx, <http://people.stern.nyu.edu/adamodar/pc/datasets/> (last visited May 28, 2020), attached as Exhibit II-50 (This workbook estimated that in July 2018 the Country Risk Premium associated with Morocco was 3.53% and the Equity risk premium was 8.9%. Therefore, the additional risk of private equity over sovereign bonds for Morocco is 5.37%.).

negative and gave it a credit rating of BBB-, the lowest possible investment grade rating.<sup>115</sup> Moreover, as noted above, subordinate bonds are unsecured and, in the case of borrower default or liquidation, holders of subordinated bonds would be prioritized lower than other classes of bonds.<sup>116</sup> Thus, bondholders would be expected to demand an even higher risk premium for this type of bond.

OCP completed a second subordinated bond issuance in May 2018, again issuing 50,000 bonds with a nominal value of MAD 100,000 each for a total of MAD 5 billion (\$505 million).<sup>117</sup> CDG Capital, a state-owned financial entity that works to support the GOM's national and sectoral development policies, again acted as one of OCP's primary financial advisors and global coordinators of the bond issuance.<sup>118</sup> CDG Capital and Attijari Finances Corp., a subsidiary of the state-owned Attijariwafa bank group, also acted as a financial advisor and global coordinator on the bond issuance.<sup>119</sup> In 2016, the Attijariwafa bank group was majority-owned by Société Nationale d'Investissement ("SNI") or National Investment Company of Morocco, a holding company owned by the Moroccan royal family.<sup>120</sup> According to its annual reports, the Attijariwafa bank group has supported various government-sponsored

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<sup>115</sup> *Fitch Ratings Revised Outlook on OCP SA to Negative*, CBonds (Dec. 20, 2016), <http://cbonds.com/news/item/863621>, attached as Exhibit II-51.

<sup>116</sup> See James Chen, *Subordinated Debt Definition*, Investopedia (Apr. 30, 2020), <https://www.investopedia.com/terms/s/subordinateddebt.asp>, attached as Exhibit II-41.

<sup>117</sup> OCP, Consolidated Financial Statements at 31 Dec. 2018, at 4, attached as Exhibit II-52.

<sup>118</sup> See OCP, Summary of the Prospectus at 1 (Apr. 2018), attached as Exhibit II-8. See also *Loan: Attijari Finances Corp. and CDG Capital Advise OCP*, L'Economiste. (Apr. 25, 2018), <https://www.leconomiste.com/flash-infos/emprunt-attijari-finances-corp-et-cdg-capital-conseillent-l-ocp>, attached as Exhibit II-53.

<sup>119</sup> See OCP, Summary of the Prospectus at 1 (Apr. 2018), attached as Exhibit II-8; *Loan: Attijari Finances Corp. and CDG Capital Advise OCP*, L'Economiste. (Apr. 25, 2018), <https://www.leconomiste.com/flash-infos/emprunt-attijari-finances-corp-et-cdg-capital-conseillent-l-ocp>, attached as Exhibit II-53; Attijariwafa bank, Attijari Finances Corp., <https://www.attijariwafabank.com/en/brands-and-Moroccan-subsidiaries/attijari-finances-corp> (last visited May 28, 2020), attached as Exhibit II-54.

<sup>120</sup> See OECD, *State-Owned Enterprises in the Middle East and North Africa: Engines of Development and Competitiveness?* at 118 (2013), attached as Exhibit II-55; *Morocco's New African Ambition*, The Report Company (Jan. 28, 2016), <http://www.the-report.com/reports/morocco/the-new-morocco/moroccos-new-african-ambition/>, attached as Exhibit II-56. In 2018, SNI changed its name to Al Mada. See *Morocco's SNI Changes Name into Al Mada, Gears Activity to Africa*, North Africa Post (Mar. 28, 2018), <https://northafricapost.com/22909-moroccos-sni-changes-name-al-mada-gears-activity-africa.html>, attached as Exhibit II-57.

programs in Morocco for many years—including programs to expand Moroccan exports and develop strategically-important sectors of the economy.<sup>121</sup> The bank also finances projects that make a significant contribution to the economic development of Morocco, consistent with GOM policy.<sup>122</sup> CDG Capital and Attijariwafa bank group were the co-lead managers of bond placement.<sup>123</sup> State-owned institutional investors, including the CDG, reportedly accounted for a large portion of the bond purchases.<sup>124</sup>

In addition to being heavily subscribed by GOM entities, OCP’s subordinated bonds were also set at rates lower than the market rate for subordinate bonds at the time of issuance in 2018. OCP again based its rates on “primary market Treasury bond” yields<sup>125</sup> with risk premiums depending on the tranche, as shown in the table below. The highest interest rate investors were able to obtain were for Tranche E, at 5.08% to 5.28%:<sup>126</sup>

#### Interest Rates for OCP’s 2018 Perpetual Subordinated Bond Issuance

	Tranche A (Unlisted)	Tranche B (Listed)	Tranche C (Unlisted)	Tranche D (Unlisted)	Tranche E (Unlisted)
Interest Rate	10-year resettable in reference to the 10-year rate based on the primary market Treasury bond yield curve as at 27 March 2018 i.e 3.23% for the first 10 years, increased by a risk premium, i.e between 4.03% and 4.23% for the first 10 years.		Annually resettable, in reference to the 52-week rate based on the primary market Treasury Bond yield curve (money market base) as at April 3rd 2018, i.e increased by a risk premium, i.e between 3.00% and 3.20%.	For the first time, 15-year resettable until the first optional redemption date, and hereafter beyond the 15th year, revised every 10 year. For the first 15 year period, the rate is determined in reference to the 15-year rate based on the primary market treasury bond yield curve as at 13 March 2018, i.e 3.67% for the first 15 years, increased by a risk premium i.e 4.72% and 4.92% for the first 15 years.	20-year resettable in reference to the 20-year rate based on the primary market treasury bond yield curve as at 27 March 2018, i.e 3.98% for the first 20 years increase by a risk premium i.e between 5.08% and 5.28% for the first 20 years.
Risk Premium	80 to 100 bps		70 to 90 bps	105 to 125 bps	110 to 130 bps
1st Optional Redemption	5/14/2028	5/14/2028	5/14/2028	5/14/2033	5/14/2038

Source: OCP, Summary of the Prospectus at 1 (Apr. 2018), attached as Exhibit II-8.

<sup>121</sup> See Attijariwafa bank, Annual Report and Corporate Social Responsibility Report 2017, at 53, attached as Exhibit II-58; see also Attijariwafa bank, Annual Report and Corporate Social Responsibility Report 2016, at 108, attached as Exhibit II-59 (“Attijariwafa bank’s commitment to developing the domestic economy is unfailing. The Bank wholeheartedly supports the major government-backed programmes.”).

<sup>122</sup> See Attijariwafa bank, Annual Report 2015, at 77, attached as Exhibit II-60.

<sup>123</sup> See OCP, Summary of the Prospectus at 1 (Apr. 2018), attached as Exhibit II-8.

<sup>124</sup> See Afifa Dassouli, *OCP’s MAD 5 Billion Bond Issue, 311% Oversubscribed!*, La Tribune (May 31, 2018), <https://lnt.ma/ocps-mad-5-billion-bond-issue-311-oversubscribed/>, attached as Exhibit II-61.

<sup>125</sup> OCP, Summary of the Prospectus, at 1 (Apr. 2018), attached as Exhibit II-8.

<sup>126</sup> OCP, Summary of the Prospectus, at 1 (Apr. 2018), attached as Exhibit II-8.

OCP closed on the perpetual bond issuance on May 4, 2018, issuing bonds as follows: MAD 1,058 million at 4.03% on unlisted tranche A and listed tranche B; MAD 109 million at 3% on unlisted tranche C; MAD 2,708 million at 4.72% yield on unlisted tranche D; and MAD 1,125 million at 5.08% on unlisted tranche E.<sup>127</sup> Thus, OCP's subordinated bonds offered approximately a 0.7-1.1% risk premium over Moroccan sovereign bonds. This significantly undervalued the risk involved with the purchase of these subordinated, unsecured bonds. OCP's credit rating at the time of its second subordinated bond issuance in 2018 was still BBB-, the lowest investment grade.<sup>128</sup> These types of bonds should have commanded a minimum 5% premium over Moroccan sovereign bonds.<sup>129</sup>

**a. Financial Contribution**

The GOM arranged the issuance of OCP's subordinated bonds, purchased a significant portion of the bonds, and directed private financial entities to purchase the MAD 10 billion (\$1.01 billion) in bonds. As discussed above, the bond issuances were arranged by CDG Capital and Attijari Finances Corp. CDG Capital and Attijari Finances Corp. are both state-owned entities that support the GOM's economic development policies and are thus government authorities within the meaning of section 771(5)(B) of the Act. Publicly available information indicates that other government authorities, including the CDG, purchased a significant portion of the bonds. Thus, the GOM's purchases of bonds constitutes a financial contribution in the form of a direct transfer of funds, within the meaning of section 771(5)(D)(i) of the Act and its

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<sup>127</sup> OCP, Consolidated Financial Statements at 31 Dec. 2018, at 48, attached as Exhibit II-52.

<sup>128</sup> *S&P Global Ratings Revised Outlook on OCP SA to Negative and Affirmed at "BBB-" (Local Currency LT) Credit Rating*, CBonds (Oct. 17, 2018), <http://cbonds.com/news/item/1049001>, attached as Exhibit II-62.

<sup>129</sup> See, *ctrypremJuly18.xlsx*, <http://people.stern.nyu.edu/adamodar/pc/datasets/> (last visited May 28, 2020), attached as Exhibit II-50 (This workbook estimated that in July 2018 the Country Risk Premium associated with Morocco was 3.53% and the Equity risk premium was 8.9%. Therefore, the additional risk of private equity over sovereign bonds for Morocco is 5.37%).

arrangement of the bond issuances constitutes a financial contribution in the form of provision of services, within the meaning of section 771(5)(D)(iii) of the Act.<sup>130</sup>

**b. Benefit**

OCP's MAD 10 billion (\$1.01 billion) in subordinated bonds should be treated as long-term loans for purposes of assessing benefit under section 771(5)(E)(ii) of the Act.<sup>131</sup> Consistent with the statute and the Department's regulations, the Department generally measures the benefit conferred to the recipient of long-term loans as the difference between the interest rate(s) the recipient pays on the loans and the amount it would pay on a comparable commercial loan the recipient could actually obtain on the market, unless the loan recipient was uncreditworthy.<sup>132</sup> Publicly available information indicates that OCP's bonds were issued at below-market rates and, at a minimum, should have offered a 5% premium over Moroccan sovereign bonds.<sup>133</sup>

Moreover, OCP was uncreditworthy at the time of both the December 2016 and May 2018 bond issuances, such that the Department should calculate a benchmark according to section 351.505(a)(4)(i) of its regulations. Under section 351.505(a)(4)(i) of its regulations, the Department considers the following four factors in assessing a loan recipient's creditworthiness: (1) the receipt by the firm of comparable commercial long-term loans; (2) the present and past financial health of the firm, as reflected in its financial indicators; (3) the firm's past and present ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the

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<sup>130</sup> 19 U.S.C. § 1677(5)(D)(i), (iii).

<sup>131</sup> See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 Fed. Reg. 37,122 (Int'l Trade Admin. June 23, 2003), and accompanying Issues and Decision Memorandum at 21 ("For the new long-term loans and bonds that were issued as part of the restructuring program, we compared the interest rates on the directed long-term loans and new bonds to the benchmark interest rates detailed in the "Subsidies Valuation Information" section, above, in accordance with section 771(5)(E)(ii) of the Act. . . . For long-term fixed-rate loans and bonds, consistent with Cold Rolled Steel, we calculated the benefit using the Department's standard fixed-rate methodology specified in 19 CFR 351.505(c)(2).").

<sup>132</sup> 19 U.S.C. § 1677(5)(E)(ii); 19 C.F.R. § 351.505(a)(1), (a)(3)(iii).

<sup>133</sup> See, ctrypremJuly18.xlsx, <http://people.stern.nyu.edu/adamodar/pc/datasets/> (last visited May 28, 2020), attached as Exhibit II-50.

firm’s future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals.<sup>134</sup> The application of these criteria to OCP indicates that the company was uncreditworthy for the following reasons.

*First*, information regarding the existence and terms of OCP’s commercial loans, and in particular whether such loans would be considered “comparable” to the perpetual bonds issued in 2016 and 2018, is not readily available to Petitioner. Nonetheless, OCP is a government-owned entity, and thus whether it received comparable commercial long-term loans is not dispositive of its creditworthiness.<sup>135</sup>

*Second*, OCP’s financial indicators demonstrate that it was uncreditworthy at the time of the bond issuances in 2016 and 2018. A firm’s current and quick ratios are “highly relevant” in this context, because they are indicators of a firm’s financial health and its ability to meet its costs and fixed financial obligations with cash flow.<sup>136</sup> The Department has previously found firms with a current ratio below 2 and a quick ratio below 1 to be uncreditworthy.<sup>137</sup> OCP’s quick ratio was well below the Department’s benchmark from 2008 to 2011 and from 2013 to 2017, and its current ratio was below the Department’s benchmark each year from 2013 to 2019, except 2018.<sup>138</sup> As of December 31, 2016, prior to the first bond issuance in December 2016, OCP’s current ratio was 1.62 and its quick ratio was 0.95.<sup>139</sup> As of January 1, 2018, prior to the

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<sup>134</sup> 19 C.F.R. § 351.505(a)(4)(i).

<sup>135</sup> 19 C.F.R. § 351.505(a)(4)(ii).

<sup>136</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 Fed. Reg. 63,788 (Oct. 17, 2012), and accompanying Issues and Decision Memorandum at 56 (“{T}he meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not.”).

<sup>137</sup> *Id.* at 58 (Trina’s debt was estimated to rate at “Ba” or “B” on Moody’s scale—ratings for obligations judged to have speculative elements and be subject to substantial credit risk—equivalent to “bb+” on Fitch’s scale).

<sup>138</sup> See OCP Financial Ratios, 2008 to 2019, attached as Exhibit II-63.

<sup>139</sup> See OCP, Consolidated Financial Statements at 31 Dec. 2016, at 7, attached as Exhibit II-49.

second bond issuance in May 2018, OCP's current ratio was 1.34 and its quick ratio was 0.97.<sup>140</sup> Thus, OCP's financial indicators demonstrate it did not have sufficient liquid funds to cover upcoming obligations, and thus was not creditworthy, at the time of the bond issuances.

In addition, as previously noted, at the time of the two bond issuances, OCP had a credit rating of BBB-, the lowest possible investment grade, even with the boost it received from its close association with the GOM.<sup>141</sup> In its rating comments, Fitch stated that OCP's independent credit profile would be bb+—a level that Fitch defines as “speculative”—but for the GOM's financial backing, and the BBB- rating of OCP “incorporates a one-notch uplift for state support (Morocco, BBB-/Stable) from its 'bb+' standalone credit profile (SCP), in line with Fitch's Government Rated Entities (GRE) rating methodology.”<sup>142</sup> In *Solar Panels from China*, the Department found a non-state-owned entity, Trina, to be uncreditworthy based in part on a similar credit rating.<sup>143</sup>

*Third*, OCP's financial indicators show that it could not meet its costs and financial obligations with cash flow at the time of the bond issuances. OCP has taken on a large amount of debt since 2008 to fund its ambitious investment program. High debt-to-equity ratios indicate that a company has more debt than equity financing, and the Department generally considers a debt-to-equity ratio above 1 to be “high.”<sup>144</sup> In this case, OCP's debt-to-equity ratio rose above

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<sup>140</sup> See OCP, Consolidated Financial Statements at 31 Dec. 2018, at 13, attached as Exhibit II-52.

<sup>141</sup> *Fitch Ratings Revised Outlook on OCP SA to Negative*, CBonds (Dec. 20, 2016), <http://cbonds.com/news/item/863621>, attached as Exhibit II-51; *S&P Global Ratings Revised Outlook on OCP SA to Negative and Affirmed at "BBB-" (Local Currency LT) Credit Rating*, CBonds (Oct. 17, 2018), <http://cbonds.com/news/item/1049001>, attached as Exhibit II-62.

<sup>142</sup> *Fitch Affirms OCP at 'BBB-'; Outlook Stable*, FitchRatings (Nov. 1, 2019), <https://www.fitchratings.com/research/corporate-finance/fitch-affirms-ocp-at-bbb-outlook-stable-01-11-2019>, attached as Exhibit II-64.

<sup>143</sup> *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 Fed. Reg. 63,788 (Oct. 17, 2012), and accompanying Issues and Decision Memorandum at 58.

<sup>144</sup> See *id.*

2.0 in 2008 and 2009 and remained above 1.0 until 2019, except for a slight dip in 2012 and 2013.<sup>145</sup> In December 2016 OCP's debt-to-equity ratio was 1.12, and in January 2018 it was 1.11.<sup>146</sup> Thus, OCP's high debt-to-equity ratios further indicate that it was uncreditworthy at the time of the perpetual bond issuances. Another indicator of the company's uncreditworthiness is OCP's return on equity. Return on equity is a measure of a firm's profitability, calculated as the amount of net income returned as a percentage of shareholder's equity. Investors commonly consider a return on equity of less than 10% to be poor.<sup>147</sup> OCP's return on equity was a mere 5% in 2016 and 7% in 2018.<sup>148</sup>

Finally, OCP's cash flow coverage ratios—a key measure of a company's ability to pay its debt obligations with cash generated from operations—have been abysmally low since 2008. OCP's cash flow coverage ratio was negative in 2008, due to negative net operating cash flows, and it has remained well below 1.0 since then.<sup>149</sup> A cash flow coverage ratio below 1.0 indicates a company is unable to meet its debt obligations with current cash flows and is at risk of bankruptcy within two years.<sup>150</sup> OCP has taken on significant amounts of debt to fund its ambitious investment program and, at the time of the two perpetual bond issuances in 2016 and 2018, did not have adequate cash flows to cover its mounting debt obligations. This is another indicator that OCP was uncreditworthy.

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<sup>145</sup> See OCP Financial Ratios, 2008 to 2019, attached as Exhibit II-63.

<sup>146</sup> OCP, Consolidated Financial Statements at 31 Dec. 2016, at 7, attached as Exhibit II-49; OCP, Consolidated Financial Statements at 31 Dec. 2018, at 13, attached as Exhibit II-52.

<sup>147</sup> Marshall Hargrave, *Return on Equity – ROE*, Investopedia (Apr. 27, 2020), attached as Exhibit II-65.

<sup>148</sup> See OCP Financial Ratios, 2008 to 2019, attached as Exhibit II-63.

<sup>149</sup> See OCP Financial Ratios, 2008 to 2019, attached as Exhibit II-63.

<sup>150</sup> See Ready Ratios, Cash Flow Coverage Ratio,

[https://www.readyratios.com/reference/cashflow/cash\\_flow\\_coverage\\_ratio.html](https://www.readyratios.com/reference/cashflow/cash_flow_coverage_ratio.html) (last visited May 28, 2020), attached as Exhibit II-66 (“A ratio equal to one or more than one means that the company is in good financial health and it can meet its financial obligations through the cash generated by operating activities. A ratio of less than one is an indicator of bankruptcy of the company within two years if it fails to improve its financial position.”).

*Fourth*, Petitioner is unaware of any evidence of OCP's future financial position that would mitigate the conclusion which can be drawn from its financial indicators. In fact, OCP reported a decline in revenue and operating income in 2019 compared to 2018, plus an increase in the cost of its gross financial debt.<sup>151</sup>

In sum, the totality of the publicly available evidence indicates that OCP was not creditworthy at the time of the two perpetual bond issuances in 2016 and 2018. Accordingly, the Department should calculate the benefit for the GOM's purchases of OCP bonds according to the formula provided in section 351.505(a)(3)(iii) of its regulations.<sup>152</sup>

In addition, the GOM's arrangement of bond issuances accords a benefit to OCP because the government provides those services for less than adequate remuneration.<sup>153</sup> OCP's bond prospectuses state that GOM entities acted as bond placement agents but do not disclose any placement fees associated with the provision of these services.<sup>154</sup> Accordingly, the GOM provided these services for less than adequate remuneration, thus conferring a benefit within the meaning of section 771(5)(E) of the Act.<sup>155</sup>

**c. Specificity**

The MAD 10 billion (\$1.01 billion) in government purchases of OCP's subordinated bonds, and related government-provided services, are both *de jure* and *de facto* specific within the meaning of section 771(5A)(D) of the Act, as they were made to fund and support OCP's CapEx program.<sup>156</sup>

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<sup>151</sup> See OCP, Consolidated Financial Statements at 31 Dec. 2019, at 5, attached as Exhibit II-18.

<sup>152</sup> 19 C.F.R. § 351.505(a)(3)(iii).

<sup>153</sup> 19 U.S.C. § 1677(5)(E)(iv); 19 C.F.R. § 351.511(a)(1).

<sup>154</sup> See OCP, Summary of the Final Prospectus at 1 (Dec. 2016), attached as Exhibit II-3; OCP, Summary of the Prospectus at 1 (Apr. 2018), attached as Exhibit II-8.

<sup>155</sup> 19 U.S.C. § 1677(5)(E).

<sup>156</sup> 19 U.S.C. § 1677(5A)(D).

## 2. Direct Government Loans

The GOM also provides direct loans to OCP through government banks and other state-controlled enterprises, including BCP, to fund its CapEx program. As disclosed in OCP's 2018 financial statements<sup>157</sup>:

- In April 2018, OCP concluded a loan totaling MAD 2 billion (\$202 million) at fixed interest rates and maturing in December 2024 with BCP.
- In April 2018, OCP concluded a loan totaling MAD 1.5 billion (\$151 million) at a fixed interest rate and maturing in June 2025 with Crédit Agricole du Maroc, a state-owned bank.<sup>158</sup>
- In September 2018, OCP concluded a loan for an aggregate amount of MAD 500 million (\$50.5 million) at a fixed interest rates maturing in July 2023 with Crédit du Maroc, a subsidiary of the state-owned Crédit Agricole du Maroc.<sup>159</sup>

OCP reported additional new financing agreements in 2019, although it failed to disclose the source of these loans<sup>160</sup>:

- In December 2019, OCP concluded one loan for MAD 1.25 billion (\$126 million) at a fixed interest rate and a second loan for MAD 3.3 billion (\$342 million) at a fixed interest rate.
- OCP's subsidiary Phosboucraa concluded three financing contracts for a total of MAD 4 billion (\$404 million) at fixed interest rates.

According to OCP's 2019 financial statements, the company had a loan balance of MAD 807 million (\$81.6 million) in loans from the State and state-controlled entities as of December 31, 2019, and MAD 4.6 billion (\$465 million) in loans from BCP.<sup>161</sup> Also according to OCP's 2019

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<sup>157</sup> OCP, Consolidated Financial Statements at 31 Dec. 2018, at 40, attached as Exhibit II-52.

<sup>158</sup> See OECD, State-Owned Enterprises in the Middle East and North Africa: Engines of Development and Competitiveness? at 118 (2013), attached as Exhibit II-55.

<sup>159</sup> See Crédit Agricole Group, Business Lines and Brands, Crédit du Maroc, <https://www.credit-agricole.com/en/business-lines-and-brands/all-brands/credit-du-maroc> (last visited May 28, 2020), attached as Exhibit II-67; OECD, State-Owned Enterprises in the Middle East and North Africa: Engines of Development and Competitiveness? at 118 (2013), attached as Exhibit II-55.

<sup>160</sup> OCP, Consolidated Financial Statements at 31 Dec. 2019, at 40, attached as Exhibit II-18.

<sup>161</sup> OCP, Consolidated Financial Statements at 31 Dec. 2019, at 48, attached as Exhibit II-18.

financial statements, the interest rates associated with its long-term loans denominated in MAD range from 3.25% to 3.95%.<sup>162</sup>

**a. Financial Contribution**

The GOM provides loans to OCP through government banks or government-owned banks. As previously discussed, OCP disclosed a loan balance of MAD 807 million (\$81.6 million) in loans from the State and state-controlled entities outstanding as of December 31, 2019. The state-owned banks Crédit Agricole du Maroc and Crédit du Maroc, which are government authorities within the meaning of section 771(5)(B) of the Act, appear to have been the source of several of these loans. OCP also reported receiving MAD 4.6 billion (\$465 million) in loans from BCP, a partially-privatized state bank that appears to be a government authority within the meaning of section 771(5)(B) of the Act.<sup>163</sup> Accordingly, the GOM's provision of loans to OCP through government banks or government-owned banks constitutes a direct transfer of funds, within the meaning of section 771(5)(D)(i) of the Act.<sup>164</sup>

**b. Benefit**

The Department generally measures the benefit of long-term loans under section 771(5)(E)(ii) of the Act as the difference between the amount the recipient pays on the loans and the amount the recipient would pay on comparable commercial loans that the recipient could actually obtain in the market.<sup>165</sup> However, as discussed above, when the loan recipient is uncreditworthy, the Department calculates benefit according to the formula in section 351.505(a)(3)(iii) of its regulations.<sup>166</sup> In this case, publicly available information indicates that OCP has been uncreditworthy since it embarked on its ambitious investment strategy in 2008.

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<sup>162</sup> OCP, Consolidated Financial Statements at 31 Dec. 2019, at 39, attached as Exhibit II-18.

<sup>163</sup> World Bank Group, Creating Markets in Morocco at 108 (Oct. 2019), attached as Exhibit II-6.

<sup>164</sup> 19 U.S.C. § 1677(5)(D)(i).

<sup>165</sup> 19 U.S.C. § 1677(5)(E)(ii); 19 C.F.R. § 351.505(a)(1).

<sup>166</sup> 19 C.F.R. § 351.505(a)(3)(iii).

Accordingly, as discussed above, the interest rates OCP paid for its debt financing is far below the interest rate it should have paid because it was uncreditworthy. For example, the rate paid on OCP's long-term bonds is approximately 4.09% whereas OCP should have paid approximately 15.56%, pursuant to the risk premium the Department normally calculates for uncreditworthy firms in accordance with 19 CFR 351.505(a)(3)(iii).<sup>167</sup>

**c. Specificity**

The at least MAD 5.4 billion (\$546 million) in direct government loans to OCP outstanding as of December 31, 2019, are specific as a matter of both law and fact within the meaning of section 771(5A)(D) of the Act as they were provided to OCP to fund its CapEx program.<sup>168</sup>

**3. Government Loan Guarantees**

The GOM also provides loan guarantees to OCP in support of its CapEx program. OCP has held explicitly government-backed loans since at least 2008.<sup>169</sup> OCP's 2019 financial statements refer to these government loan guarantees alternatively as "sovereign-guaranteed bank loans" and as "government credits."<sup>170</sup> In addition, as stated in its 2019 financial statements, prior to 2008, "OCP, as a public enterprise, benefited from the State guarantee for loans taken out with foreign organizations."<sup>171</sup> Based on OCP's 2019 financial statements, it

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<sup>167</sup> OCP, Consolidated Financial Statements at 31 Dec. 2016, at 50 and OCP, Consolidated Financial Statements at 31 Dec. 2018, at 48 (weighted average interest rate for tranche A – E), attached as Exhibits II-49 and II-52.

<sup>168</sup> 19 U.S.C. § 1677(5A)(D).

<sup>169</sup> OCP, Consolidated Financial Statements at 31 Dec. 2019, at 47, attached as Exhibit II-18. *See also* OCP, Prospectus at F-44 (Apr. 20, 2015), attached as Exhibit II-11.

<sup>170</sup> *See* OCP, Consolidated Financial Statements at 31 Dec. 2019, at 39, 43, attached as Exhibit II-18; OCP, Prospectus at 64 (Apr. 20, 2015), attached as Exhibit II-11. *See also* OCP, Prospectus at 54 (Apr. 17, 2014), attached as Exhibit II-68.

<sup>171</sup> OCP, Consolidated Financial Statements at 31 Dec. 2019, at 48, attached as Exhibit II-18.

appears that several government-backed loans made prior to 2008 remain on OCP’s balance sheet today.<sup>172</sup>

As of December 31, 2019, OCP reported MAD 64 million (\$6.5 million) of loans guaranteed by the State in its current financial debts and MAD 303 million (\$30.6 million) in its non-current financial debts.<sup>173</sup> The table below shows the amounts of these government-backed loans OCP held from December 2011 to December 2019:

Category	OCP Sovereign-guaranteed bank loans (In Millions of MAD)								
	2011	2012	2013	2014	2015	2016	2017	2018	2019
Current	49	60	63	65	66	65	67	65	64
Non-Current	837	774	724	642	565	493	449	374	303

The Department has also previously treated government-provided bond placement services as equivalent to government-provided loan guarantees.<sup>174</sup> As discussed above, governmental entities including CDG Capital and the Attijari Finances Corp. provided such services with regard to OCP’s perpetual bond issuances in 2016 and 2018, indicating the GOM effectively guaranteed the bonds. Accordingly, the Department should investigate the GOM’s provision of loan guarantees as countervailable subsidies.

**a. Financial Contribution**

The GOM’s provision of loan guarantees—including through government authorities such as CDG Capital and Attijari Finances Corp.—to OCP constitutes a potential direct transfer of funds, within the meaning of section 771(5)(D)(i) of the Act.<sup>175</sup>

<sup>172</sup> OCP, Consolidated Financial Statements at 31 Dec. 2019, at 48, attached as Exhibit II-18.

<sup>173</sup> OCP, Consolidated Financial Statements at 31 Dec. 2019, at 43, attached as Exhibit II-18. *See also id.* note 10.1.2.1 Breakdown of Financial Debts by Type at 39.

<sup>174</sup> *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 Fed. Reg. 60,639 (Int’l Trade Admin. Oct. 25, 2007), and accompanying Issues and Decision Memorandum at Comment 23.

<sup>175</sup> 19 U.S.C. § 1677(5)(D)(i).

**b. Benefit**

Under section 771(5)(E)(iii) of the Act, the benefit to the recipient conferred by loan guarantees generally equals the difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay on a comparable commercial loan if there were no guarantee by the government authority.<sup>176</sup>

**c. Specificity**

The GOM's guarantees of loans to OCP, as well as its guarantee of OCP's bonds, is specific as a matter of both law and fact within the meaning of section 771(5A)(D) of the Act as they are provided to OCP as a state-backed entity and pursuant to its CapEx program.<sup>177</sup>

**C. TAX PROGRAMS**

**1. VAT Tax Reform**

Under Morocco's VAT regime, input VAT is charged on goods and services acquired by an entity for business purposes, including both goods and services purchased in Morocco and imported goods.<sup>178</sup> The entity that is liable for paying VAT is the person or legal entity that carries out a taxable transaction, meaning the sale of goods or services or importation of goods subject to VAT.<sup>179</sup> The standard VAT rate is 20%.<sup>180</sup> Input VAT can be recovered by deducting it from output VAT (meaning VAT charged on goods or services sold in Morocco).<sup>181</sup> Since 2014, the mechanism for recovery of input VAT is that companies may offset input VAT against output VAT on the same month's VAT tax filing.<sup>182</sup>

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<sup>176</sup> 19 U.S.C. § 1677(5)(E)(iii); 19 C.F.R. § 351.506(a)(1).

<sup>177</sup> 19 U.S.C. § 1677(5A)(D).

<sup>178</sup> See EY, *Worldwide VAT, GST and Sales Tax Guide 2019*, at 714, attached as Exhibit II-69.

<sup>179</sup> See *id.*

<sup>180</sup> *Id.* at 716.

<sup>181</sup> See *id.* at 718.

<sup>182</sup> See *id.* at 718.

Morocco's VAT regime differs somewhat from the VAT regimes in other countries, such as Korea,<sup>183</sup> because if the amount of input VAT tax recoverable in a period exceeds the amount of output VAT payable in the same period, it is generally not possible to obtain a refund of the excess VAT, subject to limited exceptions.<sup>184</sup> Instead, the excess VAT paid must be carried forward to a future period as a VAT credit.<sup>185</sup>

Beginning in 2014, the GOM has undertaken a series of VAT tax reforms to improve the liquidity and foreign exchange operations for Moroccan businesses. In 2014, the GOM enacted the Finance Law of 2014 which included a program for reimbursement of VAT credit accumulated from 2004 to 2013.<sup>186</sup> Pursuant to the Finance Law of 2016, the GOM extended its VAT reform program to cover 2015, 2016, and 2017 for companies that had a cumulative VAT credit of between MAD 20 million and MAD 500 million.<sup>187</sup> The Finance Law of 2016 also widened the scope of goods eligible for VAT refund to include investment goods, with the exception of equipment, office furniture, and passenger transport vehicles.<sup>188</sup> In May 2017, the GOM amended the VAT regime for capital investments to exempt existing companies making

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<sup>183</sup> See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 Fed. Reg. 2172 (Int'l Trade Admin. Jan. 15, 2016), and accompanying Issues and Decision Memorandum at 33 ("Under the GOK's VAT Act, a company is normally assessed a 10 percent VAT on imported equipment used for business. In turn, the company collects a VAT from its customer as part of the price of the goods produced by the company. The VAT paid by the company on the imported equipment is called the 'input' tax, while the VAT that the company collects from the customer is called the 'output' tax. The company submits a VAT report to the government on a monthly basis (see GOK May 13, 2003 submission), which reconciles the two VAT amounts by paying to the government only the amount by which the output tax exceeds the input tax. **Conversely, if the input tax exceeds the output tax, the government refunds the difference to the company.**")(emphasis added).

<sup>184</sup> See EY, *Worldwide VAT, GST and Sales Tax Guide 2019*, at 718, attached as Exhibit II-69.

<sup>185</sup> *Id.*

<sup>186</sup> See *Changing Regulations: Key Points of the Finance Law of 2014*, at 2, Oxford Business Group, attached as Exhibit II-70.

<sup>187</sup> See *A Guide to the Main Tax Measures Adopted by Morocco's New Finance Law of 2016*, at 5, Oxford Business Group, attached as Exhibit II-71.

<sup>188</sup> See *id.*

investments of MAD 100 million and above from VAT, a change that significantly benefited OCP due to its massive CapEx program.<sup>189</sup>

The GOM enacted further VAT reforms pursuant to the Finance Law of 2018, including a refund of VAT credit to benefit companies acting in the desalination of sea water business.<sup>190</sup> OCP operates the largest desalination plant in Morocco at its industrial complex at Jorf Lasfar and plans to expand that plant's capacity and develop a new desalination plant in Laayoune to meet the water needs of the Phosboucraa site's industrial development program.<sup>191</sup>

In early 2018, the GOM introduced mechanisms to secure long-term factoring facilities from banks to settle the large, outstanding VAT claims of state-owned entities like OCP.<sup>192</sup> At the time, OCP had accumulated MAD 21.3 billion (\$2.17 billion) in VAT credits since 2012,<sup>193</sup> amounting to 1.8% of Morocco's GDP.<sup>194</sup> On October 8, 2018, the GOM concluded an agreement with a consortium of banks and OCP for the reimbursement, by way of non-recourse factoring, of OCP's outstanding VAT credit, amounting to MAD 20.5 billion (\$2.07 billion).<sup>195</sup> The agreement provided OCP with much needed cash to cover its upcoming debt maturities and negative free cash flow resulting from its ambitious investment strategy.<sup>196</sup>

#### **a. Financial Contribution**

The GOM's VAT reform—including providing for refunds of VAT credit accrued during the period 2003-2017, securing non-recourse factoring to settle outstanding VAT claims and, and

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<sup>189</sup> FitchRatings, Ratings Report: OCP S.A. at 2 (Feb. 10, 2020), attached as Exhibit II-72.

<sup>190</sup> See *Key Provisions of Moroccan Finance Law for 2018*, CEGOR, <http://cegor.ma/En/key-provisions-of-moroccan-finance-law-for-2018/> (last visited (May 29, 2020), attached as Exhibit II-73.

<sup>191</sup> See OCP, 2018 Sustainability Report at 86, attached as Exhibit II-74.

<sup>192</sup> *Fitch Revises OCP's Outlook to Stable; Affirms at 'BBB-'*, FitchRatings (Nov. 5, 2018), attached as Exhibit II-75.

<sup>193</sup> *Fitch Revises OCP's Outlook to Stable; Affirms at 'BBB-'*, FitchRatings (Nov. 5, 2018), attached as Exhibit II-75.

<sup>194</sup> FitchRatings, Ratings Report: OCP S.A. at 2 (Feb. 10, 2020), attached as Exhibit II-72.

<sup>195</sup> OCP, Consolidated Financial Statements at 31 Dec. 2018, at 4, attached as Exhibit II-52.

<sup>196</sup> See *Fitch Revises OCP's Outlook to Stable; Affirms at 'BBB-'*, FitchRatings (Nov. 5, 2018), attached as Exhibit II-75.

exempting large capital investments and desalination plants from input VAT—constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of foregone revenue that is otherwise due.<sup>197</sup>

### **b. Benefit**

The provision of VAT credits and exemptions confers a benefit in the amount of government revenue foregone, within the meaning of section 771(5)(E) of the Act.<sup>198</sup> The benefit conferred under this program is the difference between the amount of VAT tax the recipient actually pays and the amount that it would have paid in the absence of this program, as described in section 351.509(a) of the Department’s regulations.<sup>199</sup> Absent this subsidy program, VAT taxpayers like OCP would not have been eligible for refunds of excess input VAT and would have had significantly higher input VAT liabilities on major investment projects, which likely would have resulted in further, non-refundable excess VAT being collected by the GOM. Thus, the benefit conferred under this program is effectively the amount of the VAT credit refunded for excess VAT accrued in the period 2003-2017 and the amount of the VAT exemptions.<sup>200</sup>

### **c. Specificity**

The GOM’s VAT tax reform program was designed specifically to benefit OCP and other state-owned entities. Based on publicly available information, it appears to be *de facto* specific, within the meaning of section 771(5A)(D)(iii) of the Act,<sup>201</sup> either because the recipients of the

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<sup>197</sup> 19 U.S.C. § 1677(5)(D)(ii).

<sup>198</sup> 19 U.S.C. § 1677(5)(E).

<sup>199</sup> See 19 C.F.R. § 351.509(a).

<sup>200</sup> See 19 C.F.R. § 351.509(a); *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 Fed. Reg. 79,564 (Int’l Trade Admin. Dec. 22, 2015), and accompanying Issues and Decision Memorandum at 21 (“*Certain Cold-Rolled Steel Flat Products from the Russian Federation*, Prelim. I&D Memo”).

<sup>201</sup> 19 U.S.C. § 1677(5A)(D)(iii).

subsidy are limited in number or because OCP is a predominant user of the subsidy, given its significant amount of accrued VAT credit.<sup>202</sup> In 2018, at the time its VAT credit agreement was negotiated, OCP's accrued VAT credit accounted for roughly half of Morocco's total VAT credit outstanding and 1.8% of Morocco's GDP.<sup>203</sup> Thus, it is likely that OCP is the single-largest beneficiary of Morocco's VAT reform program and thus a predominant user of the subsidy within the meaning of section 771(5A)(D)(iii) of the Act.

## **2. Tax Incentives for Export Operations – Reduction in Income Tax**

The GOM provides a reduced corporate income tax rate for export transactions. Under the Moroccan tax code, companies pay corporate income tax ("CIT") on the difference between their trading income and expenditures.<sup>204</sup> CIT rates apply on a progressive scale, with taxable income over MAD 1 million subject to a rate of 31%.<sup>205</sup> Prior to 2020, the Moroccan tax code provided for a five-year exemption from CIT for export transactions, followed by a reduced CIT rate of 17.5% thereafter.<sup>206</sup> OCP benefited from this reduced CIT rate for its significant exports of phosphate fertilizers. As stated in its 2016 prospectus, OCP is subject to the proportional corporate income tax rate of 31% but enjoys an income tax exemption ensuring a favorable income tax rate of 17.5% on exports.<sup>207</sup> Under the Finance Law of 2020, the GOM revised the Moroccan tax code to repeal the five-year exemption and increase the 17.5% CIT rate for exports to 20%.<sup>208</sup> These new provisions apply to fiscal years opened on or after January 1, 2020.<sup>209</sup>

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<sup>202</sup> See 19 U.S.C. § 1677(5A)(D)(iii)(I), (II).

<sup>203</sup> FitchRatings, Ratings Report: OCP S.A. at 1-2 (Feb. 10, 2020), attached as Exhibit II-72.

<sup>204</sup> PwC, Morocco: Corporate – Taxes on Corporate Income (Sept. 6, 2019), attached as Exhibit II-76.

<sup>205</sup> *Id.*

<sup>206</sup> *Morocco's New Finance Law Updates Tax Rates and Exemptions* at 2 Oxford Business Group, attached as Exhibit II-77.

<sup>207</sup> OCP, Summary of the Final Prospectus (Dec. 2016), at 37, attached as Exhibit II-3.

<sup>208</sup> *Morocco's New Finance Law Updates Tax Rates and Exemptions* at 2, Oxford Business Group, attached as Exhibit II-77.

<sup>209</sup> *See id.*

**a. Financial Contribution**

The reduced CIT rate for exports constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of foregone revenue that is otherwise due to the GOM.<sup>210</sup>

**b. Benefit**

The provision of tax reductions confers a benefit in the amount of government revenue foregone, within the meaning of section 771(5)(E) of the Act.<sup>211</sup> The benefit conferred under this program is the difference between the amount of CIT the recipient, OCP, actually pays and the amount that it would have paid in the absence of this program, as described in section 351.509(a) of the Department's regulations, effectively, the amount of the CIT reduction claimed.<sup>212</sup>

**c. Specificity**

The reduction of CIT for exports is specific within the meaning of section 771(5A)(B) of the Act, because it is a subsidy that is contingent, in law or in fact, upon export performance.<sup>213</sup>

**VI. CONCLUSION**

As set forth in this Petition, the GOM is providing substantial countervailable subsidies to the sole Moroccan producer of phosphate fertilizers, OCP. Accordingly, the Department should initiate a countervailing duty investigation of subject imports from Morocco and make an affirmative determination of countervailable subsidies.

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<sup>210</sup> 19 U.S.C. § 1677(5)(D)(ii).

<sup>211</sup> 19 U.S.C. § 1677(5)(E).

<sup>212</sup> See 19 C.F.R. § 351.509(a); *Certain Cold-Rolled Steel Flat Products from the Russian Federation*, Prelim. I&D Memo at 21.

<sup>213</sup> 19 U.S.C. § 1677(5A)(B).

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "David J. Ross", written over a horizontal line.

David J. Ross  
Patrick J. McLain  
Sarah S. Sprinkle  
Stephanie E. Hartmann  
Semira Nikou

*Counsel to The Mosaic Company*

## EXHIBIT LIST

Exhibit No.	Description
II-1	OCP, The Slurry Pipeline Revolution
II-2	Dep't of Commerce, I.C. 6266, Information Circular on Mining Laws of French Morocco (1930)
II-3	OCP, Summary of the Final Prospectus (Dec. 2016)
II-4	Sophia Maazouz, <i>Tout Savoir Sur L'OCP: L'Office Chérifien des Phosphates</i> , AgriMaroc.ma (Nov. 14, 2016),
II-5	Organisation for Economic Co-Operation and Development (“OECD”), OECD Investment Policy Reviews: Morocco
II-6	World Bank Group, Creating Markets in Morocco (Oct. 2019)
II-7	OCP, Consolidated Financial Statements at 30 June 2019
II-8	OCP, Summary of the Prospectus (Apr. 2018)
II-9	Upline Group, Upline Infrastructure Fund, <a href="http://www.uplinegroup.gbp.ma/En/Ourbusinesslines/Privateequity/Pages/Presentation.asp">http://www.uplinegroup.gbp.ma/En/Ourbusinesslines/Privateequity/Pages/Presentation.asp</a> (last visited May 26, 2020)
II-10	LinkedIn, Upline Group, About Us, <a href="https://www.linkedin.com/company/upline-group/about/">https://www.linkedin.com/company/upline-group/about/</a> (last visited May 26, 2020)
II-11	OCP, Prospectus (Apr. 20, 2015)
II-12	OCP, Our Governance, <a href="https://www.ocpgroup.ma/en/who-we-are/our-governance">https://www.ocpgroup.ma/en/who-we-are/our-governance</a> (last visited May 26, 2020)
II-13	WTO Secretariat, <i>Trade Policy Review, Kingdom of Morocco</i> , WTO Doc. WT/TPR/S/329 (Dec. 7, 2015)
II-14	OCP, 2019 Sustainability Report
II-15	OCP, 2017 Annual Report
II-16	Lahssen Moqana, <i>Morocco’s Fertilizer Industry Receives \$3 Bln Investment Boost</i> , Asharq Al-Awsat (Nov. 25, 2017)
II-17	Western Sahara Resource Watch Report, P for Plunder: Morocco’s Export of Phosphates from Occupied Western Sahara (2019)
II-18	OCP, Consolidated Financial Statements at 31 Dec. 2019
II-19	U.S. IRS, Pub. 946, How to Depreciate Property (2019)
II-20	USAID, Country Profile: Property Rights and Resource Governance – Morocco
II-21	<i>Mining in Morocco: a Legal Snapshot</i> , DLA Piper (July 13, 2017), <a href="https://www.dlapiper.com/en/africa/insights/publications/2017/07/mining-in-morocco-a-legal-snapshot/">https://www.dlapiper.com/en/africa/insights/publications/2017/07/mining-in-morocco-a-legal-snapshot/</a>
II-22	IPNI, Phosphorous Fertilizer Production and Technology
II-23	Argus Phosphate Prices
II-24	CRU Phosphate Rock Prices
II-25	Michael R Rahm Consulting LLC, A Comparison of Peru’s Bayóvar Phosphate Rock with Alternatives
II-26	Argus Media, Argus Phosphates: Methodology and Specifications Guide (Apr. 2020)
II-27	Phosphate Rock Freight Rates
II-28	OCP’s Estimated Subsidy Rate

Exhibit No.	Description
II-29	Estimated Price of Phosphate Rock for OCP
II-30	OCP, Full Year and 4Q 2016 Earnings Conference Call Presentation at 2 (Mar. 23, 2017)
II-31	Dahir (Royal Decree) No. 1-95-154 of 18 Rabii I 1416 (16 Aug. 1995) promulgating Law No. 10-95 on Water, Official State Gazette No. 4325 of 20 Sept. 1995
II-32	Dahir (Royal Decree) No. 1-15-87 of 29 Ramadan 1436 (16 July 2015) promulgating Law No. 81-12 on the Coasts, Official State Gazette No. 6404 of 15 Oct. 2015
II-33	Int'l Finance Corp., Environmental, Health, and Safety Guidelines: Phosphate Fertilizer Plants & Manufacturing (Apr. 2007)
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II-35	Samir Benbrahim, et al., <i>Survey of the Carriers Influencing the Geographical and Temporal Distribution of Contamination by Heavy Metals Along the Atlantic Moroccan Coasts: the Case of Mercury, Lead and Cadmium</i> , Institut National de Recherche Halieutique (INRH) (Mar. Life, Vol. 16, 2006)
II-36	Natasha White, <i>Toxic Shadow: Phosphate Miners in Morocco Fear They Pay a High Price</i> , The Guardian (Dec. 16, 2015)
II-37	Z. Idardare, et al., <i>Evaluation de la Contamination Métallique dans deux Lagunes Marocaines: Khnifiss et Oualidia</i> , Rev. Mar. Sci. Agron. Vét. (2013)
II-38	United Nations Economic Commission for Europe & United Nations Economic Commission for Africa, Morocco: Environmental Performance Reviews, ECE/CEP/170 (2014)
II-39	Mosaic 2019 Annual Report on SEC Form 10-K
II-40	Aziz El Yaakoubi, <i>Moroccan Phosphate Producer OCP to Raise \$500 Mln in Domestic Bond Issue</i> , Reuters (Nov. 29, 2016), <a href="https://af.reuters.com/article/idAFL8N1DU41P">https://af.reuters.com/article/idAFL8N1DU41P</a>
II-41	James Chen, <i>Subordinated Debt Definition</i> , Investopedia, (Apr. 30, 2020), <a href="https://www.investopedia.com/terms/s/subordinateddebt.asp">https://www.investopedia.com/terms/s/subordinateddebt.asp</a>
II-42	AMMC, Annual Report 2016
II-43	Souhail Karam, <i>Morocco's OCP Raises \$1.55 Billion in Debut Sale of Bonds Abroad</i> , Bloomberg News (Apr. 16, 2014)
II-44	United Nations Environment Programme Finance Initiative, CDG Capital, <a href="https://www.unepfi.org/member/cdg-capital/#:~:text=CDG%20Capital%20is%20a%20major,institutional%20investor%20in%20the%20country">https://www.unepfi.org/member/cdg-capital/#:~:text=CDG%20Capital%20is%20a%20major,institutional%20investor%20in%20the%20country</a> (last visited June 10, 2020)
II-45	World Economic Forum, Caisse de Dépôt et de Gestion (CDG), <a href="https://www.weforum.org/organizations/caisse-de-depot-et-de-gestion-cdg">https://www.weforum.org/organizations/caisse-de-depot-et-de-gestion-cdg</a> (last visited May 27, 2020)
II-46	Tarek Bazza, <i>Court of Auditors Slams CDG, Depository of Moroccan Social Security</i> , Morocco World News (Jan. 9, 2019), <a href="https://www.moroccoworldnews.com/2019/01/262874/morocco-court-auditors-cdg/">https://www.moroccoworldnews.com/2019/01/262874/morocco-court-auditors-cdg/</a>
II-47	CDG Capital Groupe, Rapport D'Activité et de Responsabilité Sociale 2018

Exhibit No.	Description
II-48	CDG, About Us, <a href="https://www.cdgcapital.ma/fr/propos-de-nous">https://www.cdgcapital.ma/fr/propos-de-nous</a>
II-49	OCP, Consolidated Financial Statements at 31 Dec. 2016
II-50	ctrypremJuly18.xlsx, <a href="http://people.stern.nyu.edu/adamodar/pc/datasets/">http://people.stern.nyu.edu/adamodar/pc/datasets/</a>
II-51	<i>Fitch Ratings Revised Outlook on OCP SA to Negative</i> , CBonds (Dec. 20, 2016), <a href="http://cbonds.com/news/item/863621">http://cbonds.com/news/item/863621</a>
II-52	OCP, Consolidated Financial Statements at 31 Dec. 2018
II-53	<i>Loan: Attijari Finances Corp. and CDG Capital Advise OCP</i> , L'Economiste. (Apr. 25, 2018), <a href="https://www.leconomiste.com/flash-infos/emprunt-attijari-finances-corp-et-cdg-capital-conseillent-l-ocp">https://www.leconomiste.com/flash-infos/emprunt-attijari-finances-corp-et-cdg-capital-conseillent-l-ocp</a> .
II-54	Attijariwafa bank, Attijari Finances Corp., <a href="https://www.attijariwafabank.com/en/brands-and-Moroccan-subidiaries/attijari-finances-corp">https://www.attijariwafabank.com/en/brands-and-Moroccan-subidiaries/attijari-finances-corp</a>
II-55	OECD, State-Owned Enterprises in the Middle East and North Africa: Engines of Development and Competitiveness? (2013)
II-56	<i>Morocco's New African Ambition</i> , The Report Company (Jan. 28, 2016), <a href="http://www.the-report.com/reports/morocco/the-new-morocco/moroccos-new-african-ambition/">http://www.the-report.com/reports/morocco/the-new-morocco/moroccos-new-african-ambition/</a>
II-57	<i>Morocco's SNI Changes Name into Al Mada, Gears Activity to Africa</i> , North Africa Post (Mar. 28, 2018), <a href="https://northafricapost.com/22909-moroccos-sni-changes-name-al-mada-gears-activity-africa.html">https://northafricapost.com/22909-moroccos-sni-changes-name-al-mada-gears-activity-africa.html</a>
II-58	Attijariwafa bank, Annual Report and Corporate Social Responsibility Report 2017
II-59	Attijariwafa bank, Annual Report and Corporate Social Responsibility Report 2016
II-60	Attijariwafa bank, Annual Report 2015
II-61	Afifa Dassouli, <i>OCP's MAD 5 Billion Bond Issue, 311% Oversubscribed!</i> , La Tribune (May 31, 2018), <a href="https://lnt.ma/ocps-mad-5-billion-bond-issue-311-oversubscribed/">https://lnt.ma/ocps-mad-5-billion-bond-issue-311-oversubscribed/</a>
II-62	<i>S&amp;P Global Ratings Revised Outlook on OCP SA to Negative and Affirmed at "BBB-" (Local Currency LT) Credit Rating</i> , CBonds (Oct. 17, 2018), <a href="http://cbonds.com/news/item/1049001">http://cbonds.com/news/item/1049001</a>
II-63	OCP Financial Ratios, 2008 to 2019
II-64	<i>Fitch Affirms OCP at 'BBB-'; Outlook Stable</i> , FitchRatings (Nov. 1, 2019), <a href="https://www.fitchratings.com/research/corporate-finance/fitch-affirms-ocp-at-bbb-outlook-stable-01-11-2019">https://www.fitchratings.com/research/corporate-finance/fitch-affirms-ocp-at-bbb-outlook-stable-01-11-2019</a>
II-65	Marshall Hargrave, <i>Return on Equity – ROE</i> , Investopedia (Apr. 27, 2020)
II-66	Ready Ratios, Cash Flow Coverage Ratio, <a href="https://www.readyratios.com/reference/cashflow/cash_flow_coverage_ratio.html">https://www.readyratios.com/reference/cashflow/cash_flow_coverage_ratio.html</a> (last visited May 28, 2020)
II-67	Crédit Agricole Group, Business Lines and Brands, Crédit du Maroc, <a href="https://www.credit-agricole.com/en/business-lines-and-brands/all-brands/credit-du-maroc">https://www.credit-agricole.com/en/business-lines-and-brands/all-brands/credit-du-maroc</a> (last visited May 28, 2020)
II-68	OCP, Prospectus (Apr. 17, 2014)
II-69	EY, Worldwide VAT, GST and Sales Tax Guide 2019

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II-70	<i>Changing Regulations: Key Points of the Finance Law of 2014</i> , Oxford Business Group
II-71	<i>A Guide to the Main Tax Measures Adopted by Morocco's New Finance Law of 2016</i> , Oxford Business Group
II-72	FitchRatings, Ratings Report: OCP S.A. (Feb. 10, 2020)
II-73	<i>Key Provisions of Moroccan Finance Law for 2018</i> , CEGOR, <a href="http://cegor.ma/En/key-provisions-of-moroccan-finance-law-for-2018/">http://cegor.ma/En/key-provisions-of-moroccan-finance-law-for-2018/</a> (last visited (May 29, 2020))
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