

**THE AD HOC COMMITTEE  
OF  
DOMESTIC NITROGEN PRODUCERS**

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**VIA MESSENGER**

The Honorable Donald L. Evans  
Secretary of Commerce  
Attn: Import Administration  
Central Records Unit, Room 1870  
U.S. Department of Commerce  
14<sup>th</sup> Street & Constitution Avenue, NW  
Washington, DC 20230

**Re: Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws**

Dear Mr. Secretary:

The Ad Hoc Committee of Domestic Nitrogen Producers (“Ad Hoc Committee”) hereby submits comments in response to the Department’s *Notice of Initiation of Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws*, 66 Fed. Reg. 54197 (October 26, 2001).<sup>1</sup> For the reasons outlined in these comments, the Ad Hoc Committee respectfully submits that, despite some laudable market-oriented reforms undertaken by the Government of the Russian Federation over the last decade,

the circumstances prevailing in Russia today do not permit revocation of the country's non-market economy ("NME") status pursuant to Section 771(18) of the Tariff Act of 1930, as amended.

The Department has, in recent years, revoked the non-market economy status of several former communist countries – the Czech Republic, Hungary, Latvia, Poland, and Slovakia.<sup>2</sup> As the Department has recognized in these earlier cases, the statute does not provide a bright-line test with which to measure a country's progress in reforming its economy.<sup>3</sup> The Department has, therefore, determined that it must carefully examine the facts of each case and exercise discretion in determining the extent of government economic reform toward market principles.<sup>4</sup> In considering Russia's situation, it is evident that substantial structural differences, including many vestiges of Soviet-era central government control, distinguish the Russian economy today from the economies of those countries for which NME status has previously been revoked. When the criteria examined by the Department in previous cases are applied to the Russian economy, it is clear that Russia's progress under each of the statutory standards fails to satisfy the requirements for market economy status under the antidumping law.

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<sup>1</sup> The members of the Ad Hoc Committee are CF Industries, Inc., El Paso Corporation, Mississippi Chemical Corporation, PCS Nitrogen, Inc., and Terra Industries, Inc.

<sup>2</sup> See Department Memorandum, Respondent's Request for Revocation of Poland's NME Status (June 21, 1993) ("Poland NME Memo"); Department Memorandum: Antidumping Duty Determinations on Cold-Rolled Carbon-Quality Steel Products from the Slovak Republic – Market vs. Non-Market Economy Analysis (Oct. 13, 1999) ("Slovakia NME Memo"); Department Memorandum: Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market Economy Country Status (Nov. 29, 1999) ("Czech NME Memo"); Department Memorandum: Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Hungary – Market vs. Non-Market Economy Analysis Memorandum (Feb. 23, 2000) ("Hungary NME Memo"); and Department Memorandum: Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars from Latvia – Request for Market Economy Status (Jan. 10, 2001) ("Latvia NME Memo"). The discussion below of the Department's standards concerning each of the statutory factors is derived from these memoranda.

<sup>3</sup> See, e.g., Latvia NME Memo at 20.

<sup>4</sup> See *id.*

The evidence that the Russian economy is not and should not yet be treated as a market economy for antidumping purposes is extensive and clear. The Ad Hoc Committee urges the Department to examine particularly closely the extensive control that the Russian Government continues to exercise with respect to key energy and natural resource elements of the economy – elements that are key to Russia’s overall economic condition and which drive much of Russia’s export activity. In particular, the Ad Hoc Committee is concerned with Russia’s continuing control over the supply and pricing of natural gas, which in turn drives the level of nitrogen fertilizer production and exports.<sup>5</sup> These exports – in the Soviet era and up to the present – have wrought havoc in the domestic nitrogen fertilizer industry because they have been and continue to be driven by non-market determined production imperatives and a desire to turn natural gas into hard currency exports. An antidumping order against Russian urea, originally issued in 1987 and continued after a sunset review in 1999, has effectively addressed the problem with imports of that product.<sup>6</sup> A suspension agreement pertaining to Russian ammonium nitrate became effective in May 2000, in response to massive imports of that product.<sup>7</sup> Nitrogen fertilizer products are also subject to antidumping measures in the European Union.<sup>8</sup> Russian nitrogen fertilizer exports continue to disrupt the U.S. nitrogen fertilizer market as Russia continues to use fertilizer exports as a means to convert its natural gas into hard currency. The Ad Hoc Committee respectfully submits that the Department must find it inappropriate to bestow

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<sup>5</sup> Natural gas is the primary raw material used in the production of nitrogen fertilizers.

<sup>6</sup> Continuation of Antidumping Duty Orders: Solid Urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, 64 Fed. Reg. 62653 (Nov. 17, 1999).

<sup>7</sup> Suspension of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 65 Fed. Reg. 37759 (June 16, 2000).

<sup>8</sup> Council Regulation No. 1995/2000 of 18 Sept. 2000, OJ L238/15, 22.9.2000 (urea ammonium nitrate from Russia); Council Regulation No. 2022/95 of 16 Aug. 1995, OJ L 198/1, 23.8.95 (ammonium nitrate from Russia); Council Regulation No. 901/2001 of 7 May 2001, OJ L 127/11, 9.5.2001 (urea from Russia).

market economy status on the Russian Federation for antidumping purposes until key export-determining sectors, such as natural gas, are operating on a market basis.

The comments provided below are organized pursuant to the instructions set forth in the Department's October 26, 2001 notice. Specifically, each comment (each addressing a single criterion under section 771(18)(B)), begins on a new page, and states the issue to be discussed. Also, each comment is introduced by a summary of the comment not exceeding three sentences. Supporting documentation is provided in the attached exhibits, except where the document at issue is readily available on the worldwide web; in those instances, an electronic address is provided in the citation. The Ad Hoc Committee would, of course, be pleased to provide hard copies upon request.

Respectfully submitted,

Robert C. Liuzzi  
President and Chief Operating Officer,  
CF Industries, Inc., and Chairman,  
Ad Hoc Committee of Domestic Nitrogen  
Producers