

June 29, 2011

**TO:** Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

**FROM:** Paul Piquado  
Deputy Assistant Secretary  
for Policy and Negotiations

**RE:** Issues and Decision Memorandum for the Final Results of the Expedited  
Sunset Review of the Antidumping Duty Order on Solid Fertilizer Grade  
Ammonium Nitrate from the Russian Federation

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## Summary

On March 1, 2011, the Department of Commerce (“Department”) initiated the second sunset review of the agreement suspending the antidumping investigation on solid fertilizer grade ammonium nitrate (“ammonium nitrate”) from the Russian Federation (“Russia”). See [Initiation of Five-Year \(“Sunset”\) Review](#), 76 FR 11202 (March 1, 2011). Subsequent to the initiation of the sunset review, the suspension agreement on ammonium nitrate from Russia was terminated and an antidumping duty (“AD”) order was issued, effective May 2, 2011. See [Termination of the Suspension Agreement on Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation and Notice of Antidumping Duty Order](#), 76 FR 23569 (April 27, 2011). On March 31, 2011, the Department received comments from the Committee for Fair Ammonium Nitrate Trade (“the domestic interested party”), a coalition of producers of subject merchandise in the United States as defined by section 771(9)(C) of Tariff Act of 1930, as amended (“the Act”). The comments received by the domestic interested party were filed prior to the termination of the suspension agreement and thus reference the suspension agreement, rather than the order. We recommend that you approve the positions described in the **Discussion of the Issues** section of this memorandum.

Below is the complete list of the issues in this expedited sunset review for which we received comments from the domestic interested party. Respondent interested parties did not comment.

1. Likely Effects of Termination of the Suspension Agreement and Underlying Investigation
2. Magnitude of Margin Likely to Prevail if the Suspended Investigation is Terminated

## Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether termination of the AD order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the acceptance of the AD suspension agreement. In addition, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of dumping likely to prevail if the AD order were terminated. Below we address the comments of the interested parties.

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Interested Party Comments

The domestic interested party asserts that termination of the suspended AD investigation on ammonium nitrate from Russia would likely lead to a continuation or recurrence of dumping of Russian ammonium nitrate in the United States. Citing 19 U.S.C. § 1675a(c)(1)(A)-(B), the domestic interested party explains that in determining the likelihood of continuation or recurrence of dumping, the Department considers: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the periods before and after the acceptance of the suspension agreement. Further, the domestic interested party states that in carrying out its statutory mandate, the Department will normally determine that termination of a suspended antidumping investigation is likely to lead to continuation or recurrence of dumping if any one of the following criteria is met: (a) dumping continued at any level above *de minimis* after the suspension agreement; (b) imports of the subject merchandise ceased after the suspension agreement; or c) dumping was eliminated after the suspension agreement and import volumes for the subject merchandise declined significantly.

With respect to non-market economy (“NME”) suspension agreements, the domestic interested party states that the Department has commented further on how it will evaluate the likelihood of continuation or recurrence of dumping. According to the domestic interested party, to make a likelihood determination in sunset reviews of NME suspension agreements, the Department has compared volumes actually imported under the suspension agreement with both the quota limits in the suspension agreement and pre-petition import volumes. The domestic interested party refers to Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; Final Results of the Expedited Sunset Review of Antidumping Duty Suspended Investigation, 69 FR 54633 (September 9, 2004), and Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine, 68 FR 24434 (May 7, 2003), both NME suspension agreements, as illustrative cases in which the Department determined that the drop in imports of subject merchandise after the investigation was suspended indicated a likelihood of recurrence or continuation of dumping. The domestic interested party also cites to the first sunset review of the Russian ammonium

nitrate suspension agreement, in which the Department found that the removal of the suspension agreement would likely cause Russian producers to increase exports to the United States and to lower their prices. See Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation, 70 FR 61431 (October 24, 2005), and accompanying Issues and Decision Memorandum, unchanged in Final Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation, 71 FR 11177 (March 6, 2006). Further, the Department found that the suspension agreement restrained import volumes and the pricing behavior of the Russian producers and, absent the discipline of the suspension agreement, dumping was likely to continue or recur. See id. Additionally, the domestic interested party cites the Department's decision in Preliminary Results of Full Sunset Review: Silicomanganese From Ukraine, 65 FR 34440 (May 30, 2000), and accompanying Issues and Decision Memorandum, where the Department found that elimination of the agreement would increase imports into the U.S. market, in turn increasing supply and leading to dumping as the result of a downward pressure on prices. The domestic interested party asserts that consistent with the analysis in past sunset reviews of this and other NME suspension agreements, the Department should determine that because of the significant dumping of subject merchandise during the investigation and the drop of import volumes after the suspension agreement came into force, termination of the suspension agreement would likely lead to the continuation or recurrence of dumping.

The domestic interested party alleges that, under the suspension agreement, import volumes declined significantly and immediately from pre-investigation levels, falling from 237,272 metric tons ("MT") in 1998 and 237,165 MT in 1999 (the year when the petition was filed), to 261 MT in 2000 (the year in which the suspension of liquidation resulting from the Department's affirmative preliminary determination and the suspension agreement went into effect). The domestic interested party alleges that this drop in import volumes in 2000 represents a 99.89 percent drop in annual imports from pre-petition volumes in 1998. According to the domestic interested party, the import restrictions imposed by the suspension agreement explain the decline in imports of ammonium nitrate and if the suspension agreement were terminated, import volumes would increase. Additionally, the domestic interested party states that the suspension agreement quotas were in large part highly utilized through 2004, despite the Russian exporters' claim that they had difficulty filling their quota in 2004. Responding to claims made by Russian exporters in August 2003 letters that the Russians were unable to fill the quota in 2004 because the reference price under the suspension agreement was too high to permit shipments, the domestic interested party asserts that this is an indication that, absent the discipline of the suspension agreement, higher volumes and lower prices would prevail. Additionally, the domestic interested party asserts that Russia's withdrawal from the suspension agreement demonstrates that Russian exporters would like to ship ammonium nitrate to the United States in larger volumes and at lower prices than those permitted by the suspension agreement.

### **Department's Position:**

In accordance with section 752(c)(1) of the Act, in a sunset review, the Department shall determine whether termination of a suspended investigation would be likely to lead to a

continuation or recurrence of sales of the subject merchandise at less than fair value. In making its determination, the Department shall consider: (a) the weighted-average dumping margins determined in the investigation and subsequent reviews, and (b) the volume of imports of the subject merchandise for the period before, and the period after, acceptance of the suspension agreement.<sup>1</sup>

Further, drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act, specifically the Statement of Administrative Action, H.R. 29 Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department's determinations of likelihood will be made on an order-wide basis. In addition, the Department indicated that it will normally determine that termination of an order or a suspended dumping investigation is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the suspension agreement, (b) imports of the subject merchandise ceased after the issuance of the suspension agreement, or (c) dumping was eliminated after the acceptance of a suspension agreement and import volumes for the subject merchandise declined significantly.<sup>2</sup> The Department also recognizes that in the context of a sunset review of an AD order which until recently had been a suspended investigation, other factors may be taken into consideration, provided good cause is shown.<sup>3</sup>

With respect to dumping margins, the Department calculated weighted-average dumping margins in its original investigation of 253.98 percent for JSC Nevinnomyssky Azot, and for the Russia-wide entity. See Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 65 FR 42669 (July 1, 2000). No more recently calculated margins exist because no administrative reviews have been requested or conducted since the issuance or termination of the suspension agreement. As such, we find the weighted-average dumping margins determined in the investigation demonstrative of the behavior of Russian manufacturers, producers, and exporters without the discipline of an order in place.

With respect to import volumes, we examined statistics compiled from tariff and trade data from the Department, the U.S. Treasury, and the ITC (specifically, USITC Tariff and Trade DataWeb), the U.S. Customs and Border Protection reports, and data submitted by the domestic interested party and found that total import volumes of ammonium nitrate dropped significantly in the year of imposition of the suspension agreement and the following year. In 2000, imports of ammonium nitrate amounted to 261 MT, a sharp drop from the pre-petition level of 237,272 MT in 1998, and rose to only 87,246 MT in 2001 (approximately 13,000 MT under the limit

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<sup>1</sup> See section 752(c)(1) of the Act.

<sup>2</sup> See, e.g., Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; Final Results of the Expedited Sunset Review of Antidumping Duty Suspended Investigation, 75 FR 47263 (August 5, 2010), and accompanying Issues and Decision Memorandum.

<sup>3</sup> See 19 C.F.R. 351.218 (d)(3)(iv).

allowed by the agreement).<sup>4</sup> Since the first sunset review import volumes have fallen significantly, remaining well below the export limits, ranging from a high of 78,137 MT in 2007 to no imports in 2009. The decline in imports and the higher prices are in part connected to the discipline imposed by the suspension agreement, and it is therefore likely that, in the absence of an AD order, ammonium nitrate import volumes would increase and prices would drop. Moreover, the Russian government's withdrawal from the suspension agreement and its statement that the agreement limited access of Russian fertilizer producers to the U.S. market is an indication that Russian exporters would like to increase their exports of ammonium nitrate to the United States. The basic laws of supply and demand suggest that an increase in supply, all else being equal, would be accompanied by downward pressure on prices. Thus, the Department finds that removal of the order on ammonium nitrate from Russia would likely cause Russian producers to increase import levels of ammonium nitrate in the U.S. market and lower their prices.

In sum, the final determination in the investigation found significant dumping to exist, and there has been no subsequent finding, or indication, that Russian producers would not resume dumping in the U.S. market if the order were revoked. Moreover, we find that the import volumes have either significantly decreased or even ceased after the suspension agreement came into effect. Consequently, we find that, absent the order, dumping would be likely to continue or recur.

## **2. Magnitude of the Margin Likely to Prevail**

### **Interested Party Comments**

The domestic interested party asserts that the Department should find that the termination of the order would be likely to lead to continuation or recurrence of dumping at the weighted-average margin of 253.98 percent. The domestic interested party argues that, because this rate was the dumping rate calculated during the investigation, and because no other dumping margins have been calculated since the imposition of the suspension agreement, the investigation rate is the most probative margin likely to prevail should the suspension agreement be terminated. Additionally, the domestic interested party asserts that Russia's graduation to market economy status, after the imposition of the suspension agreement, does not affect the validity of the margin calculated in the investigation.

### **Department's Position:**

Pursuant to section 752(c)(3), the Department shall provide to the ITC the magnitude of the margin likely to prevail if the suspended investigation is terminated. Normally the Department will provide to the ITC the company-specific margin from the original investigation for each

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<sup>4</sup> We note, however, that the decline in import volumes after the entry into force of the suspension agreement goes beyond the decline required by the volume restrictions established by that agreement. In 2000, the export limit set by the suspension agreement for the Initial Export Limit Period was 49,962 MT. See Article II.A(1) of the suspension agreement. In 2001, the export limit was 100,000 MT and it increased to 110,000 MT in 2002 and 130,000 MT in 2003. Beginning in 2004 and for subsequent export limit periods the export limit was 150,000 MT.

company. For companies not specifically investigated, or for companies that did not begin shipping until after an order was issued, the Department normally will provide a margin based on the “all-others” (or “Russia-wide”) rate from the investigation.

In the original investigation, the Department calculated a dumping margin for JSC Nevinnomyssky Azot, a Russian manufacturer, producer, and exporter of Russian hot-rolled steel, as well as a “Russia-wide” rate of 253.98 percent. These calculated margins from the original investigation are the only rates that reflect the behavior of Russian producers and exporters without the discipline of the suspension agreement or an AD order in place. Therefore, pursuant to section 752(c) of the Act, the Department will report to the ITC the company-specific rate and “Russia-wide” rate from the investigation

**Final Results of Expedited Review**

We determine that termination of the AD order on ammonium nitrate from Russia would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Exporter/manufacturer	Weighted-average margin (percent)
JSC Nevinnomyssky Azot	253.98
Russia-Wide	253.98

**Recommendation:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register, and notify the ITC of our determination.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

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 Ronald K. Lorentzen  
 Deputy Assistant Secretary  
 for Import Administration

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 Date