

A-821-818  
Investigation  
Public Document  
GII/OIV: PRR

January 21, 2003

TO ALL INTERESTED PARTIES:

Enclosed please find a copy of the proposed Draft Agreement Suspending the Antidumping Investigation on Urea Ammonium Nitrate Solutions from the Russian Federation. This proposed agreement is pursuant to section 734(b)(1) and (c) of the Tariff Act of 1930, as amended, and provides for a moratorium of imports of urea ammonium nitrate solutions from Russia, followed by the issuance of weekly reference prices.

Interested parties are being afforded an opportunity to comment on this proposed Agreement. Comments must be submitted no later than February 6, 2003 to:

AD/CVD Enforcement Group II  
Room 3065  
International Trade Administration  
U.S. Department of Commerce  
c/o Central Records Unit, Room 1874  
Washington, D.C. 20230  
Attn: Paige Rivas

The Department anticipates finalizing the Agreement by February 18, 2003. If you have any questions, please contact Paige Rivas or Tom Futtner at (202) 482-0651, or (202) 482-3814, respectively.

Sincerely,

Holly A. Kuga  
Senior Office Director  
AD/CVD Enforcement Group II

Enclosure

## **Draft Agreement Suspending the Antidumping Investigation on Urea Ammonium Nitrate Solutions From the Russian Federation**

Pursuant to section 734(b)(1) and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)(1) and (c)) (the Act), and section 208 of part 351 of Title 19 of the Code of Federal Regulations (the Regulations)(2002), the U.S. Department of Commerce (the Department) and the signatory producers/exporters of Urea Ammonium Nitrate Solutions ('UANS') from the Russian Federation (the Signatories) agree as follows:

### **I. Definitions**

For purposes of this Agreement, the following definitions apply:

A. **Agreement** - For purposes of this Agreement, means this UANS suspension agreement pursuant to sections 734(b)(1) and (c) of the Act.

B. **UANS** - means the urea ammonium nitrate solutions from the Russian Federation described in Appendix A and sometimes referred to as the "subject merchandise" of the suspended investigation.

C. **Effective Date** - means the date on which this Agreement is signed by the Department and producers/exporters from the Russian Federation representing substantially all of the imports of UANS into the United States.

D. **Date of Sale** - means the date on which a Signatory confirms an order for a fixed quantity of UANS at a fixed price.

E. **Party to the Proceeding** - means any producer, exporter, or importer of UANS, union of workers engaged in the production of UANS, associations of such parties, or the government of Russia, as provided for in section 771(9) of the Act, that actively participated in the antidumping investigation, through written submission of factual information or written argument, or a signatory to this Agreement.

F. **Producer/Exporter** - means: (1) A foreign manufacturer or producer of UANS; (2) a foreign producer or reseller that also exports UANS; and (3) an affiliated person by whom or for whose account UANS is imported into the United States, as defined in section 771(33) of the Act. U.S. imports of UANS produced by any producer in the Russian Federation will be attributed to that producer for purposes of this Agreement, regardless of whether first shipped to the United States by another exporter in the Russian Federation or in another country.

**G. Quarter** - means the relevant quarter calendar year, consistent with the following schedule:

First Quarter - January 1-March 31;  
Second Quarter - April 1-June 30;  
Third Quarter - July 1-September 30; and  
Fourth Quarter - October 1-December 31.

**H. Reference Price** - means the minimum F.O.B. Russian port of export price calculated weekly by DOC for sales of UANS for export to the United States, as described in **Section VI**.

**I. Floor Price** - means the fixed price, as designated in Section III, below which the Reference Price may not fall.

**J. Current Market Price** - means the U.S. domestic price calculated weekly by DOC as described in **Section VI**.

**K. Moratorium Period** - means the period defined in section IV of this Agreement.

**L. Violation** - means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

## **II. Suspension of Investigation**

On the Effective Date, the Department will suspend its antidumping investigation of UANS from the Russian Federation initiated on May 9, 2002 (67 FR 35492, May 20, 2002), in accordance with section 734(b)(1) and (c) of the Act and 19 CAR § 351.208 (2002).

The Department determines that extraordinary circumstances are present in this case, that this Agreement will eliminate completely the injurious effect of exports to the United States of UANS from the Russian Federation, and that this Agreement will prevent suppression or undercutting of price levels of domestic products by imports of that merchandise. The Department also determines that this Agreement is in the public interest, and that effective monitoring of the Agreement by the United States is practicable.

## **III. U.S. Import Coverage**

The Signatories collectively are the producers and exporters in the Russian Federation that, during the antidumping duty investigation of UANS from the Russian Federation, accounted for substantially all of the subject merchandise exported from the Russian Federation to the United States, as defined in section 351.208(c) of the Regulations. The Department may at any

time during the operation of the Agreement require additional producers/exporters in to sign the Agreement in order to ensure that not less than substantially all sales of UANS from the Russian Federation to the United States are covered by the Agreement.

#### **IV. Moratorium Period**

As of the Effective Date, each Signatory Producer/Exporter agrees, pursuant to section 734(b)(1) of the Act, to cease exports to the United States during the period ending on November 19, 2003.

#### **V. Reference Price Period**

Following the end of the Moratorium Period, *i.e.*, beginning November 20, 2003, each Signatory must meet the following requirements:

- A. Each Signatory agrees that, following the Moratorium Period, and in order to satisfy the requirements of section 734(c)(1)(B) of the Act, for each entry of UANS subject to this Agreement, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 per cent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the Signatory examined during the investigation.
- B. The Signatories to this Agreement will ensure that UANS covered by this Agreement will not be sold at a price below the Reference Price prescribed in section VI which is in effect on the Date of Sale of subject merchandise.
- C. Any interested party to the investigation underlying this Agreement, and any Signatory of the Agreement may, at any time through October 6, 2003 (45 days prior to the end of the Moratorium Period), request that the Department determine whether the Reference Price provided in section VI of the Agreement and other aspects of the Agreement continue to meet the requirements of section 734(c) of the Act. Upon receiving the request, the Department shall initiate a review and make such a determination prior to the end of the Moratorium Period.

#### **VI. Reference Price Methodology**

- A. The Reference Price will be based on a Current Market Price, adjusted to reflect an F.O.B. Russian Federation port of export price. In addition, there will be a Floor Price below which the Reference Price shall not fall. The Reference Price will be determined on a weekly basis.
- B. The Department will issue the first weekly Reference Price under this Agreement on

the first Monday after the end of the Moratorium Period, utilizing the calculation methodology in Section VI. III.C below. This first Reference Price will be applicable to the week after the end of the Moratorium Period.

C. On the first business day of each subsequent week, the Department will calculate and issue the Reference Price which will be effective beginning on the next business day and remain in effect until the next Reference Price becomes effective. The Reference Price shall be the higher of: the Current Market Price set forth in section C.1 less the costs detailed in section C.2, and the Floor Price set forth in section C.3.

1. The Current Market Price will be determined as follows:

a.. The Department will calculate an average of the weekly Northeast and Southeast F.O.B. price ranges from publically available information.

b. The Department will calculate a simple average of the four most recent weekly averages derived in subsection 1.a, above. This four week average (converted from a short ton basis to a metric ton basis) will be the Current Market Price.

c. After consultations between the Department and the Signatories to the Agreement, should they agree that the currently used sources for the valuation of the Current Market Price for UANS are no longer appropriate, they may agree to select an alternative source. The Department will give parties at least 30 days notice before choosing another source(s) for the purposes of Current Market Price valuation.

2. To express the Current Market Price on an F.O.B. Russian Federation port of export basis, an amount for costs associated with delivering the merchandise from the Russian Federation to the United States shall be deducted from the Current Market Price calculated in section C.1. This amount will be **\$27.62** per metric ton. Except when section C.3 applies, the result of this calculation shall be the Reference Price. After consultations between DOC and the signatories to the Agreement, should they agree that the amount for costs associated with delivering the merchandise from the Russian Federation to the United States are no longer appropriate, they may revise this amount. The Department will give parties at least 30 days notice prior to any change becoming effective.

3. The Floor Price is the price below which the UANS subject to this Agreement may not be sold. The Floor Price will be **\$103.90** F.O.B. Russian Federation port. The Reference Price shall be not less than the Floor Price.

D. Reference Prices are F.O.B. Russian Federation port of export. If the sale for export

is on terms other than F.O.B. Russian Federation port of export, the Signatories to this Agreement shall ensure that the F.O.B. Russian Federation port of export price is not lower than the Reference Price, by adjusting the relevant costs to ensure compliance with the Reference Price requirements.

## **VII. Reporting Requirements**

A. Each Signatory will supply to the Department 30 days after the end of each Quarter all information that the Department determines is necessary to ensure that the Signatory is in full compliance with the terms of this Agreement. Such information shall include complete price information on each sale of UANS directly or indirectly to unaffiliated purchasers in the United States, including information supporting any relevant adjustments to the price under section 772 of the Act.

B. The Department may reject any information submitted under this Agreement that is untimely or any information which it is unable to verify to its satisfaction.

## **VIII. Disclosure**

The Department may make available to representatives of each domestic Party to the Proceeding, under administrative protective orders drawn in accordance with section 777 of the Act and section 351.305 of the Regulations, business proprietary information submitted to the Department for each Quarter, as well as the results and methodology of its calculation of Reference Prices.

## **IX. Monitoring**

A. The Department will monitor entries of UANS from the Russian Federation to ensure compliance with this Agreement. Among other means, the Department will review publicly-available data and other official import data, including, as appropriate, records maintained by the U.S. Customs Service, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. The United States shall require presentation of an original stamped Export License as a condition for entry into the United States of UANS covered by this Agreement. The Export Licenses shall be issued no later than 25 days after the Date of Sale. Export Licenses shall remain valid for entry into the United States for 35 days after the date of issuance. The Department and the signatories to the Agreement may agree to an extension of the validity of the Export License in extraordinary circumstances.

C. The Department may require, and each Signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The

Department may require that such documentation be provided, and be subject to verification, within 30 days of the sale.

D. The Department may require, and each Signatory agrees to report, on computer disk in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

E. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

## **X. Administrative Reviews**

The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of UANS from the Russian Federation are at prices consistent with the terms of this Agreement.

## **XI. Anticircumvention**

A. The Signatories will not circumvent this Agreement. Together with each sales report provided pursuant to Section VII.A, each Signatory will certify to the Department in writing that the sales reported therein include all sales directly or indirectly to unaffiliated purchasers in the United States or for delivery to the United States, and that the Signatory did not make any other such sales pursuant to any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, exchange, or other arrangement in circumvention of this Agreement.

B. The signatories to this Agreement will not engage in any of the following activities:

1. Ownership swaps--involve the exchange of ownership of UANS without physical transfer. These may include exchange of ownership of UANS in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of UANS produced in different countries, so that the parties obtain ownership of products of different national origin.
2. Flag swaps--involve the exchange of indicia of national origin of UANS, without any exchange of ownership.
3. Displacement Swaps--involve the sale or delivery of UANS from the Russian Federation to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced UANS, where the exporter in the Russian Federation knew or had reason to know that the export sale

would have that result.

## **XII. Consultations**

A. The Department and any Signatory may request consultations at any time regarding the implementation, operation (including any changes in the relationship of the reference price to market prices), and/or enforcement of this Agreement.

B. If the Department requests consultations with any Signatory concerning potential noncompliance with, or Violation of, this Agreement, it may simultaneously request that Signatory to provide the Department with all information relating to the allegation, including all sales information pertaining to covered and non-covered merchandise manufactured or sold by the Signatory. The Signatory will provide the requested information to the Department within 15 days of the Department's request. Any Party to the Proceeding may submit comments on the information submitted by the Signatory within 10 days after the information is received by the Department. The consultations shall be held within 45 days after the Department's request for consultations or for relevant information, unless the Department and the Signatory agree on a later date.

## **XIII. Termination**

Any Signatory may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 90 days after such notice is received by the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

## **XIV. Violations**

A. In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or no longer meets the requirements of section 734(d)(1) of the Act, the Department will consider imports of UANS into the United States from all sources, and factors including, but not limited to, the volume of trade, patterns of trade, and whether any reseller's export price is being complied with and is satisfying the conditions under section 704 of the Act.

B. If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take whatever action it deems appropriate under section 734(i) of the Act and the Regulations.

C. In the event that the Department resumes the original investigation, it will conduct the resumed investigation on the basis of the original administrative record and the statutes, regulations, policies, and practices in effect on the Effective Date.



## **XV. Other Provision**

By entering into this Agreement, the Signatories do not admit that any sales of UANS have been made at less than fair value.

## **XIII. Duration**

A. This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. law.

B. Any Signatory may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 90 days after such notice is received by the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

#### **XIV. Effective Date**

The effective date of this Agreement is February 18, 2003.

Signed on the 17<sup>th</sup> day of January, 2003.

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Faryar Shirzad  
Assistant Secretary  
for Import Administration

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