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July 3, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Solid Urea from the Russian
Federation

SUMMARY

The Department of Commerce (the Department) is conducting this administrative review of the antidumping duty order on solid urea from the Russian Federation (Russia). The review covers one producer/exporter of the subject merchandise, MCC EuroChem (EuroChem). The period of review (POR) is July 1, 2012, through June 30, 2013. We preliminarily find that EuroChem has not sold subject merchandise at less than normal value (NV) during the POR.

Background

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Ad Hoc Committee of Domestic Nitrogen Producers, and its individual members CF Industries, Inc. and PCS Nitrogen Fertilizer, L.P. (collectively, the petitioners), and EuroChem, requested an administrative review of the antidumping duty order on solid urea from Russia on July 31, 2013.¹ On August 28, 2013, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the antidumping duty order on solid urea from Russia.²

The original deadline for the preliminary results of this review was April 2, 2014. As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance,

¹ See letter from the petitioners to the Department, "Solid Urea from the Russian Federation: Request for Administrative Review" (July 31, 2014); see also letter from EuroChem to the Department, "Solid Urea from Russia" (July 31, 2014).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 53128 (August 28, 2013).



the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1 through October 16, 2013.³ As a result, the deadline for the preliminary results of this review was revised to April 18, 2014. On April 1, 2014, we extended the time period for issuing the preliminary results of this review by 90 days, to July 17, 2014.⁴

Scope of the Order

The merchandise subject to the order is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedules of the United States (HTSUS) item number 3102.10.00.00. Previously such merchandise was classified under item number 480.3000 of the Tariff Schedules of the United States. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether EuroChem's sales of the subject merchandise from Russia to the United States were made at less than NV, the Department compared the constructed export price (CEP) to the NV as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average CEPs (or export prices) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.⁵ In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁶ The Department finds the differential pricing analysis used in those recent investigations may be

³ See Memorandum to the record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government" dated October 18, 2013.

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Solid Urea from the Russian Federation: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" dated April 1, 2014.

⁵ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

⁶ See e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan*, 79 FR 19869 (April 10, 2014).

instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of CEPs (or export prices) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between CEP (or export price) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.9) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of export prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the

Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of export prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. *Results of the Differential Pricing Analysis*

For EuroChem, based on the results of the differential pricing analysis, the Department finds that 99.13 percent of EuroChem's export sales confirm the existence of a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margin when calculated using the average-to-average method and the alternative method.⁷ Accordingly, the Department has determined to use the average-to-average method in making comparisons of export price or CEP and NV for EuroChem.⁸

⁷ See Memorandum titled "2012-2013 Administrative Review of the Antidumping Duty Order on Solid Urea from the Russian Federation - Preliminary Results Analysis Memorandum for MCC EuroChem" (Preliminary Analysis Memorandum) dated concurrently with this notice, at 2.

⁸ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by EuroChem and sold in the United States and home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are form, grade, nitrogen content, size, urea-formaldehyde content, other additive/conditioning agent, coating agent, and biuret content.

Date of Sale

19 CFR 351.401(i) states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁹

With respect to EuroChem's sales to the United States, for all U.S. sales, EuroChem reported contract date as the date of sale.¹⁰ EuroChem defines contract date, which coincides with shipment date for all U.S. sales during the POR, as the date on which the material terms of sale are established and no longer subject to change.¹¹ EuroChem provided sample contracts for U.S. sales covered by this review, which support EuroChem's contention that price and quantity are subject to change and not finalized until the date of contract.¹² This record evidence demonstrates that all material terms of sale as reported by EuroChem are established on the date of contract which is consistent with the date of sale established in previous administrative reviews.¹³ Therefore, we preliminarily determine that the contract date is the appropriate date of sale for all sales to the United States.

With respect to its home-market sales, EuroChem reported invoice date as the date of sale, explaining that price and quantity are not finalized and are subject to change until invoicing because at the date of invoice, the product is loaded for delivery, weighed, and the exact quantity is recorded for the invoice and transportation documents.¹⁴ This is consistent with our regulatory

⁹ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰ See EuroChem's October 25, 2013, response to Section A of the Department's questionnaire, at VI-8.

¹¹ *Id.*, at VI-8.

¹² See EuroChem's November 12, 2013, response to Section C of the Department's questionnaire, at Exhibit 10, in which EuroChem provides sample sales contract documentation demonstrating that the material terms of sale are finalized because merchandise has been shipped.

¹³ See *Solid Urea From the Russian Federation: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 67335 (November 12, 2013).

¹⁴ *Id.*, at VI-9.

presumption for invoice date as the date of sale.¹⁵ Thus, because the evidence does not demonstrate that the material terms of sale were established on another date, and consistent with previous reviews, we preliminarily determine that invoice date is the appropriate date of sale for all home-market sales.¹⁶

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP for EuroChem, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer and export price was not otherwise indicated.¹⁷

We calculated CEP based on the free-on-board or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

Normal Value

A. *Home Market Viability as Comparison Market*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of EuroChem's home-market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act.¹⁸ Based on this comparison, we determined that EuroChem had a viable home market during the POR. Consequently, we based NV on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade and sales made to affiliated purchasers where we find prices were made at arm's length, described in detail below.

B. *Level of Trade*

Section 773(a)(1)(B) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁰ To determine whether NV sales are at a

¹⁵ See 19 CFR 351.401(i).

¹⁶ *Id.*

¹⁷ *Id.*, at VI-12.

¹⁸ See Preliminary Analysis Memorandum, at 2-3.

¹⁹ See 19 CFR 351.412(c)(2).

²⁰ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*CTL Plate*).

different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution.²¹ If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision).²²

In the home market, EuroChem reported a single channel of distribution.²³ Within this single channel of distribution, EuroChem reported a single LOT for all three customer types (*i.e.*, distributors, traders, and end-users) which included strategic and economic planning, personnel training, distributor/dealer training, procurement/sourcing service, packing, order input/processing or freight/delivery services.²⁴ After analyzing the data on the record with respect to the selling functions performed for each customer type, we find that EuroChem made all home-market sales at a single LOT in the home market.

In the U.S. market, EuroChem had only CEP sales through its affiliated reseller²⁵ and, thus, a single LOT.²⁶

We found that there were significant differences between the selling activities associated with the CEP LOT and those associated with the home-market LOT. For example, the CEP LOT involved little or no strategic and economic planning, personnel training, distributor/dealer training, procurement/sourcing service, packing, order input/processing or freight/delivery services.²⁷ Therefore, we conclude that CEP sales constitute a different LOT from the LOT in the home market and that the home-market LOT is at a more advanced stage of distribution than the CEP LOT.

We were unable to match CEP sales at the same LOT in the home market or to make an LOT adjustment because the differences in price between the CEP LOT and the home-market LOT cannot be quantified due to the lack of an equivalent CEP LOT in the home market. Also, there are no other data on the record which would allow us to make an LOT adjustment. Because the data available do not provide an appropriate basis on which to determine a LOT adjustment and the home-market LOT is at a more advanced stage of distribution than the CEP, we made a CEP-offset adjustment to NV in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). The CEP offset was the sum of indirect selling expenses incurred on home-market sales up to the amount of indirect selling expenses incurred on the U.S. sales.²⁸

²¹ See 19 CFR 351.412(c)(2).

²² See *CTL Plate*, 62 FR at 61732, and *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

²³ See EuroChem's October 25, 2013, response to Section A of the Department's questionnaire, at VI-38 through VI-44.

²⁴ *Id.*

²⁵ *Id.*, at VI-2 to VI-3.

²⁶ See section 772(b) of the Act.

²⁷ *Id.*, at VI-48.

²⁸ See Preliminary Analysis Memorandum at 6.

C. *Calculation of Normal Value Based on Comparison Market Prices*

We based NV on the starting prices to home-market customers. Pursuant to section 773(a)(6)(B)(ii) of the Act, we deducted inland-freight expenses EuroChem incurred on its home-market sales. We made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We made deductions for direct selling expenses, as appropriate.²⁹

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange/index.html>.

Recommendation

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 3, 2014

(Date)

²⁹ See Preliminary Analysis Memorandum at 6 - 7.