

70 FR 24528, May 10, 2005

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Ronald K. Lorentzen  
Acting Director  
Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset  
Review of the Antidumping Duty Order on Solid Urea from the  
Russian Federation: Final Results

### Summary

We have analyzed the substantive responses of the interested parties in the second sunset review of the antidumping duty (“AD”) order on solid urea from the Russian Federation (“Russia”). We recommend that you approve the positions we developed in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

- 1) Request for reconsideration of the Department of Commerce’s (“the Department”) adequacy determination;
- 2) Likelihood of continuation or recurrence of dumping; and
- 3) Magnitude of the margin likely to prevail.

### History of the Order

On May 26, 1987, the Department published its final determination in the investigation of solid urea from the Union of Soviet Socialist Republics (“Soviet Union”) finding dumping margins of 68.26 percent for Soyuzpromexport, 53.23 percent for Phillip Brothers, and 68.26 as the country-wide rate (52 FR 19557). On July 14, 1987, following an affirmative injury determination by the International Trade Commission (“ITC”), the Department issued an AD order on solid urea from the Soviet Union. Following the break-up of the Soviet Union, the AD order on solid urea from the Soviet Union was transferred to the individual members of the Commonwealth of Independent States. The rates established in the most recently completed administrative review for the Soviet Union (which, because there were no shipments of urea during the review period, remained the same as those found in the investigation) were applied to each new independent state, including Russia. On September 3, 1999, the Department published the final results of the first sunset review of solid urea from Russia finding likelihood of continued or recurring dumping at the rates established in the original investigation. There have been no administrative reviews since the issuance of the final results of the first sunset review.

## Background

On October 1, 2004, the Department initiated a sunset review of the AD (“AD”) order on solid urea from Russia (69 FR 58890) pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). On October 18, 2004, the Ad Hoc Committee of Domestic Nitrogen Producers<sup>1</sup> submitted their intent to participate in this sunset review, followed by submission of their substantive response on November 1, 2004. *See* November 1, 2004, Second Sunset Review of the Antidumping Order Against Solid Urea from the Russian Federation: Substantive Response to Notice of Initiation (“Ad Hoc Committee response”). Also, on October 18, 2004, Agrium U.S. submitted its intent to participate in this sunset review, followed by submission of its substantive response on November 1, 2004. *See* November 1, 2004, Solid Urea from Russia – Second Five-Year Sunset Review Substantive Response of Agrium U.S. Inc. to Notice of Initiation of Five-Year Sunset Review (“Agrium U.S. response”). The Ad Hoc Committee and Agrium U.S. will be collectively referred to hereinafter as “domestic interested parties.”<sup>2</sup> On November 1, 2004, we also received a substantive response to the notice of initiation on behalf of the following respondent interested parties: Nevinnomysskiy Azot, Novomoskovsk, Azot JSC, Kuybyshevazot JSC, Mineralnie Udobrenya OJSC, Perm, Salavatnefteorgsinetz OJSC, Kemerovo OJSC, OJSC Tolyatti Azot, MCC EuroChem, and the Fertilizer Producers’ Association (“respondent interested parties”). *See* November 1, 2004, Solid Urea from Russia – Sunset Review: Russian Respondents Response to the Department’s Notice of Initiation (“respondent interested parties’ response”). On November 17, 2004, we received rebuttal comments from both domestic and respondent interested parties. *See* November 17, 2004, Second Sunset Review of the Antidumping Order Against Solid Urea from the Russian Federation: Rebuttal to Respondents’ Response to Notice of Initiation (“Ad Hoc Committee rebuttal”); November 17, 2004, Solid Urea from Russia – Second Five-Year Sunset Review Rebuttal to Respondent’s Response (“Agrium U.S. rebuttal”); and November 17, 2004, Solid Urea from Russia – Sunset Review: Russian Respondents Rebuttal Comments (“respondent interested parties’ rebuttal”).

On December 3, 2004, the Department issued its adequacy determination in this review finding that responses from respondent interested parties represented less than 50 percent of exports of subject merchandise. As a result, the Department decided, pursuant to 19 CFR 351.218(e)(1)(ii)(A), to conduct an expedited sunset review. On December 10, 2004, respondent interested parties submitted comments on the Department’s adequacy determination and asked the Department to reconsider its decision to conduct an expedited sunset review, pursuant to 19

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<sup>1</sup>The Ad Hoc Committee of Domestic Nitrogen Producers is comprised of CF Industries, Inc., PCS Nitrogen Fertilizer, L.P., Terra Industries, Inc., and Mississippi Chemical Corporation, but the latter two companies no longer produce solid urea in the United States. CF Industries and PCS Nitrogen Fertilizer both produce solid urea and submitted a substantive response to the October 1, 2004, Notice of Initiation in this proceeding.

<sup>2</sup>In its substantive response, Agrium U.S. states that revocation of the AD order is likely to lead to a continuation or recurrence of dumping and incorporates by reference the submission of the Ad Hoc Committee. *See* Agrium U.S. response at 6.

CFR 351.309(e). *See* Solid Urea from Russia – Sunset Review: Russian Respondents’ Comments on the Department’s Adequacy Determination (“respondent interested parties’ adequacy comments”), December 10, 2004. Also, on December 10, 2004, domestic interested parties submitted comments supporting the Department’s decision to conduct an expedited sunset review. *See* Second Sunset Review of the Antidumping Order Against Solid Urea from the Russian Federation: Comments on the Appropriateness of an Expedited Review (“domestic interested parties’ adequacy comments”). Our review of the adequacy determination is set forth in the Discussion of the Issues section below.

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation 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 after the issuance of the AD order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

#### 1. Request for Reconsideration of the Department’s Adequacy Determination

##### Interested Party Comments

In their comments regarding the Department’s adequacy determination, domestic interested parties argue that the Department’s determination to conduct an expedited sunset review in this proceeding was correct because respondent interested parties failed to either meet the standard set forth in 19 CFR 351.218(e)(1)(ii)(A) or demonstrate how their alternative approach provided an appropriate measure of adequacy or explain how it corresponded to the likely share of exports to the U.S. market if the order were revoked. *See* domestic interested parties’ adequacy comments at 3-4.

Respondent interested parties argue that the Department should have found their substantive response to be adequate and conducted a full sunset review. They argue that, given the absence of exports of Russian urea to the United States, the information provided by respondent interested parties demonstrating that they account for more than 50 percent of Russian urea production capacity is sufficient to measure the adequacy of the respondent interested parties’ substantive response.<sup>3</sup> Respondent interested parties also argue that the

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<sup>3</sup>Although at times, in their comments, respondent interested parties claim that they represent the overwhelming share of Russian urea production, they have provided no data regarding actual production of urea on the record. The only data they have submitted regarding Russian urea producers concerns production capacity –

Department's rejection of this alternative approach based on production capacity and its focus on the U.S. market when evaluating the alternative approach applies a new standard to determining adequacy based on speculation about the likely presence of non-responding Russian companies in the U.S. market if the order were revoked, in effect requiring the participation of all respondent producers in a review in order to meet such a standard. *See* respondent interested parties' adequacy response at 2-4.

### Department's Position

The Department has a very clear standard for determining adequacy which respondent interested parties have requested the Department to refrain from using. Section 351.218(e)(1)(ii)(A) of the Department's regulations states that:

. . . the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses under paragraph (d)(3) of this section from respondent interested parties accounting on average for more than 50 percent, on a volume basis (or value basis, if appropriate), of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

However, because neither respondent interested parties, nor any other Russian producer or exporter had exported urea from Russia to the United States, respondent interested parties requested that the Department employ, as an alternative to the measure of adequacy set forth in its regulations, one based on the share of total production capacity.<sup>4</sup>

As explained in its December 3, 2004, adequacy determination, when determining adequacy, the Department is directed to focus on the U.S. market.<sup>5</sup> A respondent's likely

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what the company is capable of producing if it is running at full capacity, not what it actually produced in a given year.

<sup>4</sup>The absence of exports of subject merchandise during the sunset review period does not automatically warrant our departing from the guidance provided by the regulations or our past practice. In other cases, where respondents have not exported to the United States during the sunset review, the Department has determined their responses to be inadequate and conducted an expedited review. *See e.g., Furfuryl Alcohol from the People's Republic of China and Thailand: Final Results of Antidumping Duty Sunset Reviews*, ("Furfuryl Alcohol from the PRC") 65 FR 53701 (September 5, 2000).

<sup>5</sup>The Statement of Administrative Action ("SAA") states that: "The Administration expects that in many cases, some, but not all, interested parties will respond to the initial request for information. Where there are such mixed responses, the agencies must decide whether the responses are adequate to warrant a full-fledged review. The agencies, in making this decision, will consider the proportion of parties that respond and their likely share of the market if the order were revoked or the suspended investigation terminated." (SAA at 890) Any determination of likelihood is by its nature speculative. In establishing this regulation, the Department determined that a parties' exports of subject merchandise to the United States during the review period was the most tangible or concrete,

presence in the U.S. market, not its overall size or potential size in another market, is the determinant factor in measuring adequacy.

In this instance, respondent interested parties submitted data on their capacity to produce urea in Russia as the basis for their adequacy claim. In neither their substantive response, nor their subsequent comments regarding the Department's adequacy determination, did respondent interested parties demonstrate how their alternative measure of adequacy based on shares of reported Russian urea capacity corresponds to, or acts as an acceptable substitute for, the measure set forth in the Department's regulations and the guidance given by the SAA, which focuses on respondent's likely share of exports to the U.S. market, if the order were revoked.

As discussed in the Department's adequacy determination, a company's export performance or its position in a given export market does not necessarily correspond to its production capacity, other than the overall limitation that capacity imposes upon that company's ability to supply that market. Production capacity is only one among many factors determining a company's likely presence in a given export market, such as the United States. We determine that production capacity is less informative than other factors that are based on actual performance, such as overall exports, export presence in the region, focus on sales to the home market, or even actual urea production, because production capacity is premised on theoretical figures that purport to show the extent of a facility's production at full capacity rather than the producer's likely share in a given market. Given this crucial distinction, and the fact that the information provided by respondent interested parties indicates that non-responding Russian urea producers still account for a significant, albeit less than 50 percent, share of Russian urea capacity, the Department cannot determine, based on the information provided by the respondent interested parties in their substantive response, that respondent interested parties would account for 50 percent of the likely exports of subject merchandise, if the order were revoked. Therefore, we continue to find that Russian respondents did not provide an adequate response to the notice of initiation and that, as a result, it is appropriate to conduct an expedited sunset review in this proceeding.

## 2. Likelihood of Continuation or Recurrence of Dumping

### Interested Party Comments

Domestic interested parties state that the Department should find that revocation of the order would likely lead to a continuation or recurrence of dumping of Russian urea in the U.S. market. They note that dumping margins continue to remain in place for all Russian producers of urea at a rate unchanged since the original investigation of solid urea from the Soviet Union and the subsequent transition of the order to Russia. *See Ad Hoc Committee response at 13.* They also note that, since the transition of the order to Russia in 1992, there have been numerous opportunities but no requests for administrative reviews of the order by any Russian producer or

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accurate measure available of determining likely U.S. market share.

exporter. Further, since the issuance of the order, imports of Russian urea have virtually ceased and did not occur at all during the second sunset review period.<sup>6</sup>

Respondent interested parties state that the Department must find that revocation of the order would not be likely to lead to a continuation or recurrence of dumping of Russian urea in the U.S. market for the simple reason that there has never been a finding of dumping against solid urea from Russia or any current Russian producer. They state that the original investigation was against solid urea from the Soviet Union and the country-wide margin that was calculated in that investigation was based on the margin calculated for Soyuzpromexport, a Soviet company that no longer exists. Further, the affirmative dumping determination and the supporting calculations were based on non-market economy methodology, which is no longer used by the Department in antidumping investigations or administrative reviews of Russian exports to the United States since Russia's graduation from non-market economy status as of April 2002. Because of these facts, the Department cannot rely on information from the original investigation to determine likelihood of dumping exists.<sup>7</sup> Instead, the Department must consider the additional information supplied by respondent interested parties that they argue demonstrates that dumping is not likely to continue or recur if the order were revoked. They note that all of the Russian urea producers are now private companies which seek to maximize revenue by selling at the highest prices the market will bear. Acting as profit maximizers, respondent interested parties argue Russian urea producers are unlikely to dump if the order is revoked. They also note that demand for urea is forecasted to increase, particularly in Asia and Latin America, which will likely lead to an increase in Russian urea prices given Russia producers' high rates of capacity utilization.<sup>8</sup> Also, because they have already been supplying these other export markets which are forecasted to increase in the future, it is unlikely that Russian urea producers will divert their exports to the United States.

In their rebuttal comments, domestic interested parties argue that the dumping finding and margins calculated in the AD investigation on urea from the Soviet Union apply to respondent interested parties and exports of solid urea from Russia to the United States. They note that the order on urea from the Soviet Union was transferred to the newly independent states, including

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<sup>6</sup>U.S. import statistics published by the U.S. Census Bureau have, on occasion, shown imports of urea from Russia but, when reexamined these imports have been found to have been misclassified. Both domestic and respondent interested parties have stated that they believe there were no shipments of subject merchandise to the United States during this sunset review period.

<sup>7</sup>Respondent interested parties argue that this principle has been recognized by the U.S. Court of International Trade in *Government of Uzbekistan v. United States*, No. 01-114, slip op. at 12 (Ct. Int'l Trade, August 30, 2001) which found that the Department could not rely on a adverse preliminary margin based on best information available as the basis for its finding that dumping was likely to continue or recur in the sunset review of the suspension agreement on uranium from Uzbekistan. However, the decision in that case became moot and the remand was dismissed by the court in January 2002.

<sup>8</sup>Respondent interested parties claim Russian urea producers were operating at a high level of capacity utilization in the first quarter of 2004, but provided no support for the figure they presented to the Department.

Russia, in June 1992. *See Transfer of the Antidumping Duty Order to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 FR 28828 (June 29, 1992). Domestic interested parties argue that respondent interested parties' claim that current producers did not exist at the time of the investigation is without merit, noting that AD orders apply to subject merchandise from a given country, not specific producers, and that the Department applies the All Others rate to those companies not investigated in the original investigation or that do not ship until after the order is issued. *See Ad Hoc Committee rebuttal at 13*. They also argue that the finding of dumping and calculated margins based on non-market methodology in the original investigation are not invalidated by Russia's graduation to market economy status. Graduation only affects how margins will be calculated in the future. *See Ad Hoc Committee rebuttal at 18*.

Respondent interested parties, in their rebuttal comments, reiterate their argument that existing Russian producers have never been found to have dumped subject merchandise and that the only evidence of dumping derives from an investigation against an entity in a country that no longer exists using a non-market methodology that no longer applies to producers in Russia. As a result, there is no valid threshold finding of dumping upon which the Department can base a finding of likelihood of continued or recurring dumping in this sunset review. *See respondent interested parties' rebuttal at 2-3, 5*.

#### Department's Position

Dumping margins and cash deposits on all imports solid urea from Russia (whether as an independent state or, prior to 1992, as part of the Soviet Union) have been in place since May 1987. When the order was transferred to Russia and the other newly independent states in June 1992, the Department announced a country-wide rate of 68.26 percent for each new state, including Russia. There have been no administrative reviews of the AD order on solid urea from Russia since the transfer. In addition, there have been no imports of solid urea from Russia during this second sunset review period and, virtually no imports of solid urea from Russia since the issuance of the original order on solid urea from the Soviet Union. *See respondent interested parties' substantive response at and Notice of Final Results of Expedited Sunset Reviews: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan*, 64 FR 48357 (September 3, 1999). The SAA states:

The Administration believes that the existence of dumping margins after the order, or the cessation of imports after the order is highly probative of the likelihood or continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. *See SAA at 890*.

The Department finds that the existence of dumping margins and cash deposit rates at above *de minimis* levels on solid urea from Russia, together with the fact that imports ceased during the sunset review period and have virtually ceased since the issuance of the original order on solid urea from the Soviet Union, to be highly probative of the continuation or recurrence of dumping, if the order were revoked.

Respondent interested parties have argued that the extraordinary facts involved in this sunset review – the fact that the country (the Soviet Union) and entity (Soyuzpromexport) involved in the original investigation and order no longer exist, the changes that have occurred in Russia and the fact that the margins were based on a methodology that no longer applies to Russia – means that there has never been a valid determination of dumping against existing producers of solid urea from Russia and necessitates that the Department refrain from relying on margins derived from the original investigation and consider other information in its sunset review. Such information, respondent interested parties argue, demonstrates that dumping is not likely to continue or recur if the order on solid urea from Russia were revoked.

Although respondent interested parties are correct in their statement that the original investigation involved solid urea from the Soviet Union, they are incorrect in their assertion that, as a result, there has never been an affirmative dumping determination on solid urea from Russia. Antidumping duty determinations are country-wide. The order on solid urea from the Soviet Union covered all subject merchandise exported from the Soviet Union to the United States and applied to all producers of solid urea in the Soviet Union, including those located within the boundaries of Russia. After the breakup of the Soviet Union, the order was transferred to each of the newly independent states and applied to all producers within those newly independent states, including Russia. *See Transfer of the Antidumping Duty Order to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 FR 28828 (June 29, 1992).<sup>9</sup> The transfer of proceedings initiated against the Soviet Union to the newly independent states was upheld by the court. *See Techsnabexport, Ltd. v. United States*, 16 C.I.T. 855 (September 25, 1992).

Respondent interested parties are also incorrect that there has never been a finding with respect to any current Russian producers, because the only producer examined in the investigation was the Soviet entity, Soyuzpromexport, which has been privatized and no longer exists. With the exception of one company, production facilities for all of the Russian urea producers, including respondent interested parties and those Russian urea producers not participating in the sunset review existed prior to the issuance of the AD order on solid urea from the Soviet Union in 1987. *See* respondent interested parties' response at Exhibit 2. Any urea produced at these facilities was subject to the original AD order on solid urea from the Soviet

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<sup>9</sup>The transfer established a uniform estimated cash deposit rate for "all entries of subject merchandise generated from producers located in what was known at the USSR." At the time of the transfer, interested parties were given the opportunity to request a changed circumstances review of any of the solid urea orders, if they believed that the order should not apply to a particular newly independent state. The Department received no request for a changed circumstances review of the order on solid urea from Russia from any interested party.

Union and the subsequent AD order on solid urea from Russia.<sup>10</sup>

Neither privatization, nor other changes in ownership, result in the removal of a producer of subject merchandise from being subject to an existing order unless that company was found to be a successor to an already revoked or excluded company. If the privatized company was found to be a successor to the earlier company, it would receive the margin that applied to that company, if not, it would receive the all others rate or the country-wide rate, as appropriate, until such time that it established its own company-specific rate. In this case, no company was revoked or excluded from the order and there is only one margin applicable to former, existing or newly privatized producers of urea in Russia – 68.26 percent.<sup>11</sup>

The graduation of Russia from non-market economy to market economy status also does not invalidate earlier margins based on non-market economy methodology.<sup>12</sup> Antidumping duty orders are not revoked as a result of graduation nor are existing margins or cash deposit rates invalidated. Graduation to market economy status means that the examination of sales made after the effective date of graduation in AD investigations or administrative reviews will be conducted according to the normal methodology for market economies rather than the special methodology applied to non-market economies. As was stated in the Russian Market Economy Status Decision Memorandum:

We have determined that the effective date for the consideration of Russia as a market economy is April 1, 2002. Therefore, Russian producers and exporters will be subject to the antidumping rules applicable to market economies with respect to the analysis of transactions occurring after April 1, 2002. *See Russian*

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<sup>10</sup>Six plants were examined in the original investigation including one in Russia, which resulted in the rates calculated in the investigation. *See Urea from the U.S.S.R.: Final Determination of Sales at Less Than Fair Value*, 52 FR 19557 (May 26, 1987), and Soyuzpromexport questionnaire response (December 2, 1986) at 8.

<sup>11</sup>The Department also notes that since the dissolution of Soyuzpromexport, existing respondent interested parties have been subject to U.S. antidumping proceedings on other nitrogen-based fertilizer products, specifically ammonium nitrate and urea ammonium nitrate. In both the ammonium nitrate investigation and the urea ammonium nitrate investigation, JSC Nevinnomysskij Azot was investigated. In the ammonium nitrate investigation, which resulted in an AD suspension agreement, the company was found to be dumping at a rate of 253.98 percent. *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 11, 2000). In the urea ammonium nitrate investigation, the Department found the company to be dumping at a rate of 106.98 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate from the Russian Federation*, 68 FR 9977 (March 3, 2003). However, as a result of a negative injury determination by the ITC, no order was issued. The companies are also subject to other AD orders on urea and nitrogen-based fertilizers, specifically an EU AD order on urea and AD orders on ammonium nitrate imposed by Australia, Brazil, the EU and India.

<sup>12</sup>The revocation of Russia's non-market economy status was effective April 1, 2002. *See Decision Memorandum from Albert Hsu, et. al., to Faryar Shirzad, Assistant Secretary for Import Administration Regarding the Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law ("Russian Market Economy Status Decision Memorandum")*, June 6, 2002, at 31.

Market Economy Status Decision Memorandum at 2.

The memorandum goes on to state:

There will necessarily be a period of time during which antidumping duty rates, based on the non-market economy calculation methodology, will remain in effect. For existing antidumping duty orders, the non-market economy-based rates will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002. For ongoing investigations, because the period of investigation pre-dates the effective date of this determination, the Department will continue to utilize non-market economy methodologies in those investigations. Again, any antidumping duty rates established pursuant to these investigations will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002. *Id.*

Thus, it is clear that graduation has no impact on AD orders issued prior to graduation nor does it have an impact on the AD rates calculated prior to graduation and their continued existence beyond the effective date of graduation until such time that they are changed as a result of a review.

Respondent interested parties also claim that, because Russian urea producers are now private companies operating in a market economy, they will be unlikely to dump if the order is revoked because as profit maximizers they will seek to “maximize revenue through selling merchandise at the highest prices that the market will bear,” particularly with demand for urea predicted to rise over the next seven years. *See* Respondent Interested Parties Substantive Response at 16-17. However, dumping behavior is not limited to non-market economies or non-market actors. More than two-thirds of the AD orders currently in place are against products from countries that have always been considered market economies for dumping purposes. In fact, nine of the top ten countries in terms of outstanding U.S. AD orders are market economies – the exception being China.

Based on the existence of dumping margins and cash deposit rates at above *de minimis* levels on solid urea from Russia, the fact that imports ceased during the sunset review period and have virtually ceased since the issuance of the original order on solid urea from the Soviet Union, the comments received by both domestic and respondent interested parties and the analysis above, the Department determines that dumping is likely to continue or recur if the order on solid urea from Russia is revoked.

### 3. Magnitude of the Margin Likely to Prevail

#### Interested Party Comments

Domestic interested parties argue that the Department should report 68.26 percent rate from the original investigation that was applied as a uniform cash deposit rate to all entries of solid urea from producers in Russia when the order was transferred. This rate, they argue, is the only calculated rate that reflects the behavior of Russian producers or exporters without the discipline of an order in place. It is also the only rate ever applied to exports of solid urea from Russia to the United States.

Respondent interested parties argue that it is inappropriate to report the rate from the original investigation because that rate was calculated in an investigation against the Soviet Union, not Russia, using a non-market economy methodology that no longer applies to Russian producers or exporters. Such facts constitute extraordinary circumstances, which as recognized by the SAA and the Department's regulations, justify the Department relying on dumping margins other than those calculated and published in prior determinations. Consistent with their arguments on no likelihood of continued or recurring dumping, respondent interested parties argue that no affirmative rate should be reported to the ITC.

In their rebuttal comments, domestic interested parties argue that neither the fact that the original investigation was against the Soviet Union, nor the fact that the rates calculated in the investigation were based on non-market economy methodology, precludes the Department from reporting those rates to the ITC as the rates likely to prevail if the order were revoked. In fact, even if appropriate, there are no more recent rates from which the Department to select, given the fact that respondent interested parties have not requested an administrative review of the order on solid urea from Russia since that order was transferred in 1992. *See Ad Hoc Committee rebuttal at 16-18 and Agrium U.S. rebuttal at 2.* As recognized by the Department in the sunset review on tapered roller bearings from Hungary, graduation to market economy status does not constitute extraordinary circumstances nor is it sufficient to rely on margins other than those previously calculated by the Department in prior determinations. *See Ad Hoc Committee rebuttal at 19.*

Respondent interested parties reiterate their arguments that the margins calculated in the original investigation bear no relation to the existing Russian urea producers and cannot be relied upon or reported to the ITC as the rates likely to prevail. According to respondent interested parties, the facts in this case constitute extraordinary circumstances and, as a result, the Department should use or calculate margins other than those from prior determinations, one that reflects the fact that dumping is not likely to continue or recur.

#### Department's Position

The margins and cash deposit rates established in the original investigation of urea from the Soviet Union were transferred to the newly independent states, including Russia, in 1992.

They continue to apply to imports of solid urea from Russia. These rates were not affected by the graduation of Russia to market economy status in 2002. As stated in the Russian Market Economy Status Decision Memorandum, “For existing antidumping duty orders, the non-market economy-based rates will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002.” See Russian Market Economy Status Decision Memorandum at 2. There have been no reviews of the order since that time and the rates from the investigation and transferred to Russia remain in effect today. The Department also finds, consistent with its decision in the sunset review of Tapered Roller Bearings from Hungary, that Russia’s graduation to market economy status does not constitute the “most extraordinary circumstances” specified in the SAA that warrant reliance upon on a dumping margin other than one calculated in prior determinations.<sup>13</sup> Because these rates from the original investigation are the only calculated rates that reflect the behavior of producers or exporters of solid urea from Russia without the discipline of an order in place, we find that they are the most appropriate rates to report to the ITC. Therefore, pursuant to section 752(c) of the Act, the Department will report to the ITC the company-specific and All Others rate at levels indicated in the Final Results of Review of this notice.<sup>14</sup>

Final Results of Review

<u>Manufacturer/Producer/Exporter</u>	<u>Weighted-Average Margin (%)</u>
Phillip Brothers Ltd. & Phillip Brothers Inc.	53.23
All Others	68.26

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<sup>13</sup>The SAA states, “Only under the most extraordinary circumstances should Commerce rely on dumping margins . . . other than those it calculated and published in its prior determinations.” (SAA at 891.) In the sunset review of tapered roller bearings from Hungary where domestic interested parties argued that because of the transition of Hungary to a market economy, the Department should recalculate using a more recent rate from an EU investigation, the Department stated that, “we are not persuaded by the evidence presented by the domestic parties that such extraordinary circumstances exist in this case as to warrant the calculation of a new dumping margin.” *Final Results of Expedited Sunset Review: Tapered Roller Bearings from Hungary*, 64 FR 60272, 60275 (November 4, 1999).

<sup>14</sup>Prior to Russia’s graduation to market economy status, the antidumping duty rate applicable to Russian companies without their own company-specific rate was the country-wide rate. Since graduation, this rate is referred to as the All Others rate.

Recommendation

Based on our analysis of the substantive responses 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.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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Date