

accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. See 19 CFR 351.310(c). The Department will make its final determination no later than 75 days after this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: September 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-25187 Filed 10-02-02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-822-805]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From Belarus

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Martin or Tom Futtner, AD/CVD

Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3936, and (202) 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations codified at 19 CFR part 351 (April 2002).

Preliminary Determination

We preliminarily determine that imports of urea ammonium nitrate solutions (UANS) from Belarus are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On May 9, 2002, the Department initiated antidumping duty investigations to determine whether imports of UANS from Lithuania, Belarus, the Russian Federation, and Ukraine are being, or are likely to be, sold in the United States at LTFV. See *Initiation of Antidumping Investigations: Urea Ammonium Nitrate Solutions from Belarus, Lithuania, the Russian Federation, and Ukraine*, 67 FR 35492 (May 20, 2002) (*Initiation Notice*).¹

On June 4, 2002, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of UANS from Belarus, the Russian Federation and Ukraine. See *Urea Ammonium Nitrate Solution from Belarus, Lithuania, the Russian Federation and Ukraine*, 67 FR 39439 (June 7, 2002).

During May 2002, the Department provided participating parties with an opportunity to comment on scope and the product characteristics of subject

merchandise. No parties submitted comments.

On May 22, 2002, the Department issued its antidumping questionnaire² to the Embassy of Belarus in Washington D.C., and to the company identified in the petition, Grodno Production Republican Enterprise "GPO Azot" (Grodno). The Department requested that the Embassy of Belarus send the questionnaire to all companies that manufactured and exported UANS to the United States, as well as all manufacturers that produced UANS for companies engaged in exporting subject merchandise to the United States, and all companies that exported UANS to the United States, during the period of investigation (POI). Only Grodno responded to the Department's questionnaire; the Department received timely responses on June 12, 2002 for the section A response, and July 2, 2002 for the section C and D responses. During July and August 2002, the Department issued and Grodno responded to three supplemental questionnaires.

Period of Investigation

The POI is October 1, 2001, through March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, April, 2002). See 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered is all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3102.80.00.00. Although the HTSUS item number is provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.

² Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in nonmarket economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise sold in or to the United States under investigation. Section E requests information on further manufacturing.

¹ The petitioner in this investigation is the Nitrogen Solutions Fair Trade Committee (the petitioner). Its members consist of CF Industries, Inc., Mississippi Chemical Corporation, and Terra Industries, Inc.

Nonmarket Economy Country Status

The Department has treated Belarus as a nonmarket economy (NME) country in all previous antidumping investigations. See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus*, 66 FR 33528 (June 22, 2001). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. Therefore, pursuant to section 771(18)(C)(i) of the Act, the Department will continue to treat Belarus as an NME country for the purposes of this investigation.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Grodno has provided the requested company-specific separate rates information and has indicated that, although it is 100 percent state owned, there is no element of government control over its operations. We have considered whether Grodno is eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making processes at the individual firm level. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final*

Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China*, 60 FR 14725, 14727 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. See *Silicon Carbide*, 59 FR 22587, and the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Grodno has placed on the record a number of documents to demonstrate the absence of *de jure* control, including Regulation No. 359 of the Belarus Government, which specifies that its management has specific decision making authority, (i.e., hiring supervisors, controlling state property, reorganizing and dissolving enterprises), and Regulation No. 1835, pertaining to Grodno's export licenses (authorizing Grodno to export under license on condition that domestic consumers have priority). Grodno has also submitted a copy of an export license for subject merchandise covering the first half of the POI. We note that the export license did contain minimum export prices and quantitative limits. Nonetheless, Grodno has demonstrated that the type of decision-making the Department considers significant in separate rates determinations, such as pricing, is conducted at the company level. Grodno claims to have the autonomy to set the

price at whatever level it wishes without government interference, and states that it is free to negotiate export prices independently with its customers above the floor price indicated in the export license. In past cases, the Department has found an absence of government control over the export pricing and marketing decisions of firms, even when there is some government involvement with respect to the export of products subject to investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72257 (December 31, 1998); *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14727-14728 (March 20, 1995). Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.

With regard to the issue of *de facto* control, Grodno has reported the following: (1) It establishes its own prices; (2) it has the authority to negotiate binding contracts; (3) its General Manager is appointed by its parent company, and management is selected by the general manager; (4) it is not required to notify the Belarus government of its decisions; and (5) it decides how to distribute profits from export sales with no restrictions on the use of its export revenue. Although, according to the law of Belarus, 30 percent of foreign currency earnings must be sold to the government of Belarus, the Department has not considered such foreign exchange requirements to constitute *de facto* control. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate From Ukraine*, 66 FR 13286, 13289 (March 5, 2001);

Notice of Final Determination of Sales At Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate From Ukraine, 66 FR 38632, 38633 (July 25, 2001). Additionally, Grodno has stated that it is the sole exporter of subject merchandise from Belarus, and therefore, it does not coordinate prices with other producers or exporters. Furthermore, our analysis of Grodno's questionnaire response reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Grodno's export functions. Consequently, we preliminarily determine that Grodno has met the criteria for the application of a separate rate. (For a detailed discussion of this issue, see Separate Rates Analysis for the Preliminary Determination: Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Belarus, dated concurrently with this notice on file in the Central Records Unit (CRU) located in B-099 of the main Department of Commerce building.)

The Belarus-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, "the NME entity." The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Grodno has preliminarily qualified for a separate rate. Furthermore, information on the record of this investigation indicates that Grodno accounted for all imports of subject merchandise during the POI. Since Grodno is the only known Belarusian exporter of UANS to the United States during the POI, we have calculated a Belarus-wide rate for this investigation based on the weighted-average margin determined for Grodno.

Fair Value Comparisons

To determine whether Grodno's sales of UANS to customers in the United States were made at LTFV, we compared Export Price (EP) to NV, calculated using our NME methodology, as described in the "Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used an EP methodology in accordance with section 772(a) of the Act because Grodno sold subject

merchandise to unaffiliated U.S. customers prior to importation and because constructed export price methodology was not otherwise warranted. At the time of sale, Grodno knew that its reported sales of subject merchandise were destined for the United States.

We calculated EP based on the prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight. Where foreign inland freight was provided by NME companies, we used surrogate values from South Africa to value these expenses (see the Factors of Production Valuation Memorandum dated September 26, 2002, on file in the CRU).

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, based on the prices or costs of factors of production in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The Department's Office of Policy initially identified six countries that are at a level of economic development comparable to Belarus in terms of per capita gross national product (GNP) and the national distribution of labor. Those countries are Panama, Turkey, South Africa, Latvia, the Dominican Republic and Peru (see the memorandum from Jeffrey May to Holly Kuga dated May 17, 2002, on file in the CRU). As noted, South Africa is economically comparable to Belarus. South Africa is also a significant producer of comparable merchandise. Moreover, there is sufficient publicly available information on South African values. Accordingly, we have preliminarily calculated NV using publicly available information from South Africa to value Grodno's factors of production, except where noted below.

2. Factors of Production

In its questionnaire response, Grodno reported factors of production for the subject merchandise. The factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. See section 773(c)(3) of the Act. To calculate NV, we multiplied

the reported per-unit quantities for these factors by publicly available surrogate values from South Africa.

The surrogate values employed for the production of subject merchandise were selected because of their quality, specificity, and contemporaneity. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using the Production Price Index (PPI) from Statistics South Africa, an official government body of South Africa. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic input supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997).

We valued material inputs (including sodium hydroxide, quicklime, iron sulphate, trisodium phosphate, and hydrazine-hydrate) using values obtained from imports into South Africa during the POI under the appropriate HTS item number, from the World Trade Atlas, published by Global Trade Information Services, Inc. One input, the corrosion inhibitor, was purchased from a market economy supplier, and was paid for in U.S. currency. Pursuant to section 351.408(c)(1) of the Department's regulations, we valued the corrosion inhibitor based upon the value that Grodno reported that it paid this supplier.

For labor, consistent with 19 CFR 351.408(c)(3), we used the regression-based wage rate for Belarus from the Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002 (see <http://ia.ita.doc.gov/wages>). The source of the wage rate data on the Import Administration's website is the 2001 Year Book of Labour Statistics, International Labour Organization (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

We valued natural gas using information for October to December 2001, released by the South African Department of Minerals & Energy (DME) and published in *DME Statistics*.

We valued electricity using the published prices for industrial electricity in 2000, obtained from the Electricity Price Report in *DME Statistics*, published by South Africa's Department of Minerals and Energy.

We based our calculation of selling, general and administrative expenses, overhead, and profit on the fiscal year 2002 (April 2001 to March 2002) publicly available financial statement of Omnia Holdings Limited, a South African producer of the subject merchandise.

For a complete analysis of surrogate values used in the preliminary determination, see the Factors of Production Valuation Memorandum, dated concurrently with this notice.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service to suspend liquidation of all entries of subject merchandise from Belarus entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following weighted-average percentage margins exist for the POI:

Manufacturer/exporter	Weighted-Average Margin (percent)
Grodno	190.34
Belarus-Wide Rate	190.34

The Belarus-wide rate applies to all entries of subject merchandise except entries from Grodno.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of UANS from Belarus are materially

injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification report. Rebuttal briefs, whose contents are limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. See 19 CFR 351.310(c). The Department will make its final determination no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 26, 2002.
Faryar Shirzad,
Assistant Secretary for Import Administration.
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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On September 19, 2002, Ispat Sidbec Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free-Trade Agreement. A second request was filed on behalf of the Government of Quebec on September 19, 2002. Panel Review was requested of the Final Affirmative Countervailing Duty Determination made by the United States International Trade Administration, respecting Carbon and Certain Alloy Steel Wire Rod from Canada. This determination was published in the **Federal Register**, (67 FR 55813) on August 30 2002. The NAFTA Secretariat has assigned Case Number USA-CDA-2002-1904-08 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established