

instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For Clover/Lucky, which has a separate rate, the cash deposit rate will be zero; (2) for any previously reviewed PRC firm and non-PRC exporter with a separate rate, the cash deposit rate will be the company- and product-specific rate established for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 66.65 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 3, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### [International Trade Administration]

[A-821-811]

#### **Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation**

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

**EFFECTIVE DATE:** January 7, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Doreen Chen, Laurel LaCivita, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0408, (202) 482-4243, and (202) 482-3818, respectively.

#### **The Applicable Statute**

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's regulations are to the regulations at 19 CFR Part 351 (1999).

#### **Preliminary Determination**

We preliminarily determine that solid fertilizer grade ammonium nitrate ("ammonium nitrate") from the Russian Federation is being, or is 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**

This investigation was initiated on August 12, 1999. *See Initiation of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 64 FR 45236 (August 19, 1999). Since the initiation of this investigation the following events have occurred:

On August 17, 1999, the Department requested comments from petitioner and respondents regarding the criteria to be used for model-matching purposes. Petitioner and respondents submitted comments on the proposed model-matching criteria on August 31, 1999, and September 7 and 15, 1999.

On August 17, 1999, the Department issued Section A of its antidumping questionnaire to the Embassy of the Russian Federation, as well as courtesy copies (with the exception of JSC Kirovo-Chepetsk, for which we did not have an address) to the following possible producers/exporters of subject merchandise named in the petition: JSC Angarsk Petrochemical Co., JSC Berezniki Azot, JSC Cherepovets PO Azot, JSC Dorogobuzh, JSC Kemerovo Azot, JSC Kirovo-Chepetsk, JSC Meleuz Prod. Assoc. Minudobreniya, JSC Nevinnomyssky Azot ("Nevinka"), JSC Acron, JSC Novomendeleyevsk

Chemical Plant, JSC Novomoskovsk AK Azot, JSC Minudobreniya, and JSC Kuybyshevazot.

On August 31, 1999, the following companies with period of investigation ("POI") shipments to the U.S. submitted information regarding the quantity and value of these shipments of subject merchandise to the United States during the POI: JSC Acron and Nevinka.

We received a complete Section A response from Nevinka. Companies JSC Cherepovets PO Azot, JSC Kemerovo Azot, JSC Minudobreniya, JSC Kuybyshevazot, JSC Berezniki Azot, JSC Novomendeleyevsk Chemical Plant and JSC Kirovo-Chepetsk reported that they made no sales to the United States during the POI. On October 27, 1999, we sent a letter to JSC Kirovo-Chepetsk seeking clarification and information on a particular shipment. The due date given for this information was November 24, 1999. We also informed JSC Kirovo-Chepetsk that if it had knowledge that this shipment was destined for the United States, it was required to respond fully to the Department's antidumping questionnaire by the due date of December 2, 1999. JSC Kirovo-Chepetsk failed to provide the requested information regarding the shipment at issue within the provided deadlines. Finally, companies JSC Angarsk Petrochemical Co., JSC Dorogobuzh, JSC Meleuz Production Association Minudobreniya, JSC Novomoskovsk AK Azot and JSC Acron did not respond to the Department's questionnaire.

On September 3, 1999, the United States International Trade Commission ("ITC") preliminarily determined that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of solid fertilizer grade ammonium nitrate." (64 FR 50103, September 15, 1999).

On September 20, 1999, Nevinka submitted its complete section A response. On November 15, 1999, Nevinka submitted its response to sections C and D of the questionnaire.

On October 14, 1999, the Department issued a Section A supplemental questionnaire to Nevinka. On November 11, 1999, Nevinka submitted its response to the Department's supplemental section A questionnaire. On November 21, 1999, the Department issued a supplemental section C and D, and second supplemental A questionnaire. On December 14, 1999, Nevinka submitted its supplemental sections C, D, and a second supplemental section A questionnaire response.

On October 22, 1999, we requested publicly-available information for valuing the factors of production and comments on surrogate country selection. On November 5 and 12, 1999, petitioner and Nevinka submitted comments and rebuttals on the surrogate country selection, respectively. On November 30 and December 7, 1999, petitioner and Nevinka submitted comments and rebuttals on surrogate values, respectively.

Petitioner submitted comments regarding Nevinka's questionnaire response on September 29 and November 22, 1999.

On December 17 and 20, 1999, petitioner submitted comments on Nevinka's claim of affiliation and on the supplemental questionnaire sections C and D response. On December 21, 1999, Nevinka provide rebuttal comments to petitioner's December 17 and 20, 1999 submissions. Because of the late dates of these submissions, the Department has not had time to analyze fully this information provided by petitioner and Nevinka. Therefore, the Department has not considered these submissions for its preliminary determination.

#### Critical Circumstances

On November 1, 1999, the Department issued its preliminary determination that critical circumstances exist with respect to Nevinka. On November 8, 1999, the Department requested information regarding shipments of ammonium nitrate from Nevinka. On November 23, 1999, Nevinka provided the requested information. For a complete discussion of our preliminary analysis of critical circumstances, see *Memorandum to Deputy Assistant Secretary Joseph Spetrini*, dated November 1, 1999, on file in Room B-099 of the Department headquarters and the *Preliminary Determination of Critical Circumstances: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 63 FR 60422 (November 5, 1999). The Department will make its final determination of critical circumstances, on a company-specific basis as appropriate, concurrent with the final determination of sales at LTFV in this investigation.

#### Scope of Investigation

For purposes of this investigation, the products covered are solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per

cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Period of Investigation

The period of investigation (POI) is January 1, 1999 through June 30, 1999.

#### Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e), the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Nevinka has reported factor usage information for a large number of catalysts used in the production of ammonium nitrate (see Exhibit 18 of Nevinka's December 14, 1999 submission). However, there is currently no surrogate value information on the record regarding these catalysts, nor has the Department been able to locate such values independently. However, Nevinka has reported an actual price for ammonia synthesis catalyst purchased from a market economy country and in market economy currency in its supplemental section D questionnaire response. Therefore, as facts otherwise available, we used the actual price for ammonia synthesis catalyst as a surrogate value for all other catalysts for which Nevinka reported usage factors in its supplemental section D questionnaire response.

#### The Russia-Wide Rate

Respondents that are not entitled to a separate rate are considered to constitute a single enterprise under common control by the government of the Russian Federation. See, e.g., *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996). Companies that failed to respond to our questionnaires or reported no shipments were assigned the Russia-wide rate. Companies JSC Cherepovets PO Azot, JSC Kemerovo Azot, JSC Minudobreniya, JSC Kubyshevazot, JSC Berezniki Azot and JSC Novomendeleyevsk Chemical Plant reported, and the Department confirmed through an examination of U.S. Customs data, that they had no shipments during the POI. Since these companies did not report any shipments, we have no basis for determining a margin. Therefore, these companies were assigned the Russia-wide rate, the composition of which is described below.

U.S. import statistics indicate that the total quantity and value of U.S. imports of solid fertilizer grade ammonium nitrate from the Russian Federation are greater than the total quantity and value of solid fertilizer grade ammonium nitrate reported by all Russian companies that submitted responses. Given this discrepancy, we have concluded that not all producers/exporters of Russian solid fertilizer grade ammonium nitrate with shipments during the POI responded to our questionnaire. Moreover, on September 15, 1999, JSC Acron, which had notified the Department of its shipment quantities and values, submitted a letter to the Department, stating that it would not participate in the antidumping investigation on solid fertilizer grade ammonium nitrate. Accordingly, we are applying a single antidumping duty deposit rate—the Russia-wide rate—to all producers/exporters in the Russian Federation, other than those specifically identified below under "Suspension of Liquidation."

The Russia-wide antidumping rate is based on the facts available. Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use

information that is adverse to the interests of that party as the facts otherwise available.

As discussed above, all Russian producers/exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total adverse facts available the higher of the highest margin from the petition or the highest rate calculated for a respondent in the proceeding. In the present case, there is only one calculated margin (which is the highest margin on the record). Because the highest margin on the record is the calculated margin, the Department is assigning this rate as the adverse facts available Russia-wide rate. Accordingly, for the preliminary determination, the Russia-wide rate is 264.59 percent. For the final determination, the Department will consider all margins on the record at that time for the purpose of determining the most appropriate margin.

#### *Nonmarket Economy Country Status*

The Department has treated the Russian Federation as a nonmarket economy ("NME") country in all past antidumping duty investigations and administrative reviews (see, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (November 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30, 1995). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act). The Department is continuing to treat the Russian Federation as an NME for this preliminary determination, because no party has sought revocation of NME status in this investigation.

#### *Surrogate Country*

When the Department is investigating imports from an NME, section 773(c) of the Act requires that the Department base normal value ("NV") on the NME producer's factors of production, valued

in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, utilizes, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of individual factor values are discussed in the NV section below.

The Department has determined that Poland, Tunisia, Colombia, Turkey, South Africa, and Venezuela are countries comparable to the Russian Federation in terms of overall economic development. See *Memorandum to Rick Johnson, Program Manager, from Jeff May, Director, Office of Policy; Re: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Nonmarket Economy Status and Surrogate Country Selection*. Petitioner submitted information on the record indicating that Poland, Turkey and South Africa are significant producers of identical merchandise. See Submission from Akin, Gump, Strauss, Hauer & Feld, L.L.P., November 5, 1999. Nevinka submitted information in support of its argument that Venezuela is a significant producer of comparable merchandise. See Submission from White & Case, November 5, 1999. As noted in the *Surrogate Country Memorandum*, in the event that more than one country satisfies both statutory requirements, the Department has a preference to narrow the field to a single country on the basis of data availability and quality. See *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the Peoples Republic of China*, 59 FR 55625 (November 8, 1994).

Congress provided the Department with broad discretion in selecting surrogate countries in NME cases. See section 773(c)(1)(B) of the Act (valuation of factors of production shall be based on the best available information from a market economy country(s) considered to be appropriate); see also, *Lasko Metals v. United States*, 43 F3d. 1442, 1443 n.3 (Fed. Cir. 1994). The Department has determined that Poland qualifies as an appropriate surrogate because it satisfies the statutory criteria listed. Furthermore, we were able to obtain publicly available, contemporaneous information on the majority of factor inputs required.

While we have used surrogate prices for certain factors from countries other than the selected surrogate country in previous cases, it is the Department's preference and practice to rely on factor value information from one surrogate country to the extent possible. See *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058 (May 18, 1992). Accordingly, we have calculated NV using publicly available information from Poland to value Nevinka's factors of production, with the exception of one input, monoethanolamine, which we valued using Venezuelan data, since there was no Polish data available for this preliminary determination. For a further discussion of the Department's selection of Poland as the primary surrogate, see *Memorandum to Edward C. Yang; Re: Surrogate Country Selection* ("Surrogate Country Memorandum"), dated December 30, 1999.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for a final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

#### *Separate Rates*

The Department presumes that a single dumping margin is appropriate for all exporters in an NME country. See *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). The Department may, however, consider requests for a separate rate from individual exporters. Nevinka has requested a separate, company-specific rate. 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) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. For a complete analysis of separate rates, see *Memorandum to Edward C. Yang, Re: Separate Rates for Exporters that Submitted Questionnaire Responses*

("Separate Rates Memorandum"), dated December 30, 1999.

#### 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.

Nevinka has placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the central government of the Russian Federation, describing the elimination of export duties and licensing requirements on the export of mineral fertilizers including ammonium nitrate. Nevinka also placed on the record legislative enactments privatizing state-owned enterprises. This information provides a sufficient basis for a preliminary finding that there is an absence of *de jure* government control. See *Separate Rates Memorandum*, dated December 30, 1999.

#### 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 management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

There is no evidence on the record to suggest that there is any government involvement in the determination of sales prices. Nevinka has reported that the prices with its U.S. customers cannot be revised or changed by any of the state authorities. Nevinka stated that there are no restrictions on the usage of export revenues and that distribution of profits resulting from export revenue is within the jurisdiction of the meeting of shareholders and the Board of Directors.

Nevinka stated that its company is managed through the joint responsibilities of shareholders, a

supervisory board and a general director. Nevinka explained that the general director and members of the supervisory board are elected by a majority vote at an annual general meeting of shareholders and the general director and members of the supervisory board serve at five-year and one-year terms, respectively. Nevinka also noted that it is not required to notify any governmental authorities of the selection or appointment of its managers. Nevinka stated that it has authority to negotiate and sign contracts and other agreements. Nevinka claimed that no external organization reviews or approves any aspect of Nevinka's U.S. sales transactions. This information provides a sufficient basis for a preliminary finding that there is an absence of *de facto* government control. See *Separate Rates Memo*, dated December 30, 1999. Therefore, the Department preliminarily determines that Nevinka is eligible to receive a separate rate.

#### Affiliation

Nevinka originally reported its U.S. sales as CEP sales. Nevinka claimed that it is affiliated with its U.S. trading company, Transammonia, through Transammonia's stock ownership of Nevinka and a close supplier relationship between Nevinka and Transammonia. The Department issued supplemental questionnaires seeking further information on Nevinka's claim of affiliation with Transammonia. See supplemental section A questionnaire (October 14, 1999), second section A supplemental questionnaire (November 21, 1999) and supplemental sections C & D questionnaire (November 12, 1999). Nevinka responded to our supplemental section A questionnaire on November 11, 1999 and second section A supplemental questionnaire and supplemental sections C & D questionnaire on December 14, 1999.

Section 771(33) of the Act defines affiliated persons as including:

(A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and Employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The legislative history makes clear that the statute does not require majority ownership for a finding of control. Rather, the statutory definition of control encompasses both legal and operational control. A minority ownership interest, examined within the context of the totality of the evidence, is a factor that the Department considers in determining whether one party is legally or operationally in a position to control another. See *Certain Cut-To-Length Carbon Steel Plate From Brazil*, 62 FR 18486, 18490 (April 15, 1997); see also 19 CFR 351.102(b).

The Department has stated that merely identifying "the presence of one or more of the other indicia of control (as per Section 771(33) of the Act) does not end [the Department's] task." See *Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7310 (February 27, 1996). The Department is compelled to examine all indicia, in light of business and economic reality, to determine whether they constitute evidence of control. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. However, the Department will not find affiliation on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. See section 351.102(b) of the Department's regulations.

In the present case, as discussed below, we do not find the existence of an affiliation, as defined by the statute, between Nevinka and Transammonia. First, we note that Transammonia's ownership of Nevinka is below the five percent requirement under section 771(33)(E). The Department has also found no evidence of (and respondent has not argued for) a basis for affiliation with respect to the statutory definitions under section 771(33), subsections (A) through (D), or (F).

Furthermore, with respect to section 771(33)(G), we did not find that Nevinka's relationship with Transammonia constitutes a "close supplier relationship" which would indicate control by either party over the

other. The Statement of Administrative Action (SAA) defines a close supplier relationship as one where "the supplier or buyer becomes reliant upon another." SAA accompanying the URAA, H.R. Doc. No. 103-316, vol. 1 at 838 (1994); see also, *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea (Korean Steel)*, 62 FR 18404, 18417 (April 15, 1997). To establish a close supplier relationship, the party must demonstrate that the "relationship is so significant that it could not be replaced." See *Korean Steel*, at 62 FR 18417.

In *Korean Steel*, the Department provided additional guidance regarding close supplier relationships. Specifically, the Department established a threshold requirement that, in order to find a close supplier relationship, actual reliance between the companies must be found:

Only if we make such a finding [of reliance] can we address the issue of whether one of the parties is in a position to exercise restraint or direction over the other. When the Preamble to our *Proposed Regulations* \* \* \* states that "business and economic reality suggest that these relationships must be significant and not easily replaced," it suggests that we must find significant indicia of control. *Korean Steel*, 62 FR at 18417.

With respect to whether reliance exists in this case, the Department has examined relevant information submitted by Nevinka on the record of this investigation. First, we note that the current record indicates that there are alternative sources of ammonium nitrate supply and distribution. For example, the Petition, at exhibits 6 and 8, indicates that there are 12 additional producers of ammonium nitrate in Russia alone, and five known U.S. importers of Russian-origin ammonium nitrate. Moreover, additional record information, which is proprietary in nature, leads us to the conclusion that there is a lack of actual reliance on Nevinka by Transammonia, and vice versa. In this respect, we also believe that information on the record does not support a finding that Transammonia holds a dominant position in the U.S. market place which might, *de facto*, create actual reliance on Transammonia by Nevinka. See *Memorandum to the File, Re: Analysis Memorandum for the Preliminary Determination for JSC Azot Nevinnomyssky (Nevinka)* ("Analysis Memo") (Proprietary Version) at pg. 5.

Second, in examining reliance, we have considered comparative sales statistics of both companies, *e.g.*, the proportion of sales made by the producer through the trading company vis-vis the trading company's total sales, as well as the proportion of sales made

by the producer through the trading company to the total sales made by the producer, in accordance with *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan*, 61 FR 38139, 38157 (July 23, 1996) (LNPP from Japan). In this regard, the Department has also determined that a close supplier relationship may occur when a majority of sales are made to one customer. See *Notice of Final Determination of Sales at Less Than Fair Value: Open-End Spun Rayon Singles Yarn From Austria*, 62 FR 43701 (August 15, 1997), citing LNPP from Japan.

In this case, we find that the various proportions of sales (of subject merchandise and of all products), both with respect to Nevinka's sales to Transammonia and Transammonia's sales of Nevinka's product, are insufficient to support a determination of reliance. See *Analysis Memo* (Proprietary Version) at pg. 5.

Third, we did not find the length and terms of the contract between Nevinka and Transammonia provides sufficient evidence of reliance. Because this information is proprietary, see *Analysis Memo* (Proprietary Version) at pg. 5.

In sum, we do not find that actual reliance exists with respect to the business relationship between Nevinka and Transammonia. We also do not find that other evidence combined with this supply relationship suffices to find any type of control that would lead to a finding of affiliation. See *Analysis Memo*. Nevinka has not argued for a finding of control under any other aspect of section 771(33)(G) of the Act other than through a close supplier relationship. Therefore, we preliminarily determine that Nevinka and Transammonia are not affiliated as defined by the statute, and have consequently examined Nevinka's sales to the first unaffiliated party (Transammonia) in the United States, which are export price transactions.

#### *Fair Value Comparisons*

To determine whether sales of solid fertilizer grade ammonium nitrate products from the Russian Federation sold to the United States by Nevinka were made at less than fair value, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

#### *Export Price*

Although Nevinka has claimed that its sales through Transammonia should be considered CEP sales, as discussed

above, the Department has preliminarily determined that the relationship between Nevinka and Transammonia does not meet the statutory definition of affiliation. Therefore, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and because there is no indication that treatment of CEP is warranted, we have examined Nevinka's sales to Transammonia as EP sales in accordance with section 772(a) of the Act. We will examine the EP/CEP designation further at verification. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the only one NV based on factors of production.

We calculated EP based on FOB prices to an unaffiliated trading company. We made deductions from the starting price for inland freight (plant warehouse to port). These services were assigned a surrogate value based on public information from Poland. See *Memorandum to Edward C. Yang; Re: Factor Valuation for Nevinka* ("Factor Valuation Memo"), dated December 30, 1999. We used Nevinka's reported date of sale, which was the date of shipment. The Department normally uses invoice date as the date of sale "absent satisfactory evidence that the material terms of sale were finally established on a different date." See *Canned Pineapple Fruit from Thailand: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 43661, 43668 (October 16, 1997), citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27348 (May 19, 1997). Although we have accepted the shipment based date of sale for this preliminary determination, we will continue to review whether the date of shipment is the appropriate date of sale for the final determination.

#### *Normal Value*

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

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. We calculated NV based on factors of production reported by Nevinka. For a further

discussion, *see Analysis Memo*. We valued all the input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

#### Factor Valuations

When possible, we valued material inputs on the basis of tax-exclusive domestic prices in the surrogate country. When we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted import prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using producer or wholesale price indices, as appropriate, published in the International Monetary Fund's International Financial Statistics. For input(s) sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with our standard practice. *See Lasko Metal Products v. United States*, 437 F. 3d 1442 (Fed. Cir. 1994).

To value caustic magnesite, sodium hydrate, diethanolamine, vanadium pentoxide, tri-sodium phosphate, hydrazine hydrate, sulphuric acid and aluminum sulphate, we used public information on Polish prices published by the United Nations Trade Commodity Statistics for 1998 ("UNTCS"). To value technical alumina, we used public information published by UNTCS for 1997. To value monoethanolamine, we used a Venezuelan price using public information published by the UNTCS for 1997 because no Polish data on this input was available.

For catalysts, as noted above in the "Facts Available" section, we used the market economy price for one catalyst provided by Nevinka, since there are no record values for any catalysts other than ammonia synthesis. However, for the final determination, we will attempt to find more appropriate values for these catalysts.

For natural gas, natural gas equivalents and electricity, we used second quarter 1999 values from *Energy Prices and Taxes: Second Quarter 1999*, International Energy Agency, OECD.

We used Polish transport information to value transport for raw materials. For domestic inland freight (truck), we used a price quote from a Polish trucking company. For domestic inland freight (rail), we used freight rates as quoted from the Polish National Railroad.

For labor, we used the Russian regression-based wage rate at Import Administration's home page, Import

Library, Expected Wages of Selected NME Countries, revised in May 1999. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations provides for the use of a regression-based wage rate. The source of this wage rate data on the Import Administration's homepage is found in the *1998 Year Book of Labour Statistics*, International Labour Office ("ILO") (Geneva: 1998), Chapter 5: Wages in Manufacturing.

To value overhead, general expenses and profit, we used public information reported in the 1998 financial statements of Zaklady Azotwe Kedzierzyn S.A., a Polish ammonium nitrate producer.

#### Verification

As provided in section 782(i) of the Act, we will verify all company information relied upon in making our final determination.

#### Suspension of Liquidation

In accordance with sections 733(d) and (e) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the U.S. 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 below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin [percent]
JSC Azot Nevinomyssky .....	264.59
Russia-Wide .....	264.59

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of solid fertilizer grade ammonium nitrate from the Russian Federation are materially injuring, or threatening material injury to, the U.S. industry.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. 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. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate 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, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

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

Dated: December 30, 1999.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

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