

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

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

I. Definitions

For purposes of this Agreement, the following definitions apply:

- A. **Agreement** - For purposes of this Agreement, means this UANS suspension agreement pursuant to sections 734(b)(1) and (c) of the Act.
- B. **UANS** - means the urea ammonium nitrate solutions from the Russian Federation and referred to as the “subject merchandise” of the suspended investigation.
- C. **Effective Date** - means the date on which this Agreement is signed by the Department and producers/exporters from the Russian Federation representing substantially all of the imports of UANS into the United States.
- D. **Date of Sale** - means the date on which price and quantity become firm, e.g., the date the contract is signed or the specification date if the price and quantity become firm on that date.
- E. **Party to the Proceeding** - means any interested party, as provided for in section 771(9) of the Act, that actively participated in the antidumping investigation, through written submission of factual information or written argument, or a signatory to this Agreement.
- F. **Producer/Exporter** - means: (1) a foreign manufacturer or producer of UANS; (2) a foreign producer or reseller that also exports UANS; and (3) an affiliated person by whom or for whose account UANS is imported into the United States, as defined in section 771(33) of the Act. U.S. imports of UANS produced by any producer in the Russian Federation will be attributed to that producer for purposes of this Agreement, regardless of whether first shipped to the United States by another exporter in the Russian Federation or in another country.

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

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

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

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

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

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

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

M. **Indirect Exports** - means exports of UANS from Russia to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin, or through arrangements such as swaps, exchanges, or displacements.

N. **United States** - means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

O. **U.S. Purchaser** - means the first purchaser in the United States that is not affiliated with the Russian producer or exporter and all subsequent purchasers, from trading companies to consumers.

P. **Selling Agent** - means an importer, agent, broker, distributor, or any other entity involved in the transaction between the Signatory and the first unaffiliated U.S. customer.

II. **Suspension of Investigation**

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

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

The Signatories collectively are the producers and exporters in the Russian Federation that, during the antidumping duty investigation of UANS from the Russian Federation, accounted for substantially all of the subject merchandise exported from the Russian Federation to the United States, as defined in section 351.208(c) of the Regulations. The Department may at any time during the operation of the Agreement require additional producers/exporters to sign the Agreement in order to ensure that not less than substantially all sales of UANS from the Russian Federation to the United States are covered by the Agreement.

III. Contingency

Continued application of the Suspension Agreement shall be dependent upon all of the signatory Russian producers and exporters of UANS reaching an agreement, by March 3, 2003, with the Russian Federation Ministry of Economic Development and Trade MEDT, whereby MEDT and the signatories agree to establish an Export Certification Program and to abide by each of the conditions outlined in the Appendix to the letter dated February 19, 2003, from Maxim Medvedkov, Deputy Minister of MEDT, to Faryar Shirzad, Assistant Secretary of Commerce for Import Administration. A copy of this Agreement (“the Russian Agreement”) shall be placed on the record of this Suspension Agreement at that time. Should this contingency not be met by this date, this Suspension Agreement shall lapse and the provisions of section 734(i) of the Act shall apply.

IV. Moratorium Period

As of the Effective Date, each Signatory Producer/Exporter agrees, pursuant to section 734(b)(1) of the Act, to cease exports of UANS to the United States during the period ending on June 30, 2003.

V. Reference Price Period

Each Signatory agrees that, following the Moratorium Period, *i.e.*, beginning July 1, 2003, and in order to satisfy the requirements of section 734(c)(1)(B) of the Act, for each entry of UANS subject

to this Agreement, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 per cent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries examined during the investigation.

VI. Reference Price Methodology

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

B. The Department will issue the first Reference Price under this Agreement seven days before the termination of the Moratorium Period, utilizing the calculation methodology in Section VI.C. below. This first Reference Price will be applicable to the week after the end of the Moratorium Period.

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

1. The Department will calculate an average of the weekly Northeast and Southeast F.O.B. from Green Markets and the Atlantic Coast region of Fertilizer Week price ranges from publicly available information.
2. The Department will calculate a simple average of the four most recent weekly averages derived in subsection 1 above. This four week average (converted from a short ton basis to a metric ton basis) will be the Current Market Price.
3. After consultations, the Department and the Signatories to the Agreement, should they agree that the currently used sources for the valuation of the Current Market Price for UANS are no longer appropriate, may agree to select an alternative source. The Department will give parties at least 30 days notice before choosing another source(s) for the purposes of Current Market Price valuation.
4. To express the Current Market Price on an F.O.B. Russian Federation port of export basis, an amount for costs associated with delivering the merchandise from the Russian Federation to the United States shall be deducted from the Current Market Price calculated in section C.2. This amount will be \$36 per metric ton. Except when section C.3 applies, the result of this calculation shall be the Reference Price. After consultations, the Department and the signatories to the Agreement, should they agree that the amount for costs associated with delivering the merchandise from the Russian Federation to the United States are no longer appropriate, may revise this amount. The Department will give parties at least 30 days notice prior to any change becoming effective.

D. The Floor Price is the price below which the UANS subject to this Agreement may not be sold. The Floor Price will be \$85 F.O.B. Russian Federation port. The Reference Price shall be not less than the Floor Price.

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

VII. Reporting Requirements

A. Each Signatory will supply to the Department 30 days after the end of each Quarter all information that the Department determines is necessary to ensure that the Signatory is in full compliance with the terms of this Agreement. Such information shall include, but not be limited to, complete price information on each sale of UANS directly or indirectly to unaffiliated purchasers in the United States, including information supporting any relevant adjustments to the price under section 772 of the Act.

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

VIII. Disclosure

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

IX. Monitoring

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

B. The Department may require, and each Signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within 30 days of the sale.

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

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

X. Expedited Reviews

A. If a surge, as defined in paragraph B, in U.S. imports of UANS from the Russian Federation occurs, any party to the proceeding may request that the Department conduct a review pursuant to section 751(b) of the Act to determine whether the Suspension Agreement continues to meet the requirements of section 734(c)(1)(A) of the Act. If a surge has occurred, and the Department receives an appropriately documented request, the Department will regard the surge as good cause to conduct a changed circumstances review and shall conduct such a review and complete it within 45 days of initiation.

B. For purposes of section X.A., a surge in U.S. imports of UANS from the Russian Federation shall be considered to have occurred whenever imports of such UANS exceed the following amounts in metric tons. These annual levels will be divided evenly into four quarterly amounts, and a surge will be considered to have occurred if, in any one calendar quarter, the level of imports exceeds one-quarter of those annual amounts.

Moratorium	July-Dec. 2003	2004	2005	2006	2007
to June 30, 2003	60,000 MT	150,000 MT	200,000 MT	250,000 MT	300,000 MT

XI. Anticircumvention

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

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

1. Exchange (“swap”) subject merchandise for non-subject merchandise to be entered into the United States in place of the subject merchandise, thereby evading the requirements of this Agreement. Swaps include but are not limited to the following different types of swaps:
 - a. Ownership swaps--involve the exchange of ownership of UANS without physical transfer. These may include exchange of ownership of UANS in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of UANS produced in different countries, so that the parties obtain ownership of products of different national origin.
 - b. Flag swaps--involve the exchange of indicia of national origin of UANS, without any exchange of ownership.
 - c. Displacement Swaps--involve the sale or delivery of UANS from the Russian Federation to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced UANS, where the exporter in the Russian Federation knew or had reason to know that the export sale would have that result.
 2. Transship subject merchandise to the United States through third countries inconsistent with the terms of this Agreement.
- C. To help prevent circumvention of this Agreement, Signatories agree to take the following steps:
1. Establish contracts that incorporate the terms of this Agreement and obligate purchasers, including customers in and outside the United States (i) to only use, resell, or enter into any other arrangements pursuant to terms that prohibit circumvention of this Agreement, (ii) not to engage in any of the activities listed in section XI.B, (iii) to include the same requirement in any subsequent contracts for the sale or transfer of such UANS, (iv) to provide to the Department all requested information, including subsequent arrangements entered into for the sale, transfer, exchange, or loan to the United States of UANS, and (v) to comply with requests for verification. Signatories shall refuse to enter into contracts with parties unwilling to comply with the terms of this Agreement. Signatories must ensure that their customers of any nationality will not engage in activities to circumvent this Agreement.
 2. Require any Selling Agents to establish a contract with third parties to ensure that their sales of subject merchandise are consistent with the requirements of this Agreement. These contracts must also require the Selling Agent to maintain documentation

demonstrating that sales of subject merchandise are made consistent with this Agreement and authorize the Department to verify the Selling Agent's records.

D. At any time and without prior notice, the Department may conduct verifications of Importers or Selling Agents to determine whether they are selling subject merchandise in accordance with this Agreement.

E. The Department shall investigate any allegations of circumvention brought to its attention.

XII. Consultations

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

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

XIII. Termination

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

XIV. Violations

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

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

deems appropriate under section 734(i) of the Act and the Regulations.

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

XV. Other Provision

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

XVI. Duration

This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. law, or until it is terminated pursuant to section XIII or XIV of this Agreement.

XVII. Effective Date

The effective date of this Agreement is February 19, 2003.

Signed on the 19th day of February, 2003.

Faryar Shirzad
Assistant Secretary
for Import Administration

Walter J. Spak
White & Case
Counsel to JSC Nevinnomysskij Azot
Counsel to JSC Kuybyshevazot/Togliatti
Counsel to S.P. Novolon/Novomoskovsk