

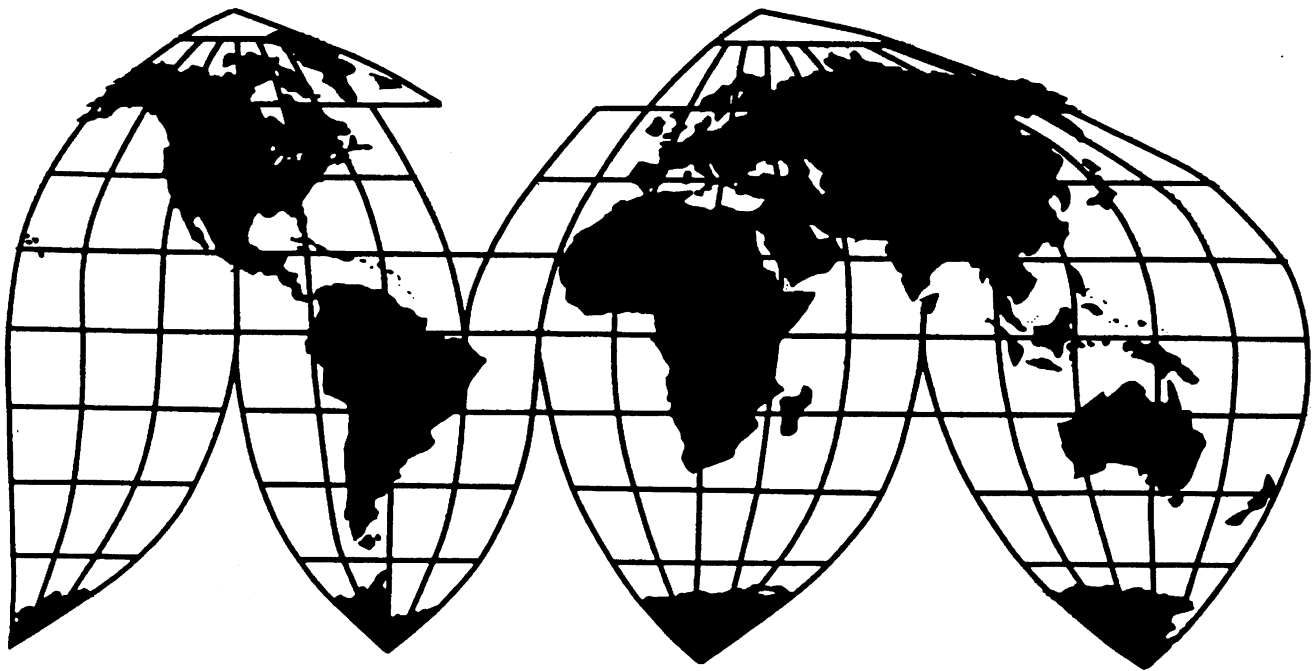
Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

Investigations Nos. 731-TA-339 and 340-A-I (Review)

Publication 3248

October 1999

U.S. International Trade Commission



U.S. International Trade Commission

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Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan



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Note.—Information that would reveal the confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

GLOSSARY

Ad Hoc Committee	Ad Hoc Committee of Domestic Nitrogen Producers
Agrico	Agrico Chemical Co.
Agrium	Agrium US, Inc.
American Cyanamid	American Cyanamid Co.
Arcadian	Arcadian Corp.
Borden	Borden Chemicals and Plastics
CF Industries	CF Industries, Inc.
C.i.f.	Cost-insurance-freight
Census	Bureau of the Census
Chimica	I.C.E. Chimica
Coastal Chem	Coastal Chem, Inc.
Coastal St. Helens	Coastal St. Helens Chemical, Inc.
Commerce	U.S. Department of Commerce
Commission (or USITC)	U.S. International Trade Commission
Customs	U.S. Customs Service
EU	European Union
F.o.b.	Free-on-board
FR	<i>Federal Register</i>
FSU	Former Soviet Union
Farmland Industries	Farmland Industries, Inc.
Fertecon	Fertecon Limited
First Mississippi.	First Mississippi Corp.
Freeport-McMoRan	Freeport-McMoRan Research Partners
GDR	German Democratic Republic
HTS	Harmonized Tariff Schedule of the United States
IFDC	International Fertilizer Development Center
IMC-Agrico	IMC-Agrico Co.
Mississippi Chemical	Mississippi Chemical Corp.
NME	Non-market economy
PCS Nitrogen	PCS Nitrogen, Inc.
Phibro	Philipp Brothers, Ltd. and Philipp Brothers, Inc.
<i>Response</i>	Response to the Commission's Notice of Institution
Royster-Clark	Royster-Clark Nitrogen, Inc.
SCEC	State-controlled-economy country
SG&A	Selling, general, and administrative
SPE	Sojuzpromesport (Soyuzpromexport)
Terra Industries	Terra Industries, Inc.
Terra International	Terra International, Inc.
UAN solutions	Urea-ammonium nitrate solutions
USSR	Union of Soviet Socialist Republics
Unocal	Unocal Corp.
W.R. Grace	W.R. Grace & Co.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-339 and 340-A-I (Review)

SOLID UREA FROM ARMENIA, BELARUS, ESTONIA, LITHUANIA, ROMANIA,
RUSSIA, TAJIKISTAN, TURKMENISTAN, UKRAINE, AND UZBEKISTAN

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on solid urea from Armenia² would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders on solid urea from Belarus,³ Estonia,⁴ Lithuania,⁴ Romania,⁴ Russia, Tajikistan,⁴ Turkmenistan,³ Ukraine, and Uzbekistan³ would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on March 1, 1999 (64 F.R. 10020, March 1, 1999) and determined on June 3, 1999 that it would conduct expedited reviews (64 F.R. 31610, June 11, 1999).

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Chairman Bragg and Commissioner Koplan dissenting.

³ Commissioners Crawford and Askey dissenting.

⁴ Commissioners Crawford, Hillman, and Askey dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹ We further determine that revocation of the antidumping duty order covering solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

I. BACKGROUND

In July 1987, the Commission determined that an industry in the United States was being materially injured by reason of imports of urea from the German Democratic Republic (“GDR”), Romania, and the Union of Soviet Socialist Republics (“USSR”) that were being sold at less than fair value.³ On July 14, 1987, Commerce issued antidumping duty orders on imports of solid urea from the GDR, Romania, and the USSR.⁴ On June 29, 1992, following the division of the USSR in December 1991 into 15 independent states, Commerce divided the original antidumping duty order on solid urea from the USSR into 15 orders applicable to each independent state.⁵

On March 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on solid urea from Romania and the 15 independent states that formerly constituted the USSR (Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and

¹ Commissioner Hillman dissenting with respect to Estonia, Lithuania, Romania, and Tajikistan. See Dissenting Views of Commissioner Jennifer A. Hillman. Commissioner Hillman joins this opinion except as noted. Commissioners Crawford and Askey dissenting with respect to Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. Commissioner Crawford joins in Sections I, II, III.A, III.B.1, IV.A, IV.B, and V of this opinion, except as otherwise noted, and in the other sections as specifically noted. Commissioner Askey generally joins in sections I, II, III, IV, and V of this opinion. Because she only cumulated the subject imports from Russia and Ukraine, she joins in sections III and IV to the extent that they apply to likely competition between Russian, Ukrainian, and domestic merchandise and to the likelihood of continuation or recurrence of material injury as a result of revocation of the order on the cumulated subject imports from Russia and the Ukraine.

² Chairman Bragg and Commissioner Koplán dissenting. They do not join in Section III.B.1 or Section V of this opinion. Chairman Bragg also does not join in Section III.A of this opinion.

³ Urea From the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics, Inv. Nos. 731-TA-338-340 (Final), USITC Pub. 1992 (July 1987) (“Original Determination”).

⁴ 52 Fed. Reg. 26367 (July 14, 1987).

⁵ 57 Fed. Reg. 28828 (June 29, 1992). Commerce noted that any interested party that believed the order should not apply, in whole or in part, to any of the new states could request a changed circumstances review. 57 Fed. Reg. at 28829. On April 3, 1998, Commerce revoked the antidumping duty order on solid urea from the former GDR, based on the fact that the Ad Hoc Committee of Domestic Nitrogen Producers, the petitioner in the original investigation, had expressed no further interest in the order against the former GDR. 63 Fed. Reg. 16471 (April 3, 1998).

Uzbekistan) would likely lead to continuation or recurrence of material injury.⁶ Commerce revoked the orders with respect to Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Latvia, and Moldova based on the lack of any notice of intent to participate by domestic interests in solid urea from the six countries.⁷ As a result, the Commission terminated its five-year reviews with respect to these countries.⁸

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁹ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In these reviews, the Ad Hoc Committee of Domestic Nitrogen Producers ("Ad Hoc Committee"), a trade association a majority of whose members produce solid urea and the petitioner in the original investigation, filed a response to the notice of institution as well as comments on adequacy.¹⁰ Agrium US, Inc. ("Agrium"), a small domestic producer that is not a member of the Ad Hoc Committee, also filed a response to the notice of institution and comments on adequacy.¹¹ The only respondent interested party to file a response to the notice of institution, as well as comments on adequacy, was the Government of Romania. The Commission did not receive a response from any respondent producers, importers, or exporters in any of the reviews on solid urea.

On June 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate. While the Commission found that the response from the Government of Romania was individually adequate, no responses from any Romanian producers, exporters, or U.S. importers were received, and the Commission accordingly found that the respondent interested party group response for Romania was inadequate. It found that the respondent interested party group responses for all the other reviews were inadequate as well.¹² Pursuant to section

⁶ 64 Fed. Reg. 10020 (March 1, 1999).

⁷ 64 Fed. Reg. 24137 (May 5, 1999); 64 Fed. Reg. 28974 (May 28, 1999).

⁸ 64 Fed. Reg. 30358 (June 7, 1999).

⁹ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

¹⁰ The participating members of the Ad Hoc Committee are: CF Industries, Inc., Coastal Chem, Inc., Mississippi Chemical Corp., PCS Nitrogen, Inc., and Terra Industries, Inc. The only other member of the Ad Hoc Committee is J.R. Simplot Co., which does not produce solid urea in the United States and is therefore not participating in the sunset reviews. Response of Ad Hoc Committee to Notice of Institution ("Ad Hoc Committee Response") at 1, n.2 (April 20, 1999). The Ad Hoc Committee reported that in 1998 its participating members represented between 60 and 64 percent of domestic production of solid urea. Ad Hoc Committee Response at 65, n.109.

¹¹ Agrium reports that it accounted for *** percent of domestic solid urea production in 1998. Response of Agrium to Notice of Institution ("Agrium Response") at 19 (April 19, 1999).

¹² See Explanation of Commission Determination on Adequacy in Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan (June 1999).

751(c)(3)(B) of the Act,¹³ the Commission voted to conduct expedited reviews.¹⁴ Subsequently, Commerce extended the date for its final results in the expedited reviews from June 29, 1999, to August 30, 1999.¹⁵ On July 7, 1999, the Commission revised its schedule to conform with Commerce's new schedule.¹⁶

On October 5, 1999, the Ad Hoc Committee and Agrium filed comments pursuant to 19 C.F.R. § 207.62(d) arguing, as they had in their responses to the notice of institution, that revocation of the antidumping duty orders on solid urea from the subject countries would likely lead to a recurrence of material injury to the domestic solid urea industry within a reasonably foreseeable time. The Government of Romania argued in its response to the notice of institution and in comments filed on October 5, 1999, that revocation of the order on solid urea from Romania would not be likely to lead to a recurrence of material injury within a reasonably foreseeable time.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."¹⁷ The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."¹⁸ In its final five-year review determination, Commerce defined the subject merchandise as follows:

Solid urea is a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. During the original investigations the merchandise was classified under item number 480.3000 of the Tariff Schedule of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under item number 3102.10.00 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and customs purposes. The written description of the scope remains dispositive.¹⁹

¹³ 19 U.S.C. § 1675(c)(3)(B).

¹⁴ 64 Fed. Reg. 31610 (June 11, 1999). Commissioner Hillman dissented from the Commission's determination to conduct expedited reviews, finding a full review warranted in view of the response of the Government of Romania. See Explanation of Commission Determination on Adequacy in Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan (June 1999).

¹⁵ 64 Fed. Reg. 36333 (July 6, 1999).

¹⁶ 64 Fed. Reg. 38476 (July 16, 1999).

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹⁹ 64 Fed. Reg. 48360 (Sept. 3, 1999).

In the original investigations, the Commission defined the domestic like product as consistent with Commerce's scope of subject merchandise.²⁰ It noted that solid urea was sold in the United States in two forms, prills and granules, and that subject imports were virtually all in prilled form.²¹ The Commission further noted that prilled and granular urea are chemically identical and that, while there are some physical differences between them, they are generally suitable for the same uses and are fungible.²²

None of the parties to the instant reviews objects to the original like product definition, and no new information has been obtained during these reviews that warrants a departure from that definition. Accordingly, we define the domestic like product as solid urea.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."²³ We define the domestic industry, as the Commission did in the original investigations, to include all domestic producers of solid urea.

III. CUMULATION

A. Framework²⁴

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²⁵

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines

²⁰ Original Determination at 3-4.

²¹ Original Determination at 4.

²² Original Determination at 4.

²³ 19 U.S.C. § 1677(4)(A).

²⁴ Chairman Bragg does not join Section III.A of this opinion. For a complete statement of Chairman Bragg's analytical framework regarding cumulation in sunset reviews, see *Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews*, found in *Potassium Permanganate From China and Spain*, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. ____ (Oct. 1999). In particular, Chairman Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation.

²⁵ 19 U.S.C. § 1675a(a)(7).

that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry. We note that neither the statute nor the SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.^{26 27} For these reviews, our “no discernible adverse impact” analysis is focused on the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.

As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and with the domestic like product. The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.^{28 29 30} Only a “reasonable overlap” of

²⁶ Vice Chairman Miller and Commissioners Hillman and Koplan note that the legislative history to the URAA provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible.” S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate “to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernible adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews.

²⁷ For a discussion of Commissioner Askey's views on the meaning of the statutory provision addressing the discernible adverse impact of the subject imports, see her Additional Views.

²⁸ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market.

²⁹ Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. E.g., U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int’l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n.9 (Ct. Int’l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int’l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute.

³⁰ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

competition is required.³¹ In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists.

Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission's traditional factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.³²

Here, the statutory requirement that all of the solid urea reviews be initiated on the same day is satisfied. For the reasons discussed below, we determine to cumulate imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.^{33 34} We do not cumulate subject imports from Armenia because we find that subject imports from Armenia are likely to have no discernible adverse impact on the domestic industry.³⁵

³¹ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

³² See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992) (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

³³ Commissioner Koplan also cumulated subject imports from Armenia with the other subject imports. Commissioner Hillman only cumulated subject imports from Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan.

³⁴ For purposes of their analysis in these reviews, Commissioners Crawford and Askey find that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the orders are revoked, and thus cumulation is precluded under the statute. For a discussion of their views on these countries, see Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. However, they join the majority's finding of a lack of discernible adverse impact of the subject imports from Armenia and therefore join in section III.B.1 of this opinion.

Commissioner Crawford did not exercise her discretion to cumulate the subject imports from Russia and Ukraine in her determinations in those reviews. See Views of Commissioner Carol T. Crawford.

³⁵ Chairman Bragg and Commissioner Koplan dissenting.

B. Discussion

1. No Discernible Adverse Impact³⁶

The Armenian fertilizer industry has been idled for the past ten years, having closed its single solid urea plant following an earthquake in 1988.³⁷ Thus, Armenia has not exported solid urea to the United States since the orders were imposed, and currently has no solid urea capacity or production. We note that the record indicates that Armenia may reactivate its solid urea plant at some point, but consider such information to be speculative and not persuasive that Armenian production and exports will resume in the reasonably foreseeable future.³⁸ We note in this regard that it is costly to restart production once a urea plant has been shut down.³⁹

³⁶ Chairman Bragg and Commissioner Koplan do not find that imports of solid urea from Armenia are likely to have no discernible adverse impact on the domestic industry in the event of revocation. Consequently, Chairman Bragg and Commissioner Koplan do not join in this section of the opinion.

Chairman Bragg and Commissioner Koplan note that the statute authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record; or (2) an interested party, or any other person, withholds information requested by the agency, or fails to provide such information in the time or in the form or manner requested, or significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(I) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information contained in the record of the Commission's original investigation or any other information placed on the record in a review. *Id.* See *infra* n.75.

Chairman Bragg and Commissioner Koplan further note that the evidence on the record concerning projected production and production capacity in Armenia for the years 2000 and 2001 is less than definitive. Response of the Ad Hoc Committee of Domestic Nitrogen Producers to Notice of Institution of Five-Year Sunset Reviews, Exhibit 12, at 9-10, 27. Nevertheless, they choose to rely upon record evidence indicating that Armenia will achieve an annual production capacity of 141,000 tons in 2000 and 2001. *Id.* at 9, 27. Chairman Bragg and Commissioner Koplan also rely upon record evidence indicating production in Armenia of 50,000 tons in 2000 and 75,000 tons in 2001. *Id.* at 10. Notably, these projections are not substantially dissimilar to projections for other subject countries such as Estonia, Lithuania, and Tajikistan. See *id.* at 9-10.

Based upon the high degree of price sensitivity for this commodity-type product, as well as current conditions of declining prices and global oversupply, Chairman Bragg and Commissioner Koplan find that revocation of any of the orders, including the order on Armenia, would likely result in a discernible adverse impact on the domestic industry.

Chairman Bragg and Commissioner Koplan also find a likely overlap of competition among all subject imports and between subject imports and the domestic like product. See *infra* nn.43 & 44.

Commissioner Koplan further finds there are no other circumstances or significant differences in the conditions of competition in these markets that persuade him to not exercise his discretion to cumulate subject imports.

Accordingly, Chairman Bragg and Commissioner Koplan determine to cumulate all subject imports in these grouped reviews.

³⁷ Ad Hoc Committee Response, Exhibit 12 at 27.

³⁸ See Ad Hoc Committee Response, Exhibit 12 at 27.

³⁹ Confidential Staff Report ("CR") at I-13, Public Staff Report ("PR") at I-9.

Moreover, even assuming that production from Armenia would resume in the reasonably foreseeable future, a study prepared on behalf of the domestic industry by the organization Fertecon forecasts that Armenia's production and capacity volumes would be extremely small in relation to the U.S. market and other foreign suppliers. Specifically, the Fertecon study estimates that Armenia's capacity will be 155,100 short tons in 2000, which would represent approximately 1.8 percent of 1998 U.S. apparent consumption.⁴⁰ However, Armenia's projected actual production for 2000 is only 55,000 short tons. Even assuming the entire actual production were exported to the United States, it would represent only 0.65 percent of 1998 U.S. apparent consumption.⁴¹ Even if imports from Armenia were to resume, these imports would not enter the United States solely at the expense of domestic producers, given that in 1998 nonsubject imports held a market share of approximately 43 percent.⁴² The fact that nonsubject imports as well as the domestic producers would lose market share further diminishes the impact of any imports from Armenia on the U.S. industry.

Accordingly, we find that, given the current lack of production in Armenia, the speculative nature of reports that production will resume, and the known high cost to reactivate urea plants, it is unlikely that Armenia will resume solid urea production and exports to the United States in the reasonably foreseeable future. We further find that, even were production and exports to the United States to resume, they would be at minimal levels for the reasonably foreseeable future. Accordingly, we find that imports from Armenia are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order is revoked. Therefore, we find that the statute precludes cumulation of Armenian subject imports with the other subject imports.

2. Reasonable Overlap of Competition^{43 44 45 46}

The domestic producers argue that there is a reasonable overlap of competition and that the Commission should exercise its discretion to cumulate subject imports from all the subject countries. Specifically, they assert that solid urea from each of the subject countries and from the United States is

⁴⁰ See Ad Hoc Committee Response, Exhibit 12 at 9; Table I-4, CR at I-21, PR at I-18.

⁴¹ See Ad Hoc Committee Response, Exhibit 12 at 10; Table I-4, CR at I-21, PR at I-18.

⁴² Table I-4, CR at I-20-21, PR at I-17-18.

⁴³ Chairman Bragg finds a likely reasonable overlap of competition among all subject imports, and between subject imports and the domestic like product, in the event of revocation. For a discussion of Chairman Bragg's determination regarding cumulation, see *supra* n.36.

⁴⁴ Commissioner Koplan finds this section applies equally to Armenia.

⁴⁵ As noted previously, Commissioner Crawford did not cumulate any of the subject imports, and she does not reach the issue of whether there is a reasonable overlap of competition. See Views of Commissioner Carol T. Crawford. Therefore, she does not join this discussion.

⁴⁶ As previously indicated, Commissioner Askey finds that there is no likelihood of a discernible adverse impact on the domestic industry if the orders were revoked for subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan, in addition to Armenia. She finds that she is therefore precluded from cumulating these subject imports with those from Russia and Ukraine. Commissioner Askey cumulated the subject imports from Russia and Ukraine. She believes that the factors discussed in section III.B.2 apply generally to her determination to cumulate the subject imports from these two countries. She therefore joins in the discussion in section III.B.2 of this opinion but only to the extent that it applies to likely competition between Russian, Ukrainian, and domestic merchandise. Moreover, she does not join the discussion of the reasons the majority chose to exercise their discretion to cumulate.

substitutable; that, while there have been virtually no exports of solid urea from the subject countries to the United States since the orders were imposed, the subject countries currently offer solid urea simultaneously in the same geographical markets, including, for example, India, China, Brazil, the United Kingdom, and Western Europe; that the subject countries sell solid urea in similar channels of distribution; that foreign producers in several of the subject countries depend on Russian natural gas to produce solid urea; and that some of the foreign exporters ship solid urea through each other's ports.⁴⁷

The record indicates that domestically produced and imported solid urea are substitutable products. Solid urea is produced and sold in two forms in the United States, prilled and granular, which are chemically identical.⁴⁸ As was true at the time of the original investigation, a little more than half of the solid urea produced in the United States is of the granular type, while imported solid urea is almost entirely in prilled form.⁴⁹ While the record of the original investigation indicated some quality differences between subject imports and domestically produced prilled urea, domestic and imported product were generally found to be substitutable.⁵⁰ In addition, both prilled urea, whether domestically produced or imported, and granular urea are suitable for use alone as a single-nutrient fertilizer or for blending with other solid fertilizers for field applications.⁵¹ Accordingly, we find that the record suggests that there would be a reasonable level of fungibility between U.S. production and likely imports if the orders were revoked.⁵²

The record also indicates that the channels of distribution for domestic and imported solid urea would likely be similar and that the subject and domestic merchandise would likely be sold in the same or similar markets if the orders were revoked. International trading companies offer solid urea for sale from multiple countries, including the subject countries.⁵³ At the time of the original investigation the port of New Orleans was the principal port of entry for subject imports.⁵⁴ Moreover, the Commission found that domestic and imported urea were directed to the same customers and were frequently commingled in wholesalers' warehouses.⁵⁵ The Ad Hoc Committee maintains that these fundamental conditions of competition in the U.S. market identified in the original investigation have remained relatively unchanged since the antidumping duty orders were imposed in 1987.⁵⁶

The other traditional competition factor we consider for cumulation purposes (simultaneous market presence) is less easy to evaluate, given that U.S. imports of solid urea from the subject countries have been virtually non-existent since the orders were imposed.

Overall, we find that there would likely be a reasonable overlap of competition between subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and

⁴⁷ Ad Hoc Committee Response at 27-37.

⁴⁸ CR at I-7, PR at I-6.

⁴⁹ CR at I-7-8, PR at I-6-7.

⁵⁰ CR at I-7, n.19, PR at I-6-7, n.19; Original Determination at 8.

⁵¹ CR at I-7, PR at I-6.

⁵² CR at I-7, PR at I-6.

⁵³ CR at I-16, n.37, PR at I-13, n.37.

⁵⁴ CR at I-8, PR at I-7.

⁵⁵ Original Determination at 8, n.22.

⁵⁶ CR at I-8, n.21, PR at I-7, n.21.

Uzbekistan⁵⁷ and the domestic like product as well as among the subject imports from these countries, if the antidumping duty orders covering solid urea from these countries were revoked.⁵⁸ We therefore conclude that the subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to compete with each other and with the domestic like product in the U.S. market if the orders were revoked.⁵⁹ Moreover, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. In this regard, we have considered the substantial excess capacity in the subject countries, the export orientation of the foreign industries, the demonstrated ability of exporters to shift sales from one market to another within a relatively short period of time, and the current oversupply of urea on the world market.⁶⁰

For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan⁶¹ in these reviews.

⁵⁷ Chairman Bragg and Commissioner Koplan also cumulated subject imports from Armenia with the other subject imports and find that revocation of the antidumping duty orders covering solid urea from all the subject countries, including Armenia, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See n.36, supra.

Commissioner Hillman cumulated subject imports from Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan. She finds that the same factors discussed in this section with respect to likely competition and the exercise of discretion support her determination to cumulate imports from these five countries. She finds that imports from the remaining subject countries – Romania, Estonia, Lithuania, and Tajikistan – are likely to have no discernible adverse impact on the domestic industry. See Dissenting Views of Commissioner Jennifer A. Hillman.

As noted above, Commissioner Askey cumulated only the subject imports from Russia and Ukraine for purposes of her analysis in these reviews. She finds that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked and she has therefore not cumulated the subject imports from these countries with those from Russia and Ukraine. For a discussion of her views on these countries, see Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey.

Commissioner Crawford also finds that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked, and therefore the statute precludes cumulation of the subject imports from these countries. She did not exercise her discretion to cumulate the subject imports from Russia and Ukraine in her determinations in those reviews. For a discussion of her views on these countries, see Views of Commissioner Carol T. Crawford.

⁵⁸ Chairman Bragg does not join the remainder of this section.

⁵⁹ See n.57, supra.

⁶⁰ Commissioner Askey does not join this statement. She did not consider these factors when choosing to exercise her discretion to cumulate the subject imports from Russia and Ukraine.

⁶¹ See n.57, supra.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON SOLID UREA FROM BELARUS, ESTONIA, LITHUANIA, ROMANIA, RUSSIA, TAJIKISTAN, TURKMENISTAN, UKRAINE, AND UZBEKISTAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME^{62 63 64}

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping finding or order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding or order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁶⁵ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding or order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁶⁶ Thus, the likelihood standard is prospective in nature.⁶⁷ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁶⁸ According to the SAA, a “reasonably

⁶² Commissioner Crawford dissenting with respect to Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. Commissioner Hillman dissenting with respect to Estonia, Lithuania, Romania, and Tajikistan. See Dissenting Views of Commissioner Jennifer A. Hillman.

⁶³ Chairman Bragg and Commissioner Koplán find that the following discussion applies equally to Armenia.

⁶⁴ For purposes of her analysis in these reviews, Commissioner Askey cumulated the subject imports from Russia and Ukraine. She finds that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the orders covering these countries are revoked and finds that revocation of the antidumping orders covering these countries would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For a discussion of her views on these countries, see the Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. However, she believes that the same general factors discussed in the majority’s recurrence or continuation of material injury analysis apply to her affirmative determination with respect to the subject imports from Russia and Ukraine. Accordingly, she joins in the discussion set forth in section IV of this opinion but only to the extent noted.

⁶⁵ 19 U.S.C. § 1675a(a).

⁶⁶ SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁶⁷ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁶⁸ 19 U.S.C. § 1675a(a)(5).

foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”⁶⁹ ⁷⁰

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁷¹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.⁷² ⁷³

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”⁷⁴ ⁷⁵ As noted above, no respondent interested parties that are producers, exporters, or

⁶⁹ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁷⁰ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁷¹ 19 U.S.C. § 1675a(a)(1).

⁷² 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁷³ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in these matters.

⁷⁴ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of the original determination and any other information placed on the record. *Id.*

⁷⁵ Chairman Bragg and Commissioners Koplan and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission
(continued...)

U.S. importers of the subject merchandise responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the record in the original investigation, limited information collected by the Commission since the institution of these reviews, and information submitted by the Ad Hoc Committee, Agrium, and the Government of Romania.⁷⁶

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the Commission is directed to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁷⁷ According to the domestic producers, the fundamental conditions of competition in the U.S. market identified in the original investigation have remained relatively unchanged since the antidumping duty orders were imposed in 1987.⁷⁸ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for solid urea.

In the original investigation, the Commission characterized urea as a fungible, widely traded commodity that is generally sold on the basis of price.⁷⁹ Of the two forms in which solid urea is sold in the United States, roughly half of U.S. production (52 percent in 1997) is of the granular type, while virtually all imports are prilled.⁸⁰ Although there may be some physical and quality differences between the subject and domestic merchandise, the two forms are chemically identical and both types are suitable

⁷⁵ (...continued)

of its obligation to consider the record evidence as a whole in making its determination. "[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations." SAA at 869 (emphasis added). Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." *Id.*

⁷⁶ Vice Chairman Miller and Commissioner Hillman emphasize that they have reached their determinations in the absence of contrary evidence or argument from respondent interested parties other than the Government of Romania.

⁷⁷ 19 U.S.C. § 1675a(a)(4).

⁷⁸ CR at I-8, n.21, PR at I-7, n.21.

⁷⁹ Original Determination at 8-10.

⁸⁰ CR at I-7-8, n.20, PR at I-7, n.20.

for use alone as a single-nutrient fertilizer or for blending with other solid fertilizers for field applications.⁸¹ Therefore, the domestic and imported product are generally considered substitutable.^{82 83}

Demand for urea is derived from several factors, including activity in the domestic farm sector, weather and soil conditions, the availability of specific equipment to spread the fertilizers, and, to some extent, the price of urea relative to the price of the other major nitrogen fertilizers (anhydrous ammonia, nitrogen solutions, and ammonium nitrate), which may be used with or instead of urea in at least some applications.⁸⁴ Of the two solid nitrogen fertilizers, solid urea generally has the lowest cost per unit of nitrogen.⁸⁵

The United States remains a major consuming market, and, similar to circumstances at the time of the original investigation, purchasers in the U.S. market respond relatively quickly to price differences between the domestic and imported product.⁸⁶ Because fertilizer trade publications provide marketing information on a weekly basis to both buyers and sellers, urea prices can change quickly based upon the supply and demand balance, or a perception of that balance.⁸⁷ Transportation costs, however, are a significant mitigating factor in marketing decisions.⁸⁸

In 1996 U.S. apparent consumption, at 6.7 million short tons, was the same as that in 1986, the year the original investigation was instituted, and increased by 27 percent to 8.4 million short tons from 1996 to 1998, driven by an increase in the global demand for downstream agricultural products.⁸⁹ The U.S. market share held by U.S. producers had dropped to 50.6 percent in 1986 before the orders were imposed, then rose in 1987 after the orders took effect, and was at 57.2 percent in 1998.⁹⁰ Non-subject imports hold the remaining 43 percent of the U.S. market, a higher percentage than at the time of the original investigation.⁹¹

The U.S. industry has undergone restructuring and consolidation since the original investigation. According to industry experts, this consolidation has improved efficiency by reducing the number of producers (from 24 to 12) and has improved economies of scale.⁹² In the last three years (1996-1998) both domestic production and U.S. shipments of solid urea increased, by 7 percent and 24 percent respectively.⁹³

⁸¹ CR at I-7, n.19, PR at I-6-7, n.19.

⁸² Original Determination at 8. Granular urea has some advantages over the prilled form and, at the time of the original investigation, commanded a 7 percent higher average price. CR at I-7, n.19, PR at I-6-7, n.19.

⁸³ Commissioner Crawford finds that subject and nonsubject imports are good substitutes for each other, but only moderate substitutes for the domestic like product. See Views of Commissioner Carol T. Crawford, *infra*.

⁸⁴ CR at I-7, I-20, PR at I-6, I-16-17.

⁸⁵ CR at I-20, PR at I-17.

⁸⁶ Ad Hoc Committee Response at 11; see also Agrium Response at 6-7.

⁸⁷ CR at I-8, PR at I-7.

⁸⁸ CR at I-8, PR at I-7.

⁸⁹ CR at I-20, PR at I-17.

⁹⁰ Table I-4, CR at I-21, PR at I-18. See Ad Hoc Committee Response at Exhibit 3 for estimated 1987 U.S. market share of 54.9 percent for U.S. producers.

⁹¹ Table I-4, CR at I-21, PR at I-18.

⁹² CR at I-9-11, PR at I-7-9.

⁹³ CR at I-13, PR at I-11.

Urea plants are designed exclusively for urea production.⁹⁴ Urea plants must operate continuously and at capacity utilization rates of at least 80 percent to maintain the chemical reaction process by which urea is manufactured.⁹⁵ Once plants are shut down, it is costly to maintain them and to restart production.⁹⁶ U.S. capacity utilization, which decreased from 81 percent to 64 percent from 1984 to 1986, was 93.9 percent in 1998.⁹⁷

Several countries, in addition to the subject countries, produce urea, and it is widely traded throughout the world.⁹⁸ In contrast to the period immediately following the original investigation, when world urea demand exceeded world supply, there currently exists a worldwide surplus of urea that is driving prices down.⁹⁹ In part, this oversupply is due to the fact that China, which accounted for 25.8 percent of world urea imports in 1996, including imports from most of the subject countries, closed its market to urea imports in mid-1997.¹⁰⁰ Moreover, the reduced cost of natural gas, the largest single cash cost in producing urea, has substantially reduced the production costs of the subject merchandise in recent years.¹⁰¹

All the countries subject to these reviews entered into a period of significant transformation of their basic political, social, and economic structures, including their urea industries, after the original antidumping duty orders were imposed. The USSR, as noted previously, divided into 15 independent states in 1991. The Government of Romania describes the period since the original investigation as one of “profound transformation,” which has affected all aspects of Romania’s economy, including its urea industry.¹⁰² The Romanian government describes the urea industry as in the process of restructuring and privatization.¹⁰³ The government explains that, because the industry is being privatized, its marketing decisions are not driven by state policy emphasizing exports at all costs.¹⁰⁴ It reports that Romania has maintained and developed a stable position in non-U.S. urea markets since the original order was imposed.¹⁰⁵

Based on the record evidence, we find that these conditions of competition in the U.S. solid urea market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. solid urea market provide us with a reasonable basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.¹⁰⁶

⁹⁴ CR at I-13, PR at I-9.

⁹⁵ CR at I-11, I-13, PR at I-9.

⁹⁶ CR at I-13, PR at I-9.

⁹⁷ INV-W-229, Table I-2, CR at I-12-13, PR at I-10-11.

⁹⁸ CR at I-22, PR at I-17.

⁹⁹ CR at I-22, PR at I-17; Agrium Response at 5.

¹⁰⁰ Ad Hoc Committee Response at 67-68.

¹⁰¹ Agrium Response at 5.

¹⁰² Response of Government of Romania to Notice of Institution (“Romanian Response”) at 3 (April 20, 1999).

¹⁰³ CR at I-24, PR at I-20.

¹⁰⁴ Romanian Response at 6-7.

¹⁰⁵ Romanian Response at 3.

¹⁰⁶ As noted previously, Commissioner Crawford did not cumulate any of the subject imports, and thus joins the remainder of Section IV that is not inconsistent with her analysis and as noted herein. For her analysis with respect

(continued...)

C. Likely Volume of Cumulated Subject Imports^{107 108}

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹⁰⁹ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹¹⁰

During the period of the original investigation, subject imports¹¹¹ increased sharply, particularly from 1985 to 1986. U.S. market penetration by the cumulated subject imports increased to 17.8 percent in 1986, from 12.4 percent in 1984.¹¹² Although U.S. imports of solid urea from Romania and the USSR increased by 50 percent in volume from 1984 to 1986, there have been no imports from Romania and only minimal reported imports from any of the other subject countries since the antidumping duty orders were imposed.¹¹³

Several factors support the conclusion that subject import volume is likely to be significant if the orders are revoked. First, urea capacity utilization in the subject countries is low: 54 percent for nearly all of the former Soviet Union (“FSU”) countries and 4.2 percent for Romania in 1998.¹¹⁴ These subject countries generally do not consume their urea production internally and rely therefore on export

¹⁰⁶ (...continued)

to Ukraine and Russia, see Views of Commissioner Carol T. Crawford, infra.

¹⁰⁷ For purposes of the volume, price, and impact analyses in Sections IV.C, IV.D, and IV.E of this opinion, “cumulated subject imports” are imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, and for Chairman Bragg and Commissioner Koplán, imports from Armenia as well.

¹⁰⁸ For Commissioner Askey, the cumulated subject imports consist of imports of solid urea from Russia and Ukraine.

¹⁰⁹ 19 U.S.C. § 1675a(a)(2).

¹¹⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹¹¹ Subject imports at the time of the original investigation comprised imports from the former German Democratic Republic (“GDR”), the USSR as a whole, and Romania. Commerce, as noted previously, revoked the antidumping duty order on solid urea from the former GDR in 1998. 63 Fed. Reg. 16471 (April 3, 1998).

¹¹² Original Determination at 9.

¹¹³ CR at I-16, PR at I-13.

¹¹⁴ Tables I-5, I-6, CR at I-25-27, PR at I-21-22. Commissioners Crawford and Askey note that the capacity utilization rates for Russia and Ukraine have fallen since 1996. The capacity utilization rates for Russia and Ukraine, respectively, were 73.1 and 80.3 percent in 1996, 54.8 and 80.0 percent in 1997, and 49.4 and 61.2 percent in 1998, and they are projected to be 50.2 and 64.2 percent in 1999. CR and PR at Table I-7. They also note that these two countries comprise, by far, the largest portion of available excess capacity of the former Soviet states that remain subject countries.

markets.¹¹⁵ For Romania, the ratio of exports to production was 88 percent in 1996, while the FSU cumulated countries together exported 87 percent of their urea in 1998.¹¹⁶ Moreover, the subject countries comprise the largest group of solid urea exporters in the world, and their urea exports in 1998 accounted for 24 percent of total world exports.¹¹⁷ Their internal consumption of solid urea reportedly was only 1.8 percent of total world urea consumption in that same year.¹¹⁸

China, which was the largest urea-consuming market in the world and by far the largest market for urea imports, closed its borders to urea imports in mid-1997, making the United States the second largest urea import market in the world.¹¹⁹ Because many of the subject countries exported substantial volumes of urea to China prior to 1997, the closure of the Chinese market represents the loss of a significant export market for many subject producers.¹²⁰

We find that the relative strength of U.S. demand for urea, as well as the barriers to urea imports in China, provides significant incentives to the subject country producers to increase their exports to the United States should the orders be revoked, particularly given the high overall level of underutilized capacity in the subject countries. We note, moreover, that, faced with significant unused production capacity and the effective closing of key markets, such as China and, for Russia, the European Union,¹²¹ the subject countries have already demonstrated their ability to shift export shipments readily to other markets.¹²² The record shows that, as the subject countries' urea exports to China generally declined after 1997, their exports to Europe and Latin America increased significantly.¹²³

Based on the foregoing, we find it likely that the subject countries, which ceased exports of solid urea to the United States after the orders were imposed, would, upon revocation of the orders, resume exports to the U.S. market. Given the generally low capacity utilization rates in these countries and the substitutable nature of the product, we find that import volumes would rise significantly if the orders are removed.¹²⁴ Consequently, we conclude that cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.

D. Likely Price Effects of Cumulated Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to

¹¹⁵ Ad Hoc Committee Response at 68.

¹¹⁶ CR at I-27, PR at I-20. Commissioners Crawford and Askey note that Russian and Ukrainian producers also rely on export markets for a significant portion of their shipments as well. CR and PR at Table I-7.

¹¹⁷ Ad Hoc Committee Response at 25. Export data for Romania for 1998 were not available. Ad Hoc Committee Response, Exhibit 12 at 22.

¹¹⁸ Ad Hoc Committee Response at 25.

¹¹⁹ Ad Hoc Committee Response at 26-27.

¹²⁰ Tables I-5, I-7, CR at I-25, I-31, PR at I-21, I-25.

¹²¹ The European Union in 1995 imposed an antidumping duty order on solid urea imports from Russia. Ad Hoc Committee Response at 26.

¹²² Agrium Response at 9.

¹²³ Table I-7, CR at I-31, PR at I-25; Ad Hoc Committee Response, Exhibit 12 at 11-13.

¹²⁴ See SAA at 890.

enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.¹²⁵

In the original investigations, the Commission found a significant decline in U.S. urea prices, as reflected in the decline in unit values, which was most marked in 1985-1986.¹²⁶ The Commission found that monthly domestic prices fell by 41 to 56 percent, coincident with significant underselling by subject imports.¹²⁷ The underselling also resulted in lost sales by the domestic producers.¹²⁸

Because there have been no U.S. imports of solid urea from Romania and only minimal reported imports from the other subject countries since 1986, no current data are available for subject country pricing in the U.S. market.¹²⁹ However, the record in these reviews reveals that, in the face of a growing worldwide surplus of urea and aggressive competition by imports in third-country markets, U.S. prices have declined. The U.S. price declined steadily from \$185 per short ton in 1996 to \$124 per short ton in 1998.¹³⁰ The unit values of U.S. imports from nonsubject sources (excluding Canada) declined from \$181 per short ton in 1996 to \$115 per short ton in 1998.¹³¹ Agrium maintains that the decline in nonsubject import prices is attributable in part to the competition the nonsubject imports face in third-country markets from subject country imports.¹³²

The limited information in the record regarding current pricing indicates that cumulated subject imports would be likely to undersell the domestic product and have significant adverse price effects, as they did before the imposition of the orders, if the orders were revoked. Urea continues to be, as at the time of the original investigation, a widely traded, substitutable commodity, for which price is a significant purchase factor. Notwithstanding some quality differences between the imported and domestic product,¹³³ consumers generally purchase from the lowest priced supplier,¹³⁴ particularly with respect to the same form of urea. Solid urea producers from the subject countries thus would likely have an incentive to price aggressively in order to regain market share.

Moreover, the domestic producers submitted information indicating that the subject countries price urea aggressively in third-country markets.¹³⁵ The record reveals that subject country exports to China undersold non-subject country exports to China, on a per short ton basis, by \$5.08 in 1995, \$12.01

¹²⁵ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

¹²⁶ Original Determination at 9.

¹²⁷ Original Determination at 9.

¹²⁸ Original Determination at 10.

¹²⁹ CR at I-16, PR at I-13. Commissioners Crawford and Askey note that there have been only minimal levels of subject imports from Russia and the Ukraine as well.

¹³⁰ Table I-2, CR at I-12, PR at I-10.

¹³¹ Table I-3, CR at I-18-19, PR at I-15-16.

¹³² Table I-3, CR at I-18-19, PR at I-15-16.

¹³³ CR at I-7, n.19, PR at I-6-7, n.19.

¹³⁴ Ad Hoc Committee Response at 55.

¹³⁵ Ad Hoc Committee Response at 52. Commissioner Askey notes that she does not join in the following paragraphs discussing price competition in third-country markets.

in 1996, and \$37.78 in 1997.¹³⁶ Subject country exports to Canada likewise undersold non-subject country exports to Canada by as much as \$54.63 per short ton during the same period.^{137 138}

In the absence of detailed information regarding the conditions of competition in these third-country markets, we do not place significant weight on the information submitted by the domestic producers regarding the subject countries' aggressive pricing behavior in third countries. However, we view the information on the subject countries' pricing practices in third-country markets as consistent with their behavior in the U.S. market before the orders were imposed and as indicative generally of aggressive pricing behavior.¹³⁹

We find that, given the world oversupply of urea, the excess production capacity in the subject countries, the importance of price to purchasers, the aggressive pricing behavior of subject country producers,¹⁴⁰ and their focus on export markets, it is likely that, should the orders be revoked, cumulated subject imports would enter the United States at prices that would significantly depress or suppress U.S. prices.

For the foregoing reasons, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the cumulated subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Cumulated Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹⁴¹ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.¹⁴² As instructed by the statute, we have considered the

¹³⁶ Ad Hoc Committee Response at 53. The Government of Romania points out that Romania did not export urea to China in 1997. Comments of Government of Romania on Staff Report at 2-3 (Oct. 5, 1999).

¹³⁷ Ad Hoc Committee Response at 53.

¹³⁸ The domestic producers offer, in addition, a comparison of current U.S. urea prices with a constructed Black Sea price to the United States, noting that in 1998 the constructed Black Sea price was almost 31 percent below the U.S. Gulf Coast price. Ad Hoc Committee Response at 54, Exhibit 5; Agrium Response at 13-14.

¹³⁹ Chairman Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original investigation.

¹⁴⁰ Commissioner Askey did not rely on this factor in her analysis.

¹⁴¹ 19 U.S.C. § 1675a(a)(4).

¹⁴² 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its final five-year review determinations Commerce

(continued...)

extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.¹⁴³

The Commission found in the original investigation that the decline in urea prices, as reflected in the decline in unit values, caused the domestic industry's net sales to decline much more than the cost of goods sold, resulting in a marked decline in gross profit and operating income.¹⁴⁴ The industry experienced a significant decline in profitability, particularly in 1985-1986.¹⁴⁵ Its ratio of operating income to net sales declined from 18 percent in 1984 to 1.4 percent in 1986.¹⁴⁶ The U.S. solid urea price (per short ton) declined from \$157 in 1984 to \$96 in 1986.¹⁴⁷ The quantity of U.S. shipments remained about the same from 1984 to 1986 (3.25 million short tons as compared with 3.29 million short tons) but the value declined dramatically -- from \$476.8 million in 1984 to \$340.6 million in 1986.¹⁴⁸ Capacity utilization declined from 80.9 percent in 1984 to 63.5 percent in 1986.¹⁴⁹

After imposition of the orders, subject imports effectively ceased.¹⁵⁰ The domestic producers maintain that U.S. market share, prices, and profitability quickly rebounded and have remained well above 1986 levels.¹⁵¹ We do not find that the domestic industry is currently in a weakened state, as contemplated by the vulnerability criterion of the statute.¹⁵² We note nevertheless that U.S. prices for solid urea fell rapidly from 1996 to 1998.¹⁵³

We found above that revocation of the antidumping duty orders would lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic product and significantly depress U.S. prices. We find that the volume and price effects of the cumulated subject

¹⁴² (...continued)

determined that revocation of the antidumping duty orders on solid urea from the subject countries would likely lead to continuation or recurrence of dumping at the following margins: Romania -- I.C.E. Chimica and All Others, 90.71 percent; Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan -- Soyuzpromexport ("SPE") and Country-wide, 68.26 percent; Phillip Brothers, Ltd. and Phillip Brothers, Inc., 53.23 percent. 64 Fed. Reg. 48360, 48362 (Sept. 3, 1999); 64 Fed. Reg. 48357, 48360 (Sept. 3, 1999).

¹⁴³ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

¹⁴⁴ Original Determination at 9.

¹⁴⁵ Original Determination at 9.

¹⁴⁶ Table I-2, CR at I-12, PR at I-10.

¹⁴⁷ Table I-2, CR at I-12, PR at I-10.

¹⁴⁸ Table I-2, CR at I-12, PR at I-10.

¹⁴⁹ Table I-2, CR at I-12, PR at I-10.

¹⁵⁰ CR at I-16, PR at I-13.

¹⁵¹ CR at I-13, PR at I-11.

¹⁵² We note, for example, that, although the U.S. industry's operating income declined from 1996 to 1998, it declined from an historical high level and remains well above 1986 levels. Table I-2, CR at I-12, PR at I-10.

¹⁵³ Agrium Response at 16.

imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share.¹⁵⁴

We find it likely that the effect of revocation on domestic prices, and production and sales would be significant. The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in employment declines for domestic firms.

Accordingly, based on the limited record in this review, we conclude that, if the antidumping duty orders were revoked, subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.^{155 156 157}

¹⁵⁴ The record reflects that even if 21 percent of the volume of imports from the cumulated subject countries that had been exported to China were diverted to the U.S. market, cumulated subject imports would reach the volume and market share levels found to have injured the domestic industry in the original investigation. Ad Hoc Committee Response at 58, n.99. While we recognize that, were the cumulated subject imports to regain U.S. market share, a portion of their gain might be at the expense of nonsubject imports, we nevertheless find it likely that, as at the time of the original investigation, a significant portion of U.S. market share would be lost to U.S. producers. From 1984 to 1986, the U.S. market share held by nonsubject imports, as well as by subject imports, increased, while the domestic producers' U.S. market share declined dramatically. See Table I-4, CR at I-21, PR at I-18.

¹⁵⁵ Chairman Bragg and Commissioner Koplán reach the same conclusion with regard to Armenia.

¹⁵⁶ Commissioners Crawford and Askey find that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan would be likely to have no discernible adverse impact on the domestic industry within a reasonably foreseeable time frame. Therefore, they further find that any impact from these countries would not be significant. See their Dissenting Views.

¹⁵⁷ Commissioner Hillman determines that revocation of the antidumping orders with respect to solid urea from Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. She bases this determination on the same analysis of likely volume, price effects, and impact that is set out above. All of the facts discussed above apply to cumulated imports from these five subject countries, with the following exceptions: (1) 1998 capacity utilization in the five subject countries was 53 percent (compared to 54 percent for all subject FSU countries); (2) the five subject countries exported 89 percent of their urea production in 1998 (compared to 87 percent for all subject FSU countries); and (3) in 1998 the five subject countries accounted for approximately 23 percent of total world exports (compared to 24 percent for all subject countries) (adjustment based on export data in the Fertecon report (Ad Hoc Committee Response, ex. 12)). Moreover, Commissioner Hillman does not join: (1) the discussion of Romania; (2) the reference to the share of 1998 world consumption of urea accounted for by all subject countries; or (3) the reference to underselling in the Chinese market by urea imports from all subject FSU countries as compared to urea imports from non-subject countries.

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SOLID UREA FROM ARMENIA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME¹⁵⁸

As discussed above, we find that imports from Armenia are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order is revoked. Therefore, the statute precludes cumulation of the subject imports from Armenia with those from the other subject countries. We note that there has been no production of solid urea in Armenia since 1988 when an earthquake forced the shutdown of its one urea plant, and resumption of production does not appear likely in the reasonably foreseeable future. Moreover, even assuming production were to resume, the evidence indicates that significant imports of urea from Armenia to the United States are not likely within a reasonably foreseeable time. Nor is there any information indicating that subject imports from Armenia would be likely to have significant price effects or a significant adverse impact on the domestic industry within the reasonably foreseeable future.¹⁵⁹ Thus, we determine that revocation of the antidumping duty order against Armenia would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury to the U.S. solid urea industry within a reasonably foreseeable time.¹⁶⁰ We further determine that revocation of the antidumping duty order on imports of solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to the U.S. solid urea industry within a reasonably foreseeable time.¹⁶¹

¹⁵⁸ Chairman Bragg and Commissioner Koplán do not join in this portion of the opinion.

¹⁵⁹ Commissioner Crawford finds that, because revocation of the order will have no discernible adverse impact on the domestic industry, it follows that no injury, much less material injury, will continue or recur if the order is revoked.

¹⁶⁰ Commissioners Crawford and Askey dissenting with respect to the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. Commissioner Hillman dissenting with respect to the subject imports from Estonia, Lithuania, Romania, and Tajikistan. See her Dissenting Views.

¹⁶¹ Chairman Bragg and Commissioner Koplán dissenting.

IEWS OF COMMISSIONER CAROL T. CRAWFORD

Solid Urea from Russia and Ukraine

Investigations Nos. 731-TA-340-E and 340-H (Review)

In these reviews, I concur in my colleagues' determinations that revocation of the antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. I further concur in, and join, the majority's determination that revocation of the order on solid urea from Armenia is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, I do not concur in the majority's determination that revocation of the orders on solid urea from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Rather, I have joined Commissioner Askey in determining that imports from these seven countries are likely to have no discernible adverse impact on the domestic industry if the orders are revoked, and thus that the statute precludes cumulation of any of these subject imports with imports from any other country. Furthermore, I have joined Commissioner Askey in determining that revocation of the orders on solid urea from these seven countries is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.¹

I have joined my colleagues in the findings concerning like product and the domestic industry. I also have joined the discussion of the conditions of competition, in particular the critically important facts that there is a worldwide surplus of solid urea and that China closed its market to imports of solid urea in mid-1997, which resulted in the loss of the largest export market for both Russia and Ukraine.² However, I do not find that solid urea is "fungible" or highly substitutable among sources. The record clearly demonstrates that such a conclusion is not warranted. First, the solid urea supplied by both subject countries and nonsubject countries consists almost entirely of solid urea in prilled form, which indicates that it is likely that solid urea from subject and nonsubject sources are good substitutes for each other. However, only 48 percent of domestic solid urea consists of solid urea in prilled form, which substantially reduces overall substitutability between the domestic product and the subject and nonsubject imports. This conclusion is supported by evidence on the record that prices for the granular form are on average 7 percent higher than prices for the prilled form. In addition, the record indicates that prilled solid urea from the subject countries generally is inferior to domestic prilled solid urea.³ For these reasons, I conclude that solid urea from subject and nonsubject sources are only moderate substitutes for the domestic like product. Finally, as discussed below, I have declined to exercise my discretion to cumulate the subject imports from Ukraine with the subject imports from Russia.

I. CUMULATION

Even if reviews are initiated on the same day, under the statute cumulation is discretionary in five-year reviews. In my view, the statutory framework presents four distinct, sequential analyses that are required when determining whether or not to cumulate subject imports from different countries, in addition to the requirement that the reviews are initiated on the same day.

¹ See Dissenting Views of Commissioner Carol T. Crawford and Commissioner Thelma J. Askey, *infra*.

² FERTECON Report at 47 and 60-61.

³ CR at I-6 to I-8; PR at I-6 to I-7.

First, the subject imports must be eligible for cumulation. In my view, the scopes of the orders under review must be the same for the subject imports to be eligible for cumulation.⁴ Second, the statute precludes cumulation if the Commission determines that subject imports from a country “are likely to have no discernible adverse impact on the domestic industry.”⁵ In my view, it is necessary first to determine that the subject imports are eligible for cumulation and that the statute does not preclude cumulation before determining whether to exercise the discretion to cumulate, which is the third analysis required.⁶ Fourth, even if the discretion to cumulate is exercised, cumulation is only allowable if the subject imports “would be likely to compete with each other and with domestic like products in the United States market.”⁷

In these reviews, the scopes of the orders are the same for all subject countries, and thus the imports are eligible for cumulation. As discussed above, I have joined the majority in determining that the statute precludes cumulation of the subject imports from Armenia because they are likely to have no discernible adverse impact on the domestic industry. In addition, I have joined Commissioner Askey in determining that imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are likely to have no discernible adverse impact on the domestic industry if the orders are revoked, and thus that the statute precludes cumulation of any of these subject imports with imports from any other country.⁸ Therefore, only the subject imports from Ukraine and Russia remain eligible for cumulation, which is discretionary. In these reviews, I decline to exercise my discretion to cumulate the subject imports from Ukraine with the subject imports from Russia. Having declined to exercise my discretion, I need not reach the question of whether the subject imports from Ukraine and Russia compete with each other and with the domestic like product.

II. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SOLID UREA FROM UKRAINE IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

The industry in Ukraine is a significant producer and exporter of solid urea. From 1996 to 1998 Ukraine exported the vast majority, between 92 percent and 97 percent, of its production.⁹ Historically, China has been the largest export market, accounting for 72 percent of exports in 1996, but declining precipitously, to 42 percent of exports in 1997 and to zero in 1998. However, after China closed its market

⁴ See Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238 at 43 (Sept. 1999).

⁵ 19 U.S.C. § 1675a(a)(7).

⁶ The statute simply states that the Commission *may* cumulate if the competition requirement is met. However, the statute does not require cumulation under any enumerated circumstances, even if the competition requirement is met. Therefore, although competition is a condition precedent to cumulation, it is not necessarily a sufficient reason or the only factor to consider in deciding whether to exercise the discretion to cumulate. Furthermore, because cumulation is not required under any statutorily enumerated circumstances, in my view there is no statutory or analytical presumption of cumulation.

⁷ Id.

⁸ See Dissenting Views of Commissioner Carol T. Crawford and Commissioner Thelma J. Askey, *infra*.

⁹ Table I-7.

Ukrainian producers were able to replace about one-half of their lost export volumes by exports to Latin American and European markets.¹⁰

Production capacity of 3,350 metric tons in Ukraine has been stable and is projected to remain so in the immediate future. However, capacity utilization declined substantially, from 80.3 percent in 1996 to 61.2 percent in 1998, after China closed its market. Even though exports to other markets have increased, unused capacity in Ukraine currently represents about 17 percent of apparent U.S. consumption.¹¹ Therefore, producers in Ukraine have the ability to export significant volumes of solid urea to the U.S. market. As discussed, producers in Ukraine have demonstrated their ability to develop new export markets. In addition, Ukrainian producers have demonstrated an ability to export solid urea to the North American market, as evidenced by their exports to Canada in the past.¹² For these reasons, I find that imports of solid urea from Ukraine are likely to increase to a significant level if the order is revoked.

The significant volume of subject imports likely would result in a shift in demand toward solid urea from Ukraine, and a shift in demand away from other sources of solid urea. As discussed, subject imports are only moderate substitutes for the domestic product, but quite good substitutes for nonsubject imports. Because nonsubject imports held a market share of 43 percent in 1998,¹³ it is likely that the shift in demand toward the subject imports would result in a substantial shift in demand away from the nonsubject imports. However, the domestic industry held a market share of 57 percent in 1998, and thus it is likely that demand for the domestic product would be reduced by a large portion of the shift in demand toward solid urea from Ukraine. Therefore, it is likely that demand for the domestic product would decrease significantly if the order on solid urea from Ukraine were revoked.

The effect of the revocation on the domestic industry likely would be a decrease in its prices, output and sales, or some combination thereof. The record indicates that solid urea from Ukraine likely would be sold at prices that would be lower than domestic prices.¹⁴ Record evidence indicates that economic efficiency requires the domestic industry to operate its facilities at a capacity utilization of about 80 percent,¹⁵ and thus it is likely that the domestic industry would lower its prices in response to the decreased demand for its product. However, the domestic industry currently operates at a capacity utilization exceeding 90 percent,¹⁶ and thus it is likely that the domestic industry would also reduce its output and sales. Therefore, it is likely that the domestic industry's prices, output and sales, and therefore its revenues, would be reduced significantly if the order is revoked. Consequently, I conclude that revocation of the order on solid urea from Ukraine is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

¹⁰ FERTECON Report at 59 - 61.

¹¹ Calculated from Table I-4 and Table I-7.

¹² Ad Hoc Committee Response at Exhibit 10.

¹³ Table I-4.

¹⁴ In Canada, prices for solid urea from Ukraine have been lower than prices for solid urea from the United States. Ad Hoc Committee response at Exhibit 10. In addition, the "constructed Black Sea price", which I find a credible estimate, is lower than the domestic price for solid urea in the U.S. market. Ad Hoc Committee response at 54.

¹⁵ CR at I-11; PR at I-9.

¹⁶ Table I-2.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SOLID UREA FROM RUSSIA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

The analysis concerning revocation of the order on solid urea from Ukraine applies to revocation of the Russian order as well. The basic facts are the same, but the effects of revoking the Russian order are likely to be greater in magnitude. Unused capacity in Russia is nearly two and one-half times larger than in Ukraine. Russian producers also export the vast majority, between 87 percent and 99 percent, of production.¹⁷ Russia has demonstrated an even greater ability to replace lost export markets: after China closed its market, Russian producers developed new markets in the European Union and Mexico. However, the European Union has imposed an antidumping duty order on solid urea from Russia, and Russian imports are in danger of being shut out of the Mexican market because of an ongoing antidumping dumping investigation.¹⁸ Therefore, Russian producers have an even greater ability and need to export solid urea to the U.S. market. For these reasons, I find that imports of solid urea from Russia are likely to increase to a significant level if the order is revoked.

Like the analysis for imports from Ukraine, the significant volume of subject imports from Russia likely would result in a shift in demand away from other sources of solid urea. As discussed, subject imports are only moderate substitutes for the domestic product, but quite good substitutes for nonsubject imports. Because nonsubject imports held a market share of 43 percent in 1998, it is likely that the shift in demand toward the subject imports would result in a substantial shift in demand away from the nonsubject imports. However, the domestic industry held a market share of 57 percent in 1998, and thus it is likely that demand for the domestic product would be reduced by a large portion of the shift in demand toward solid urea from Russia. Therefore, it is likely that demand for the domestic product would decrease significantly if the order on solid urea from Russia were revoked.

The effect of the revocation on the domestic industry likely would be a decrease in its prices, output and sales, or some combination thereof. The record indicates that solid urea from Russia likely would be sold at prices that would be lower than domestic prices.¹⁹ Record evidence indicates that economic efficiency requires the domestic industry to operate its facilities at a capacity utilization of about 80 percent, and thus it is likely that the domestic industry would lower its prices in response to the decreased demand for its product. However, the domestic industry currently operates at a capacity utilization of nearly 90 percent, and thus it is likely that the domestic industry would also reduce its output and sales. Therefore, it is likely that the domestic industry's prices, output and sales, and therefore its revenues, would be reduced significantly if the order is revoked. Consequently, I conclude that revocation of the order on solid urea from Russia is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

¹⁷ Table I-7.

¹⁸ Ad Hoc Committee Response at 22 and Exhibit 14.

¹⁹ In Canada, prices for solid urea from Russia have been lower than prices for solid urea from the United States. Ad Hoc Committee response at Exhibit 10. In addition, the "constructed Black Sea price", which I find a credible estimate, is lower than the domestic price for solid urea in the U.S. market. Ad Hoc Committee response at 54.

IV. CONCLUSION

Based on the foregoing analysis, I conclude that revocation of the orders on solid urea from Ukraine and Russia is likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

**DISSENTING VIEWS OF
COMMISSIONERS CAROL T. CRAWFORD AND THELMA J. ASKEY**

Section 751(d) requires that the Department of Commerce revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these reviews, we concur in the determination that revocation of the antidumping duty orders covering solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We also concur in the majority’s determination that revocation of the antidumping duty order covering solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. However, we determine that revocation of the antidumping duty orders covering solid urea from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

We join our colleagues’ findings concerning the domestic like product and the domestic industry. In addition, to the extent noted, we join their findings with respect to conditions of competition in the U.S. market, the likelihood of continuation or recurrence of material injury insofar as it addresses the likelihood of material injury by reason of the subject imports from Russia and the Ukraine, and the lack of a discernible adverse impact on the domestic industry if the order on the subject imports from Armenia is revoked. Further, except as otherwise noted, Commissioner Askey joins in the majority’s cumulation discussion to the extent that it addresses competition between the subject imports from Russia and Ukraine.

Unlike the majority, we determine that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are likely to have no discernible adverse impact on the domestic industry within a reasonably foreseeable time if the order is revoked. We therefore find that the statute precludes cumulation of these imports with other subject imports. We further determine that revocation of the orders on these imports would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Because our determinations in these seven reviews differ from the majority, our dissenting views follow.

As a preliminary matter, we note that we received two domestic party responses to our notice of institution in this proceeding. The first response was submitted by the Ad Hoc Committee, a trade association whose members include five domestic producers of solid urea. According to the Committee, its five members accounted for between *** and *** percent of domestic production in 1998.² The Commission also received a response from Agrium, a small domestic producer that is not a member of the Committee. Agrium accounted for *** percent of domestic production in 1998.³ The only respondent interested party that filed a response was the Government of Romania, which provided a limited amount of information to the Commission concerning the Romanian urea industry. No other

¹ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

² Committee Response at 65.

³ CR and PR at Table I-1.

respondent interested party (i.e., no foreign producer, exporter or importer of the subject merchandise) responded to the notice of institution.

Given the level of responses in this review, the Commission has a somewhat limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future.⁴ In a case such as this, where essentially only domestic interested parties (and no respondent producers, exporters, or importers) participate in an investigation or review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal from the other side. Nonetheless, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the information and evidence before it in terms of the statutory criteria.⁵ The Commission cannot properly accept participating parties' information and characterizations thereof without question and without evaluating other available information and evidence.⁶

I. THE SUBJECT IMPORTS FROM BELARUS, ESTONIA, LITHUANIA, ROMANIA, TAJIKISTAN, TURKMENISTAN, AND UZBEKISTAN ARE LIKELY TO HAVE NO DISCERNIBLE ADVERSE IMPACT ON THE DOMESTIC INDUSTRY WITHIN THE REASONABLY FORESEEABLE FUTURE⁷

As discussed below, we find that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan would not be likely to have a discernible adverse impact on the domestic industry if the antidumping orders covering these imports were revoked. Our analysis of the likely impact on the domestic industry of the subject imports from each of these countries follows:

1. Subject Imports from Belarus

Belarus has existing production capacity of 1,131 thousand short tons and has no plans to increase its capacity between now and 2001.⁸ The sole Belarusian producer operated at moderate capacity utilization levels of 66.0 percent, 46.4 percent, and 48.2 percent during the period from 1996 to

⁴ Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission's determination would be upheld unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int'l Trade Comm'n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission's decision on sanctions).

⁵ 19 U.S.C. § 1675a(a).

⁶ See, e.g., Alberta Pork Producers' Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int'l Trade 1987) ("Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.").

⁷ Commissioner Askey notes that, when performing her analysis of the likely discernible adverse impact of the subject imports under 19 U.S.C. §1675a(a)(7), she examines whether the subject imports will be likely to have a discernible adverse impact on the industry after revocation of the order. She does not simply engage in a form of negligibility analysis as a substitute for the impact analysis required by the statute. For a full description of her views in this regard, see her "Additional Views" in this proceeding.

⁸ CR and PR at Table I-7; Committee Response at Ex. 12, p.29.

1998 and is projected to operate at 60.4 percent of capacity in 1999.⁹ These data might suggest that approximately 40 percent of its production capacity -- which is equivalent to approximately 5.3 percent of total apparent U.S. consumption in 1998 -- is now unused and theoretically available to export urea to the United States if the order were revoked.

However, we find that the record as a whole supports the conclusion that only minimal volumes of subject merchandise from Belarus will enter the United States if the order is revoked. The record demonstrates that the Belarusian producer focuses on its home market and is expected to continue doing so within the reasonably foreseeable future.¹⁰ Its home market sales are projected to be 83.9 percent of its production in 1999, 86.0 percent of its production in 2000, and 87.0 percent of its production in 2001. Therefore, the Belarusian producer does not focus on export sales, which represent a relatively small portion of its overall sales. Given the producer's focus on its home market, it is not reasonable to conclude that it will increase its production to export urea to the United States if the order were revoked. Furthermore, in absolute terms, the producer's total exports are projected to be only 110 thousand short tons per year to all markets between 1999 and 2001, which would equal only 1.3 percent of apparent U.S. consumption in 1998. There is no basis to conclude that all of these exports will be diverted to the United States. Therefore, we find that any increase in the volume of the subject imports from Belarus will be minimal at most in the reasonably foreseeable future. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports. Consequently, we find that the subject imports from Belarus are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

2. Subject Imports from Estonia

Estonia is a very small supplier of urea. It has an existing production capacity of 240 thousand short tons and has no plans to increase its production capacity between now and 2001.¹¹ It operated at capacity levels of 51.4 percent, 41.7 percent, and 45.2 percent during the period from 1996 to 1998 and is projected to operate at capacity utilization rates between 50 percent and 55 percent of capacity from 1999 to 2001. Although the Estonian producer has available capacity that is equivalent to approximately 120 thousand short tons, this available production capacity would equal only 1.4 percent of total apparent U.S. consumption in 1998.¹² There is, therefore, a small amount of capacity available that the Estonian producer might be able to use increase shipments to the United States within the reasonably foreseeable future. However, the Estonian producer is not projected to increase its capacity utilization rates between 1999 and 2001. Moreover, although the Estonian producer's shipments are primarily export shipments, it has focused almost exclusively on the European market for export sales.¹³ There is no basis to conclude that these exports will be diverted from the European market if the order is revoked.

Accordingly, we find that any increase in the volume of the subject imports from Estonia will be minimal at most in the reasonably foreseeable future. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market,

⁹ CR and PR at Table I-7.

¹⁰ Committee Response at Ex. 12, p. 29.

¹¹ CR and PR at Table I-7; Committee Response at Ex. 12, p. 32.

¹² CR and PR at Table I-4; Committee Response at Ex. 12, p. 33.

¹³ Committee response at Ex. 12, p. 33.

which would compete directly with the subject imports. Consequently, we find that the subject imports from Estonia are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

3. Subject Imports from Lithuania

Like Estonia, Lithuania is a very small supplier of urea. The sole Lithuanian producer has existing production capacity of 276 thousand short tons, and has no plans to increase its capacity between now and 2001.¹⁴ During the period from 1996 to 1998, the Lithuanian producer operated at capacity utilization rates of more than 100 percent each year. It is projected to do so again in 1999 and to continue to do so through 2001.¹⁵ Therefore, there is no available unused capacity in Lithuania.

Furthermore, although Lithuania exports a significant portion of its production, these exports have been almost exclusively directed at the European market.¹⁶ There is no basis to conclude that these shipments to Lithuania's traditional export markets will be diverted to the U.S. market if the order is revoked. Therefore, we find that it is not likely that the subject imports from Lithuania will increase in the reasonably foreseeable future. Accordingly, we also find that it is unlikely that the subject imports from Lithuania will have a discernible adverse impact on the domestic industry if the order is revoked.

4. Subject Imports from Romania.

On the surface, the Romanian producers appear to have substantial available capacity that could be used to increase production as well as exports to the United States if the order were revoked. The Romanian producers' production capacity remained at 2,649 short tons during the period from 1996 to 1998.¹⁷ Although the Romanian producers do not have plans to increase their existing capacity, capacity utilization plummeted during the period of review, from 62.8 percent in 1996 to 26.8 percent in 1997 to only 4.2 percent in 1998. Thus, the Romanian producers appear to have unused capacity of more than 2,500 short tons,¹⁸ which would be equivalent to nearly 30 percent of total U.S. consumption in 1998.

Nonetheless, the record also indicates that there is little likelihood that the Romanian producers would quickly increase production significantly in the reasonably foreseeable future. The Romanian producers have completely idled their urea capacity and are no longer producing urea in any significant amounts. All nine urea plants in Romania are reported to be "currently idle," and the industry is reportedly "currently doing little more than covering domestic demand at present." Moreover, the industry is reported to be in a "state of uncertainty as the government looks to sell any viable units and rationalize others."¹⁹ As a result, the Romanian producers are projected to continue operating at very low capacity utilization rates through 2001 (only 14 percent in 2000 and 15 percent in 2001). More

¹⁴ CR and PR at Table I-7; Committee Response at Ex. 12, p.35.

¹⁵ CR and PR at Table I-7; Committee Response at Ex. 12, p.36.

¹⁶ Committee Response at Ex. 12, p. 37.

¹⁷ CR and PR at Table I-5.

¹⁸ CR and PR at Tables I-5 & I-4.

¹⁹ Committee Response at Ex. 12, pp. 18 & 23.

specifically, Romanian production is projected to increase by only 160 thousand short tons annually during 2000 and 2001, and most of this increase is projected to be consumed domestically.²⁰

This evidence is consistent with the statements made by the Government of Romania (GOR) in its response. The GOR reported that the Romanian industry has completely changed since the original investigation, with the original Romanian producers no longer being in existence or no longer involved in urea production. The GOR also notes that the industry's capacity levels have declined by nearly 23 percent since the original period of investigation (from 3,427 thousand short tons to 2,649 thousand short tons) and that many, if not all, of the Romanian producers have shut down their facilities since 1996. Finally, the Government notes that it would take considerable investment in these facilities to start them up again.²¹ This latter statement is consistent with the record evidence indicating that it is costly to maintain and then restart production from idled facilities.

For these reasons, we find that it is unlikely that the Romanian producers will be able to quickly restart their idled operations. Moreover, the record provides no indication that, after essentially shutting down their facilities, the Romanian producers have any plans to resume significant production, even if the order were revoked. Therefore, we find that it is unlikely that Romanian producers will resume significant production activities within the reasonably foreseeable future simply for the purpose of exporting urea to the United States. As a result, we find that it is not likely that the subject imports from Romania will have a discernible adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked.

5. Subject Imports from Tajikistan

Tajikistan has only one urea production facility and this facility has operated only intermittently since the early 1990's. Tajikistan has existing production capacity of only 220 thousand short tons, and has no plans to increase its capacity between now and 2001.²² It has operated at very low but increasing levels of capacity utilization during the period from 1996 to 1998, with capacity utilization increasing from 4.5 percent in 1996 to 20.0 percent in 1997 and 32.5 percent in 1998. Capacity utilization is projected to remain at 32.5 percent from 1999 to 2000. Although the Tajikistan producer has unused capacity of approximately 149 thousand short tons, this available capacity equals only 1.8 percent of apparent U.S. consumption in 1998.²³ Moreover, there is no basis to conclude that exports to the United States will occur in the future. There were no exports to any markets from Tajikistan between 1996 and 1998 and no exports to any markets are projected through 2001.²⁴ Therefore, there is no basis to conclude that Tajikistan will export urea to the United States if the order is revoked.

As a result, we find that it is not likely that the subject imports from Tajikistan will increase at all in the reasonably foreseeable future. Accordingly, we also find that it is unlikely that the subject imports from Tajikistan will have a discernible adverse impact on the domestic industry if the order is revoked.

²⁰ Committee Response at Ex. 12, p. 22.

²¹ See CR at I-24-I-27, PR at I-20.

²² CR and PR at Table I-7; Committee Response at Ex. 12, p.51.

²³ CR and PR at Table I-7 and Table I-4.

²⁴ Committee Response at Ex. 12, p. 51.

6. Subject Imports from Turkmenistan.

Turkmenistan does not have any existing urea production facilities, and therefore has no current or existing capacity to produce urea.²⁵ Turkmenistan reportedly has plans to bring new urea production facilities on line by the end of 1999. However, these facilities' capacity is relatively small compared to the size of the U.S. market, and it is unclear when the facilities will actually begin production.²⁶

Nonetheless, although the projected new production capacity of the facilities would equal approximately 4.3 percent of apparent U.S. consumption in 1998, even the domestic producers agree that this capacity will not become fully operationally until one to two years after the facility is completed.²⁷ Moreover, Turkmenistan is projected to export only 110 thousand short tons to all markets in 1999, 220 thousand short tons to all markets in 2000, and 165 thousand short tons to all markets in 2001. These export levels would equal 1.3 percent, 2.6 percent, and 1.9 percent of total apparent U.S. consumption in 1998, respectively.²⁸ There is no basis to conclude that all of these exports would be diverted to the U.S. market if the order were revoked.

Accordingly, we find that any increase in the volume of the subject imports from Turkmenistan will be minimal at most in the reasonably foreseeable future. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports. Consequently, we find that the subject imports from Turkmenistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

7. Subject Imports from Uzbekistan

Uzbekistan has a fairly significant production capacity of 661 thousand short tons and is projected to increase its capacity levels by 76 thousand short tons in 2000.²⁹ Nonetheless, while the producers in Uzbekistan are not operating at 100 percent capacity, they have operated at relatively high capacity utilization rates during the period from 1996 through 1998, with their utilization rates being 68 percent in 1996, 75 percent in 1997, and 58.3 percent in 1998. Their utilization rates are expected to be 58.3 percent in 1999 as well. Accordingly, Uzbekistan has existing unused capacity of approximately 276,000 short tons. It might therefore be reasonable to conclude that Uzbek producers have the ability to increase production and exports to the United States.

This unused capacity represents only about 3 percent of U.S. consumption.³⁰ Moreover, the producers in Uzbekistan are focused primarily on the domestic market. In this regard, the large bulk of

²⁵ CR and PR at Table I-7.

²⁶ In this regard, the world production study submitted by petitioners appears to assume this production will come on line in 1999. Committee Response at Ex. 12, p.52.

²⁷ Data submitted by the Committee indicates that the facilities will be operating at 100 percent capacity in 2000 (after completion of the facilities in 1999) while data submitted by Agrium indicates that the facilities will only operate at 100 percent capacity in 2001. Id.

²⁸ Committee Response at Ex. 12, p. 53; CR and PR at Table I-4.

²⁹ CR and PR at Table I-7; Committee Response at Ex. 12, p. 65.

³⁰ See CR and PR at Table I-4.

their shipments have historically been domestically consumed.³¹ Indeed, the only significant export market for Uzbekistan has been the Chinese market, which is not surprising given the geographic proximity of the two countries and the fact that Uzbekistan is land-locked, without direct access to a sea port. In 1996, exports to China accounted for 92 percent of Uzbekistan's total exports. Following the closing of the Chinese market in mid-1997, exports to China dropped to 42 percent of its total exports. In absolute terms, 1996 exports to China were 164,000 short tons out of total exports of 179,000 short tons, while 1997 exports to China were 18,000 short tons out of total exports of 42,000 short tons. Thus, exports to other countries were presumably 14,000 short tons in 1996 and 25,000 short tons in 1997. In 1998 and 1999, total exports, i.e. excluding exports to China, are projected to be 17,000 short tons each year. Based on these data, it is reasonable to conclude that Uzbekistan is not particularly export-oriented, and, to date, efforts to develop new export markets to replace the exports to China have not been undertaken, have not been successful, or at least take a number of years to accomplish.³²

Our conclusion in this regard is consistent with the Fertecon study. That study projects a significant increase in exports in 2000, at least 2½ years after the closing of the Chinese market. Therefore, it is reasonable to conclude that it would take at least 2½ years to develop the U.S. market as an export market.³³ This conclusion is supported by the fact that there have been no exports from Uzbekistan to the U.S. or Canadian market since the order was issued. Moreover, the study projects that the producers in Uzbekistan will export a total of only 110,000 short tons in 2000 and 165,000 short tons in 2001. These projected exports represent only 1.3 percent and 2.0 percent of domestic consumption, respectively.³⁴

Given Uzbekistan's geographic isolation, its lack of exports to North America, and its general lack of exports to markets other than China, it is reasonable to conclude that Uzbekistan's exports to the U.S. market would not be significant if the order is revoked. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports. Consequently, we find that the subject imports from Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

II. NO LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS FROM BELARUS, ESTONIA, LITHUANIA, ROMANIA, TAJIKISTAN, TURKMENISTAN, AND UZBEKISTAN

As discussed in detail above, we determine that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the antidumping orders covering these imports were revoked. Accordingly, in accordance with the language of section 1675a(a)(7) of the statute, we have not cumulated the subject imports from these countries for purposes of our sunset analysis. For the reasons outlined above, we further find that none of the subject imports from any of these non-cumulated countries are likely to have significant volume, price or other impacts on the domestic industry after revocation of the antidumping orders covering these countries. Accordingly, we find that revocation of

³¹ CR and PR at Table I-7; Committee Response at Ex. 12, p.65.

³² CR and PR at Table I-4.

³³ Committee Response at Ex. 12, p.65.

³⁴ CR and PR at Table I-4.

the orders on these imports would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**Dissenting Views of Commissioner Jennifer A. Hillman
with Respect to Solid Urea from Romania, Estonia, Lithuania, and Tajikistan**

I concur with the Views of the Commission above that imports of solid urea from Armenia are likely to have no discernible adverse impact on the domestic industry and therefore should not be cumulated with other subject imports pursuant to section 752(a)(7) of the Tariff Act of 1930.¹ I write these additional views to explain my determination that solid urea imports from four other subject countries – Romania, Estonia, Lithuania, and Tajikistan – are also likely to have no discernible adverse impact.

1. No discernible adverse impact

The starting point for these four countries – indeed for each of the subject countries – is that none is currently exporting any solid urea to the United States. However, our task in five-year reviews is to determine likely exports in the event the antidumping orders on solid urea are revoked. This requires an examination of information regarding the foreign industries at issue and other relevant competitive and market conditions.

Romania. Although Romania has substantial capacity to produce solid urea (2.4 million metric tons per annum)², other record information indicates that it is not in a position to export meaningful quantities (if any) of solid urea to the United States within a reasonably foreseeable time.

The Government of Romania responded to our notice of institution of the review and provided information regarding the solid urea industry in Romania. The Government indicated that the six urea producers that comprise the Romanian solid urea industry were formerly a single state-owned and -operated enterprise that is now being privatized.³ The Government further maintained that, although five of six producers now had private ownership, these newly privatized entities were not yet in a position to conduct substantial operations, and that “[c]onsiderable additional investment remains necessary to bring the industry to a reasonably healthy and competitive condition.”⁴ The Government indicated that the industry produced only 122,000 metric tons in 1998, and that two facilities with substantial capacity had either closed or were in the process of being liquidated.⁵

The report prepared for the domestic industry by Fertecon confirms the information provided by the Government of Romania.⁶ Fertecon reported that all urea production plants in Romania are understood to be currently idle, and that no new projects are planned.⁷ Fertecon reported that Romania’s solid urea

¹ 19 U.S.C. § 1675a(a)(7).

² CR and PR at Table I-5.

³ Response of the Government of Romania to the Notice of Initiation of Sunset Review, April 20, 1999 at 6.

⁴ *Id.*

⁵ *Id.* at 5.

⁶ See Response of the Ad Hoc Committee of Domestic Nitrogen Producers to Notice of Institution of Five-Year Sunset Reviews, April 20, 1999, at exhibit 12 (“Fertecon report”).

⁷ *Id.* at 18.

production dropped from 1.5 million metric tons in 1996 to 100,000 metric tons in 1998, and that 1998 production represented a mere 4 percent of capacity.⁸ Fertecon summed up the position of the Romanian solid urea industry as follows:

The industry is doing little more than covering domestic demand at present. A very small recovery in output and exports is forecast for the period to 2001. The Romanian industry is currently in a state of uncertainty as the government looks to sell any viable units and rationalize others. There have been some sales of plants, but generally to companies of little financial standing.⁹

Although Romania's large productive capacity would enable it to produce and export more-than-*de minimis* quantities of solid urea to the United States, I find, in light of the information described above, that such an outcome is not likely.

Estonia. Estonia has a small solid urea industry comprised of a single 30-year-old production complex with an annual productive capacity of 218,000 metric tons.¹⁰ It is currently operating at approximately 50 percent of capacity, with the vast majority of its production exported.¹¹ As would be expected given its proximity to the European Union (EU), which is a major consumer of solid urea, nearly all of Estonia's exports are destined for the EU.

Given that the EU is Estonia's natural export market, I find it unlikely that Estonia would divert substantial exports from the EU market or to otherwise ramp up production for export to the United States. The small size of Estonia's current unused capacity (just over 100,000 metric tons) indicates that Estonia has little potential to export solid urea to the United States in a manner that would noticeably affect the U.S. solid urea industry.

Lithuania. Lithuania has a small solid urea industry comprised of a single 28-year-old production complex with an annual productive capacity of 250,000 metric tons.¹² It is currently operating at full capacity. A little more than half of its production is exported, virtually all to the EU, with the remainder presumably being sold for home-market consumption.¹³

Given that the EU is Lithuania's natural export market, I find it unlikely that Lithuania would divert substantial exports from the EU market for export to the United States. Moreover, Lithuania has no excess productive capacity that could be used for producing solid urea for export to the United States.

⁸ *Id.* at 19.

⁹ *Id.* at 23.

¹⁰ CR and PR at Table I-7, Fertecon report at 32.

¹¹ Fertecon report at 33.

¹² CR and PR at Table I-7, Fertecon report at 35.

¹³ Fertecon report at 36-37.

Tajikistan. Tajikistan has a small solid urea industry comprised of a single 32-year-old plant with an annual productive capacity of 200,000 metric tons.¹⁴ It is currently operating at 33 percent of capacity, with no exports and all production presumably destined for home-market consumption.¹⁵ The Fertecon report observes that Tajikistan’s solid urea plant “has operated only intermittently since the early 1990s” and “has been forced to close for periods of time due to internal fighting within the country.”¹⁶

The above facts paint a picture of an industry in Tajikistan that is unlikely to export solid urea to the United States so as to have a discernible adverse impact on the domestic solid urea industry.

Other subject countries. With respect to the remaining subject countries – Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan – I join the majority of the Commission in *not* finding that solid urea imports from these countries are likely to have no discernible adverse impact on the domestic solid urea industry. I add a few remarks here in order to contrast these countries with the countries described above whose imports I have found likely to have no discernible adverse impact.

Each of the remaining subject countries has or will have a higher productive capacity (in some cases many times higher), and a higher unused capacity, than the countries described above (except Romania, see below). The capacity of these remaining countries is as follows: Russia, 5.9 million metric tons; Ukraine, 3.4 million metric tons; Belarus, 1.0 million metric tons; Uzbekistan, 600,000 metric tons; Turkmenistan, 330,000 metric tons.¹⁷

Other facts make it even less appropriate to find that any of these remaining countries are not likely to have a discernible adverse impact. With respect to Turkmenistan, its capacity is expected to consist of a new plant. The new plant will presumably be of at least a somewhat more modern and efficient design, and thus be more competitive, than the 28 to 32 year-old plants in Estonia, Lithuania, and Tajikistan. Moreover, since it is a new plant, all of Turkmenistan’s expected 330,000 metric ton productive capacity is potentially available for export to the United States. This is in sharp contrast to, in particular, Lithuania, which is operating at full capacity to serve the EU and home markets.

With respect to Uzbekistan, not only is its productive capacity more than twice that of Estonia, Lithuania, or Tajikistan, but the Fertecon report gives a positive assessment of its future potential and prospects, observing that, “[w]ith substantial natural gas reserves, there are plans to expand nitrogen capacity by revamping existing units and building new plants.”¹⁸

Finally, for none of the remaining countries is there record information indicating that the foreign industries are experiencing the kind of transitional difficulties that the Fertecon report and the Government of Romania stated are being faced by the solid urea industry in Romania.

¹⁴ CR and PR at Table I-7, Fertecon report at 50.

¹⁵ Fertecon report at 51.

¹⁶ *Id.* at 50.

¹⁷ CR and PR at Table I-7.

¹⁸ Fertecon report at 63.

2. No likely material injury

Having found that imports from Romania, Estonia, Lithuania, and Tajikistan are likely to have no discernible adverse impact on the domestic industry, I further find that revocation of the antidumping duty orders with respect to these countries is not likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.

ADDITIONAL VIEWS OF COMMISSIONER THELMA J. ASKEY

This review raises a significant new issue concerning the Commission's decision to cumulate imports in sunset reviews. This review is one of four sunset reviews to date in which the Commission has considered whether to cumulate imports.¹ In these reviews, the Commission has addressed several cumulation-related issues in our sunset analysis. Amongst other things, the Commission has considered in these reviews whether imports from a subject country are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order covering the imports. Because of the relative novelty of this issue and the complexity of the overall analysis required in sunset reviews, I am taking the opportunity to address this issue in this proceeding.

My analysis of the meaning of the phrase "no discernible adverse impact on the domestic industry" begins with the plain language of section 752(a)(7) of the Tariff Act of 1930, which is the statutory provision governing the Commission's cumulation analysis in sunset reviews. Section 752(a)(7) provides that:

[T]he Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²

As can be seen, section 752(a)(7) clearly states that the Commission has the discretion to cumulate the subject imports in its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied.³ Section 752(a)(7) also clearly states, however, that the Commission is precluded from exercising this discretion if imports from a country subject to review are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order.⁴

Thus, under this provision, the Commission must find that the subject imports from a country will have a "discernible adverse impact on the domestic industry" after revocation of the order before cumulating those imports with other subject imports. Accordingly, our task under this provision is a

¹ See Sugar from the European Union; Sugar from Belgium, France and Germany; and Sugar and Syrups from Canada; Inv. Nos. 104-TAA-7; AA1921-198-200 & 731-TA-3 (Reviews), USITC Pub. 3238 at 16-17 (September 1998); Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-26 (Reviews); Solid Urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan, Inv. Nos. 731-TA-339 (Reviews); and Iron Metal Castings from India, Heavy Iron Construction Castings from Brazil, and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 303-TA-13, 701-TA-249 & 731-TA-262, 263, and 265 (Reviews). The Commission made its determinations in the sugar proceeding in September 1998 and voted on the three remaining cases last week.

² 19 U.S.C. § 1675a(a)(7).

³ Of, course, the Commission may only cumulate imports from a subject country if reviews for those imports were initiated on the same day as well. Id.

⁴ 19 U.S.C. § 1675a(a)(7).

straightforward one. To determine whether we are precluded from cumulation, we must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, that is, by simply assessing their negligibility after revocation of the order. Indeed, it is important to note that the language of the statute does not contain any language indicating that the Commission should limit its analysis under this provision to an assessment of whether subject import volume levels are likely to be minimal after revocation of the order.

Of course, I agree that, in many cases, a minimal volume of subject imports will not be likely to have a discernible adverse impact on the industry as a result of revocation. Nonetheless, the language of section 752(a)(7) does not limit the section's scope to this form of volume-based analysis. This distinction is important because the level of adverse impact on an industry will not always be linked to the actual volume of subject imports. For example, a minimal volume of imports that would otherwise qualify as "negligible" under the current provisions of the statute⁵ might have a discernible adverse impact on an industry if the merchandise in question is highly price-sensitive. Similarly, a non-negligible level of imports might not always have a "discernible adverse impact" on the industry after revocation of an order if conditions of competition are such that the volume and price effects of the imports will not change discernibly after revocation. Given this, I believe that it would not be appropriate under section 752(a)(7) to make an affirmative finding of discernible adverse impact on the industry unless there would be a discernible change in the industry's condition by reason of imports as a result of revocation of the order.

This reading of section 752(a)(7) is supported by its legislative history. The Statement of Administrative Authority for the URAA -- the binding expression of intent with respect to the meaning of the URAA -- contains no suggestion that the "discernible adverse impact" analysis is to be equated with some form of negligibility analysis.⁶ Indeed, the only piece of legislative history addressing the appropriateness of a negligibility approach under section 752(a)(7) is the Senate's joint report on the URAA.⁷ However, that language simply indicates that section 752(a)(7) allows the Commission to use a "negligibility" approach as one possible component of its "discernible adverse impact" analysis.⁸ Moreover, the Senate report states specifically that it would not be "appropriate to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision."⁹ This clearly indicates that Congress intended the "discernible adverse impact" analysis under 752(a)(7) to differ from the negligibility analysis set forth in the current statute. I would add that the House report, like the SAA, contains no statement about the need for a negligibility-based analysis under section 752(a)(7).¹⁰

⁵ 19 U.S.C §1677(24).

⁶ In fact, the only statement in the SAA discussing this provision states that "the Commission shall not cumulate imports from any country if those imports are likely to have no discernible impact on the domestic industry." SAA at 887. This sentence appears to imply that the discernible adverse impact analysis must be performed on an individual country basis.

⁷ S. Rep. 103-412 at 51 (stating that the "Committee believes that it is appropriate to preclude cumulation where imports are negligible"). The report is a joint report of the Senate Committee on Finance, the Senate Committee on Agriculture, Nutrition and Forestry, and the Senate Committee on Governmental Affairs.

⁸ Id.

⁹ Id.

¹⁰ H. Rep. 103-826 at 62.

A comparison of the provisions of section 752(a)(7) with the negligibility provisions of the statute that were in existence prior to the URAA is also useful. Before the URAA, the Commission was given discretion not to cumulate imports from subject countries that competed with each other and the domestic merchandise if the imports were “negligible and ha[d] no discernible adverse impact on the domestic industry.”¹¹ When enacting section 752(a)(7), however, Congress chose to include in section 752(a)(7) only the “discernible adverse impact” language from the prior law and specifically declined to include in the provision any reference to “negligibility” or “likely negligibility” as a requirement for not cumulating subject imports in a sunset proceeding. This clearly indicates that Congress did not intend the discernible adverse impact analysis required by 752(a)(7) to be equated with a negligibility analysis.

In sum, I believe that the statute clearly requires that the Commission to find that revocation of an antidumping or countervailing duty order will result in a discernible adverse impact on the industry by the subject imports from an individual country before cumulating those imports with other imports in its sunset analysis. In my view, the language of the statute simply does not allow the Commission to examine current or likely volumes of imports and assess whether those volumes are likely to be “discernible” without also considering whether revocation of the order would result in a change of the price or volume levels of imports such that they will have a discernible adverse impact on the industry. I believe this interpretation of the law is consistent with the clear language of the statute and the language of the SAA as well as with the general policy underlying the cumulation provision of the sunset portions of the statute.

¹¹ 19 U.S.C. §1677(7)(c)(v) (1994).

INFORMATION OBTAINED IN THE REVIEWS

INTRODUCTION

On March 1, 1999, the Commission gave notice that it had instituted reviews to determine whether revocation of the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.¹ On June 3, 1999, the Commission determined that the domestic interested party responses to its notice of institution were adequate with regard to each of these reviews; the Commission also determined that the respondent interested party response was inadequate for each review.² The Commission found no other circumstances that would warrant full reviews. Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).³ The Commission voted on these reviews on October 20, 1999, and notified Commerce of its determinations on October 27, 1999.

The Original Investigations

The Commission completed the original investigations⁴ in July 1987, determining that an industry in the United States was being materially injured by reason of imports of solid urea from the GDR, Romania, and the USSR that were being sold at less than fair value.⁵ The Commission defined the domestic like product in the original investigations as solid urea in any form, i.e., whether granular or prilled, and it defined the domestic industry as producers of solid urea in any form.⁶ After receipt of the Commission's determinations, Commerce issued antidumping duty orders on imports of solid urea from

¹ (64 FR 10020, Mar. 1, 1999.) All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

² The Commission received three submissions to its notice of institution in the subject reviews. They were filed on behalf of the following entities: (1) the Ad Hoc Committee, a coalition of U.S. producers of nitrogen fertilizers, including solid urea, and its participating members (which include the following producers of the domestic like product: CF Industries, Coastal Chem, Mississippi Chemical, PCS Nitrogen, and Terra Industries); (2) Agrium, a domestic producer of solid urea; and (3) the Government of Romania. (In addition, Coastal St. Helens, another producer of the domestic like product, is also participating in this proceeding through its affiliate Coastal Chem.)

³ (64 FR 31610, June 11, 1999.) Commissioner Hillman dissented. Subsequently, Commerce extended the date for its final results in the expedited reviews from June 29, 1999 to Aug. 30, 1999 (64 FR 36333, July 6, 1999). The Commission, therefore, revised its schedule to conform with Commerce's new schedule (64 FR 38476, July 16, 1999). The Commission's notices of expedited review and revised schedule appear in app. A. See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct expedited or full reviews. The Commission's statement on adequacy is presented in app. B.

⁴ The investigations resulted from a petition filed on behalf of the Ad Hoc Committee on July 16, 1986. The Ad Hoc Committee was then comprised of the following firms: Agrico, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, and W.R. Grace.

⁵ *Urea from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics*, USITC Pub. 1992, July 1987, p. 3. Petitioner subsequently expressed no further interest in the antidumping duty order for the GDR (Germany) and it was revoked by Commerce. (63 FR 16471, Apr. 3, 1998.)

⁶ *Id.*, p. 4. The Ad Hoc Committee stated that it agrees with the Commission's definitions of domestic like product and domestic industry. *Response of Ad Hoc Committee*, p. 69. Agrium and the Government of Romania did not address the issue of like product in their responses.

Romania and the USSR (as well as the GDR) in July 1987.⁷ In December 1991, the USSR divided into 15 independent states. To conform to these changes, Commerce changed the original USSR antidumping duty order into 15 orders applicable to each independent state of the former USSR. Commerce did not receive a notice of intent to participate from any domestic interested party in the sunset reviews concerning Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Latvia, and Moldova;⁸ it revoked those antidumping duty orders on May 5, 1999 and May 28, 1999 (64 FR 24137 and 64 FR 28974) and the Commission, in turn, terminated the corresponding expedited reviews (64 FR 30358, June 7, 1999).

Commerce's Final Results of Expedited Sunset Reviews

On September 3, 1999, the Commission received Commerce's "Final Results of Expedited Sunset Review" concerning solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.⁹ The reviews covered all manufacturers and exporters of solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Commerce determined that dumping is likely to continue or recur if the antidumping duty orders are revoked for each subject source. The following tabulation

⁷ (52 FR 26367 July 14, 1987.) These orders required the posting of a cash deposit equal to the estimated weighted-average antidumping duty margins, which were 90.71 percent for Chimica (Romania), 68.26 percent for SPE (USSR), 53.23 percent for Phibro (USSR), and 64.93 percent for all others (USSR). In determining the weighted-average antidumping duty margins for Romania and the USSR, Commerce compared the U.S. price with the foreign market value. The U.S. price for Romania was represented by the (adjusted) exporter's sales price of Chimica, the state trading agency that accounted for all exports of urea from Romania. Commerce determined that Romania was a SCEC and used constructed value for foreign market value, using some inputs provided by the Romanian producer as well as the best available information from public sources and the petition. Commerce also determined that the USSR was a SCEC; it limited its investigation to the state controlled SPE and to Phibro, which together accounted for all USSR exports of urea to the United States. The U.S. price for the USSR was represented by the (adjusted) purchase price of the subject merchandise for sales by SPE to U.S. importers other than Phibro and, for sales to Phibro, Commerce used the (adjusted) exporter's sales price. Foreign market value for the USSR was calculated on the basis of constructed value, using some factors provided by USSR producers, as well as information provided by the petitioner. (52 FR 19553, May 26, 1987; 52 FR 19557, May 26, 1987.)

Commerce has conducted one administrative review of Chimica, a manufacturer/exporter of solid urea from Romania. Commerce determined that the original margin of 90.71 percent existed for the period reviewed (Jan. 2, 1987 through June 30, 1988) since there were no shipments by Chimica. (54 FR 39558, Sept. 27, 1989.) To date, Commerce has not issued any duty absorption findings in this case. (64 FR 48360, Sept. 3, 1999.)

Commerce conducted one administrative review of solid urea from the USSR prior to its division, finding a margin of 68.26 percent for SPE for the period reviewed (Jan. 2, 1987 through June 30, 1988). (54 FR 39219, Sept. 25, 1989.) Further, on June 29, 1992, Commerce issued a Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment. This officially determined that the cash deposit rate of 68.26 percent established in the most recent administrative review would remain in effect for each new independent state. (57 FR 28828, June 29, 1992.) Commerce also conducted one administrative review after the division of the USSR (for Estonia) and determined that the cash deposit rate would remain at 68.26 percent because there was no record of any U.S. imports of solid urea from Estonia during the period reviewed. (59 FR 25606, May 17, 1994.)

⁸ There reportedly is no current or planned urea production capacity in those countries. *Response* of the Ad Hoc Committee, p. 1, n. 2.

⁹ (64 FR 48357, Sept. 3, 1999; 64 FR 48360, Sept. 3, 1999). The *Federal Register* notices of Commerce's final results are presented in app. A.

provides information with regard to the margins (*in percent*) of dumping that Commerce found would likely prevail if the orders are revoked:¹⁰

<u>Company</u>	<u>Margin</u>
FSU:	
SPE	68.26
Phibro	53.23
Country-wide rate (subject FSU)	68.26
Romania:	
Chimica	90.71
All others	90.71

THE PRODUCT

Scope

The imported product covered by these reviews is solid urea. The product is classified in HTS subheading 3102.10.00 and enters the United States at the column 1 general duty of free. The HTS subheading is provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.¹¹

¹⁰ Commerce determined that (with the exception of Phibro) the margin calculated in the original investigations for SPE (and which subsequently became the uniform cash deposit rate transferred to the independent states) reflects the behavior of FSU producers and exporters without the discipline of the order and is probative of their behavior if the FSU orders were revoked. The listed dumping margin for Phibro is that assigned to it in the original investigation. Commerce also determined that the margin calculated in the original investigation for Chimica reflects the behavior of Romanian producers and exporters of urea without the discipline of the order and is probative of their behavior if the order for Romania were revoked.

¹¹ HTS 3102.10.00 covers a larger category than the scope of these orders, as it also includes urea in aqueous solution. However, overseas trade in urea in aqueous form is believed to be minimal.

Description and Uses¹²

Urea is a high-nitrogen content compound¹³ that is primarily used as a fertilizer.¹⁴ The general urea production process yields 70 to 87 percent urea in an aqueous solution, which may be purified and evaporated to produce the subject product, solid urea, or used to manufacture downstream fertilizer nitrogen solutions.¹⁵ In 1986, 60 percent of U.S. total urea production was used in solid form for fertilizers and 34 percent was produced as an aqueous solution, then used captively to produce mainly UAN solutions. The remaining 6 percent of U.S. urea production was incorporated into feeds (2 percent), or used in other applications, principally in adhesives and plastics (4 percent). In 1997, the distribution of urea was still about the same, with 62 percent produced as granular or prills, 31 percent as a solution, and 3 percent mostly as feed.¹⁶

Solid urea (the subject product) is produced and sold in the United States in two forms, as small spherical pellets called prills or as larger (coarse) pellets called granules. Prilled and granular urea are chemically identical, though there are some physical differences between them. Generally, the prilled product has a lower crushing strength and abrasion resistance than granules and, consequently, contains a higher percentage of small-sized particles called "fines." Excessive fines can increase caking (caused by water absorption) during storage. Granular urea also has an advantage over prilled urea for use in the production of dry mixed (multi-nutrient) chemical fertilizers because the granule size closely matches the particle size of the additives with which urea is often mixed.¹⁷ Both types, however, are suitable for use alone as a single-nutrient fertilizer or for blending with other solid fertilizers for field applications.¹⁸ At the time of the original investigations, the subject imports of urea were virtually all in prilled form. In contrast, granular urea accounted for almost 53 percent of the solid urea produced in the United States in 1986.¹⁹

¹² All of the discussion in this section is from the original investigations, unless otherwise noted. *Staff Report of June 19, 1987*, pp. A-3 through A-16. The Ad Hoc Committee states that the product, and the manufacturing process underlying it, are virtually identical to that examined during the original investigations. *Response of Ad Hoc Committee*, p. 67.

¹³ The chemical formula of pure urea is $\text{CO}(\text{NH}_2)_2$, with a molecular weight of 60.06, and a nitrogen content of 46.6 percent. It is produced by reacting ammonia with carbon dioxide at high temperature and pressure. Urea production technology is available throughout the world.

¹⁴ Of the three primary crop nutrients (nitrogen, phosphorus, and potassium), nitrogen is the leading plant nutrient applied by farmers in the United States. Other nitrogen fertilizers include anhydrous ammonia, nitrogen solutions (UAN solutions), and ammonium nitrate. The Commission's report for the original investigations indicated that "in the United States, the general conclusion of agronomists is that urea is as good as any other nitrogen fertilizer if properly used." *Staff Report of June 19, 1987*, p. A-10, citing United Nations, "Development and Transfer of Technology Series No. 13," *Fertilizer Manual*, 1980, p. 109.

¹⁵ *Staff Report of June 19, 1987*, citing *Census Current Industrial Reports (Fertilizers), Report M28B*, Commerce.

¹⁶ *Census Current Industrial Reports (Fertilizers), Report MA28B*.

¹⁷ Uniform particle size is important in dry mixed fertilizers to minimize separation or segregation of the components during transportation and application. Its ability to be blended with other dry fertilizers is still a key characteristic of granular urea. *Response of Agrium*, p. 10.

¹⁸ *Urea from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics*, USITC Pub. 1992, July 1987, pp. 3-4.

¹⁹ Delivered prices of granular urea reportedly averaged about 7 percent higher than delivered prices of prilled
(continued...)

U.S. manufacturers, oriented principally towards the domestic market, continue to produce significant amounts of the granular product; imported urea is still almost entirely in prilled form.²⁰

Distribution, Marketing, and Pricing²¹

Urea is a stable nontoxic solid that can be shipped in standard bulk handling vessels and stored in simple warehouses for several months. The Mississippi River and its connecting waterways comprise the principal distribution system in the United States for nitrogen fertilizers, including urea. Ocean-going vessels can travel about 50 miles up the river near New Orleans and, as a result, the port of New Orleans was the principal port of entry for urea from subject sources during the original investigations. A significant mitigating factor in the market is transportation costs.²² The location of the seller in relation to the buyer can markedly affect transportation costs, and thus can affect the delivered price of urea. Because of this, not all producers or importers are able to compete equally at all locations.²³

In general, information on the urea market is readily available to buyers and sellers. Weekly trade publications provide marketing information and prices can change quickly based upon the supply and demand balance (or a perception of that balance). Field representatives of U.S. producers and importers are in regular contact with purchasers to inform them of the current price of urea. Many participants in the market subscribe to the *Green Markets* newsletter, which publishes weekly average prices and reports on production and import levels. In addition, some U.S. producers and importers also publish bimonthly price lists for dealers, brokers, and end users.²⁴ The Ad Hoc Committee states that “reports of even a single low-priced shipment, therefore, can have a significant negative effect on price throughout the market.”²⁵

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

In 1986, there were 24 firms producing solid urea at 35 plants in the United States. U.S. producers ranged from small chemical or fertilizer companies to large integrated multinational oil and chemical corporations. Some of the largest urea producers were farmers’ cooperatives (including CF Industries, Farmland Industries, and Mississippi Chemical). Urea plants were typically located close to ammonia feedstock plants, which, in turn, are found in states with abundant supplies of natural gas.²⁶ Today, there are approximately 12 domestic producers of solid urea (table I-1).

¹⁹ (...continued)

urea. Also, the majority of purchasers indicated that imported Romanian and USSR urea were generally inferior to domestic prilled urea. *Staff memorandum (EC-K-253) dated June 23, 1987*, p. 2, citing questionnaire responses by purchasers.

²⁰ *Response of Agrium*, pp. 10-11. In 1997, the granular urea accounted for 52 percent of solid urea production in the United States. *Census Current Industrial Reports (Fertilizers), Report M28A*.

²¹ According to the Ad Hoc Committee, the fundamental conditions of competition in the U.S. market identified during the Commission’s original investigations have remained relatively unchanged since the imposition of the antidumping orders in 1987. *Response of the Ad Hoc Committee*, pp. 11 and 67.

²² *Staff Report of June 19, 1987*, pp. A-23 and A-24.

²³ *Id.*, pp. A-64 and A-65.

²⁴ *Id.*

²⁵ *Response of the Ad Hoc Committee*, p. 9.

²⁶ *Staff Report of June 19, 1987*, p. A-19.

Table I-1
Solid urea: U.S. producers, plant location(s), capacity, production, and share of total production, 1998

Firm	Plant location(s)	Capacity	Production	Share of total production
		<i>1,000 short tons</i>		<i>Percent</i>
Agrium	Borger, TX	***	***	***
Borden	Geismar, LA	***	(2)	(2)
CF Industries ¹	***	***	***	***
Coastal Chem ¹	***	***	***	***
Coastal St. Helens	***	***	(3)	(3)
Farmland Industries	Enid, OK	***	(2)	(2)
IMC-Agrico	Donaldsonville, LA	***	(2)	(2)
Mississippi Chemical ¹	***	***	***	***
PCS Nitrogen ¹	***	***	***	***
Royster-Clark	East Dubuque, IL	***	(2)	(2)
Terra Industries ¹	***	***	***	***
Unocal	Kenai, AK	***	(2)	(2)
Total	--	6,270	5,889	100.0

¹ Participating member of the Ad Hoc Committee.

² Not available.

³ Data reported with Coastal Chem's.

Note.—Although not identified as solid urea producers by interested parties, IMC-Agrico and Royster-Clark are believed to produce the subject product. The IMC-Agrico plant, in Donaldsonville, LA, is currently idle, but was producing solid urea in 1998. Royster-Clark is a new entity which purchased a previously existing solid urea plant in April 1999.

Source: *Response of the Ad Hoc Committee, Exhibit-1; Response of Agrium, p. 19; IFDC (June 1999); and Commission staff estimates.*

A protracted downturn in the U.S. nitrogen fertilizer industry during the early 1980's reached acute proportions by the mid-1980's, leading to significant restructuring and consolidation of capacity by U.S. urea producers. A number of factors contributed to this downturn, including (1) global recession precipitated in part by two major oil price shocks during the 1970's, (2) U.S. grain oversupply and depressed prices compounded by a strong dollar, which negatively affected domestic agricultural commodity trade, and (3) rising natural gas raw material costs vital to the production of ammonia and urea.

Major shifts in the U.S. industry structure began in 1987 and 1988 when two industry icons, Agrico and W.R. Grace, exited the business, selling their large solid urea production facilities in Arkansas and Louisiana to Freeport-McMoRan and a plant in Tennessee to Nitrex. Further consolidation of the urea industry resulted from the formation of Arcadian in 1989, which purchased a number of large nitrogen fertilizer producers, including Nitrex. (Arcadian, in turn, was later purchased by PCS Nitrogen in 1997.) Also, in 1989, American Cyanamid, one of the petitioning firms in the original investigations, permanently closed its solid urea facility. Today, the former Agrico plants are owned and operated by Terra Industries and IMC-Agrico; and the W.R. Grace plants by Terra Industries and PCS Nitrogen. In addition, in 1994, Mississippi Chemical opted to convert from the cooperative system, going public on the NASDAQ exchange. In 1996, the firm also assumed full ownership of its large solid urea plant (the Triad Chemical facility) which it had previously held in a joint venture with First Mississippi. This restructuring and consolidation of the urea industry are believed by industry experts to have improved efficiency by reducing the number of players and improving economies of scale.

As shown in table I-1, the 6 producers responding to the Commission's notice of institution (Agrium, CF Industries, Coastal Chem (with its affiliate Coastal St. Helens), Mississippi Chemical, PCS Nitrogen, and Terra Industries) accounted for *** percent of estimated 1998 production of solid urea.²⁷ The domestic interested parties stated that they are not aware of any U.S. producers that are related parties.²⁸

U.S. Production, Capacity, Shipments, and Financial Data

Data reported by U.S. producers of solid urea in the Commission's original investigations and in response to its review institution notice are presented in table I-2. As shown, solid urea production, capacity, capacity utilization, U.S. shipments (value and unit value), and prices all declined from 1984 to 1986, as did reported financial indicators. (The quantity of U.S. shipments was level.) Capacity utilization decreased from 81 percent to 64 percent, a significant decrease in that, according to a 1995 Commission study, urea plants must operate continuously and at capacity utilization rates of at least 80 percent to maintain the reaction process.²⁹ The Commission's report for the original investigations indicated that, to operate efficiently, most urea plants need to operate continuously at near capacity. Further, urea plants are designed exclusively for the production of urea and, once shut down, it is costly to maintain them and to restart production.³⁰

²⁷ Estimate is based on U.S. production as published by Census (5.9 million short tons). According to data published by The Fertilizer Institute, the six responding firms may actually have accounted for as much as *** percent of total U.S. solid urea production in 1998.

²⁸ *Response of Ad Hoc Committee. Response of Agrium (amendment, dated Apr. 23, 1999).*

²⁹ *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements*, USITC Pub. 2900, June 1995, p. 11-7.

³⁰ *Staff Report of June 19, 1987*, p. A-22.

Table I-2
Urea: U.S. producers' trade and financial data, 1984-86 and 1996-98¹

Item	1984	1985	1986	1996	1997	1998
Trade data:						
Production:						
Solid urea (<i>1,000 short tons</i>)	5,025	4,495	3,865	5,502	5,151	5,889
All urea (<i>1,000 short tons</i>)	7,752	6,975	6,264	8,548	8,190 ²	8,801
Capacity:						
Solid urea (<i>1,000 short tons</i>)	6,214	6,215	6,084	(³)	(³)	6,270 ⁴
All urea (<i>1,000 short tons</i>)	8,093	8,129	7,959	7,829	8,523	8,907
Capacity utilization:						
Solid urea (<i>percent</i>)	80.9	72.3	63.5	(³)	(³)	93.9
All urea (<i>1,000 short tons</i>)	95.8	85.8	78.7	109.2	96.1	98.8
U.S. shipments (solid urea):						
Quantity (<i>1,000 short tons</i>)	3,246	3,119	3,292	3,882 ⁵	3,717 ⁵	4,830 ⁵
Value (<i>1,000 dollars</i>)	476,812	426,680	340,557	(³)	(³)	(³)
Unit value (<i>per short ton</i>)	\$147	\$137	\$103	(³)	(³)	(³)
Financial data (all urea):						
Total sales (<i>1,000 dollars</i>)	686,563	585,422	444,847	534,297	489,833	427,142
Cost of goods sold (<i>1,000 dollars</i>)	530,349	488,347	408,940	329,885	396,100	360,543
Gross profit (<i>1,000 dollars</i>)	156,214	97,075	35,907	204,413	93,732	66,599
SG&A expenses (<i>1,000 dollars</i>)	32,696	28,992	29,560	20,393	17,939	16,576
Operating income/loss (<i>1,000 dollars</i>)	123,518	68,083	6,347	184,020	75,794	50,023
Ratio of operating income/loss to net sales (<i>percent</i>)	18.0	11.6	1.4	34.4	15.5	11.7
U.S. solid urea price (<i>per short ton</i>)	\$157	\$127	\$96	\$185	\$142	\$124
<i>Notes continued on next page.</i>						

Continuation of table I-2.

¹ Data reported on a dry, 100-percent-urea basis.

² The Ad Hoc Committee lists a figure of 7.7 million short tons, which appears to be in error. *Response of the Ad Hoc Committee*, exhibit 4.

³ Not available.

⁴ Capacity as of year-end 1998 from IFDC (June 1999) and Commission staff estimates.

⁵ Production minus exports, adjusted for inventory changes.

Note.--Questionnaire responses were received during the original investigations from all known manufacturers of urea; further, producers accounting for 91 percent of total U.S. solid urea production in 1986 supplied usable financial data. However, the financial information reported for 1996-98 only represents slightly over *** percent of U.S. urea production in 1998. *Response of the Ad Hoc Committee*, p. 18, n. 34.

Source: *Response of the Ad Hoc Committee*, exhibit 4, for all urea production and capacity data for 1984-86 (which were obtained from *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements*, USITC Pub. 2900, June 1995, p. 11-8); *Staff Report of June 19, 1987*, pp. A-29, A-32, and A-42 for solid urea and financial data for 1984-86 (which are both from questionnaires); *Census Current Industrial Reports (Fertilizers), Reports MA28B & MQ28B* for production data; *Response of the Ad Hoc Committee*, exhibits 4, 3, and 8, respectively, for capacity (which are Census data), shipments (which are based upon *Census Current Industrial Reports (Fertilizers), Report M28B*), and financial data (which are from a survey apparently conducted by the Committee) for 1996-98; and *Response of the Ad Hoc Committee*, exhibit 5, for all pricing data (which are the average of quarterly urea prices (f.o.b. Gulf Coast (*Green Markets Newsletter*)), weighted by quarterly urea shipments).

The Ad Hoc Committee states that U.S. market share, prices, and profitability quickly rebounded as a result of the antidumping orders, and have remained well above 1986 levels.³¹ Somewhat more capacity is now in place to produce solid urea than in 1986 (table I-2).³² In the last three years, both domestic production and U.S. shipments of solid urea increased, by 7 percent and 24 percent, respectively. However, downward trends in prices and key financial indicators are evident, with a 33 percent drop in solid urea prices and 73 percent decrease in operating income from 1996 to 1998 (table I-2).

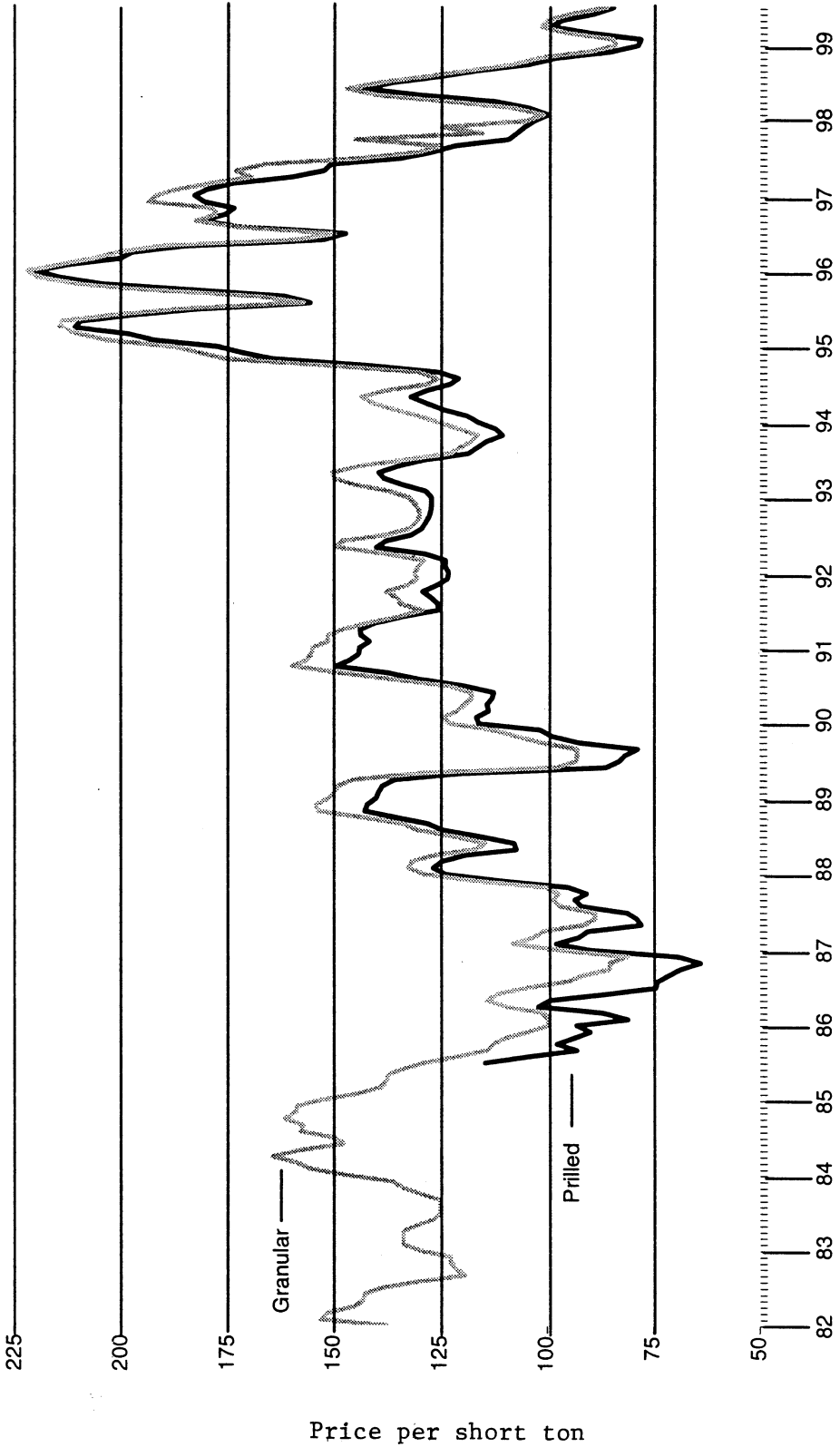
Figure I-1 shows U.S. urea prices from 1982 to 1999. According to the Ad Hoc Committee, U.S. urea prices in 1998 are at their lowest level since the orders were imposed in 1987.³³ It states: “{t}he U.S. industry’s current condition of vulnerability is related to conditions in the world fertilizer market. Most importantly, in mid-1997, China imposed an embargo on urea imports, ceasing licensing of almost all urea imports into the country, in order to support domestic production. ... The effective closure of this key consuming market has displaced substantial supply into the world market, whereas demand has not increased commensurately. Related to the embargo, worldwide prices for urea have declined

³¹ *Response of the Ad Hoc Committee*, p. 4.

³² CF Industries added 420,000 tons per year of granular urea capacity in Donaldsonville, LA, during 1998.

³³ *Response of the Ad Hoc Committee*, p. 21.

Figure I-1
 Urea: Average Gulf Coast f.o.b. prices by forms and by months, January 1982-June 1999



Note.—Price data for prilled urea was not available prior to 1985.

Source: Green Markets.

dramatically over the last three years.”³⁴ Agrium also discusses the currently vulnerable condition of the U.S. solid urea industry in its *Response* and states that several projects to increase domestic production recently have been canceled or postponed.³⁵ Industry sources state “The financial results of several US nitrogen companies are rather poor. This could result in the closure of some of the older urea plants.”³⁶

U.S. IMPORTS AND CONSUMPTION

U.S. Imports³⁷

During the original investigations, the Commission identified over 16 importers of the subject merchandise (including that from the GDR). These firms were, for the most part, international or multinational trading companies that handle a wide range of product in addition to solid urea.³⁸ In its response to the Commission’s notice of institution in this review, the Ad Hoc Committee stated that to the best of its knowledge, no importer has imported solid urea from any subject source since the imposition of the antidumping orders.³⁹ Likewise, the Government of Romania is unaware of any current U.S. importers of urea from Romania.⁴⁰

As shown in table I-3, U.S. imports of solid urea from Romania and the USSR increased by 50 percent, by quantity, from 1984 to 1986. Following the imposition of the antidumping orders in July 1987, subject imports dropped to negligible amounts (figure I-2). There have been no U.S. imports of solid urea from Romania and only minimal reported subject imports from the USSR, later the FSU, since 1986 (table I-3 and figure I-2).⁴¹ Consequently, no current subject country pricing data are available.

³⁴ *Id.*, pp. 22-23. Exhibit 9 of their *Response* provides data showing China’s sharp decline in imports of solid urea, exhibit 13 provides world demand figures, and exhibit 11 lists worldwide prices for urea.

³⁵ *Response* of Agrium, pp. 7 and 14-18.

³⁶ Pierre L. Louis, International Fertilizer Industry Association, *Fertilizers and Raw Materials Supply and Supply/Demand Balances (Preliminary Version)*, May 1999, p. 13.

³⁷ The Commission cumulated imports from all three countries originally subject to investigation. *Urea from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics*, USITC Pub. 1992, July 1987, p. 7. According to the Ad Hoc Committee, urea from the former USSR and Romania are highly fungible and have continued to compete against each other in foreign markets and appear simultaneously in those markets. *Response* of the Ad Hoc Committee, pp. 28, 30-31, and exhibit 15. Further, the Ad Hoc Committee states that evidence suggests that specific trading companies offer solid urea from multiple subject countries for sale (*Id.*, p. 31 and exhibit 16). In addition, there is common sourcing of the natural gas used in the production of solid urea and common use of port facilities to ship the subject product. (The Russian gas supplier (Gasprom) supplies natural gas to Belarus, Estonia, Lithuania, Ukraine, and Romania, as well as to Russian producers.) *Id.*, pp. 32-35 and exhibit 12. Agrium states that the reviews were initiated on the same day and that imports would likely compete with one another and with a domestic like product in the United States market. *Response* of Agrium, p. 12.

³⁸ *Staff Report of June 19, 1987*, p. A-23.

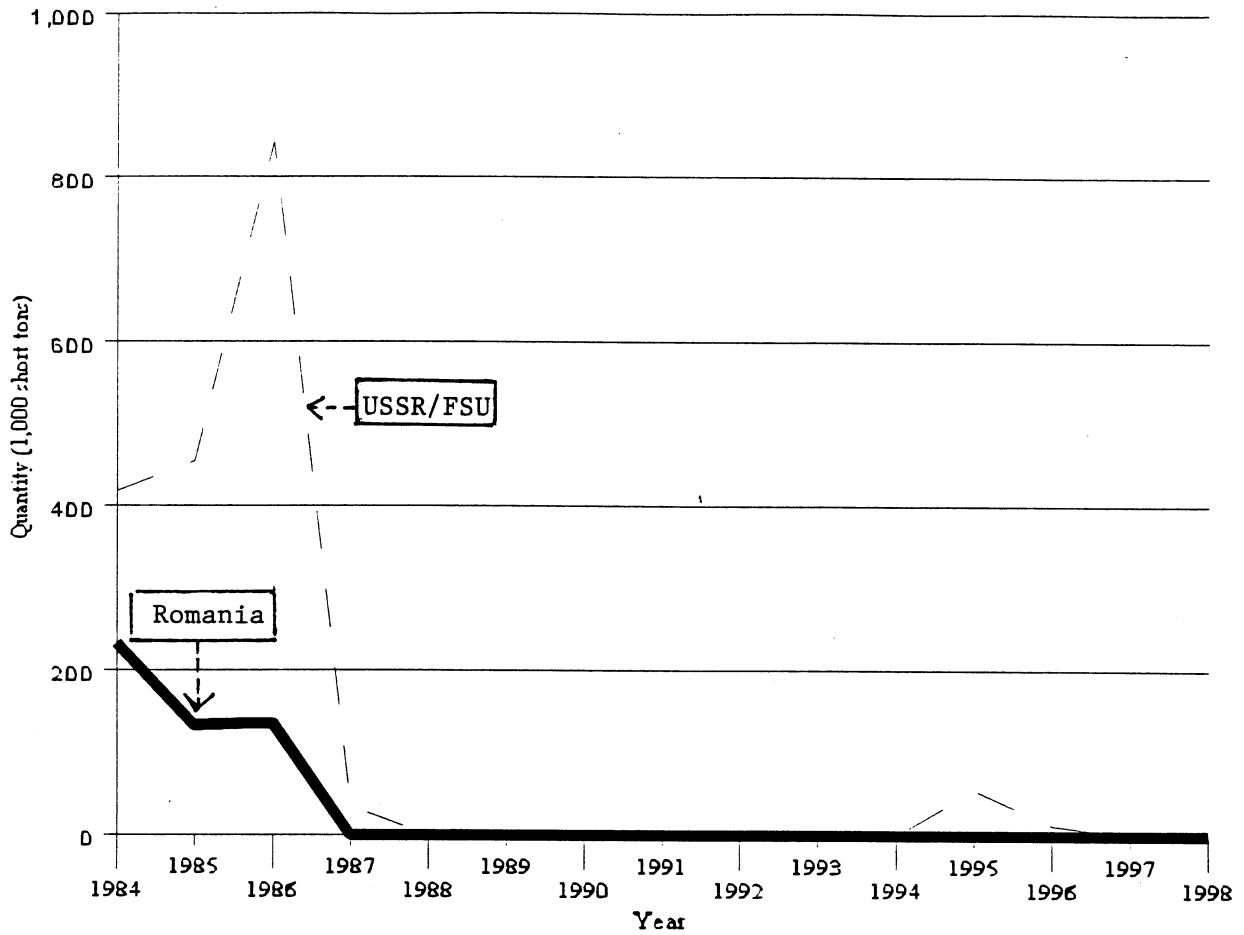
³⁹ *Response* of Ad Hoc Committee, p. 64.

⁴⁰ *Supplemental Response* of the Government of Romania, p. 4.

⁴¹ However, the Ad Hoc Committee believes that no urea from any of the subject countries has entered the U.S. market since 1987. It states that the small amounts of subject imports recorded in official Commerce statistics are misclassified and are, in fact, other products, usually ammonium nitrate or UAN solutions. *Response* of the Ad Hoc Committee, p. 5, n. 7.

Figure I-2

Solid urea: U.S. imports from Romania and the USSR/FSU, by quantity, 1984-98



Source: *Staff Report of June 19, 1987* for 1984-86 data (which were from official Commerce statistics, except for Romania which were from questionnaires); 1987-98 imports are from adjusted official Commerce statistics. (Data reported for U.S. imports from FSU for 1995 are believed to be in error.)

Table I-3						
Solid urea: U.S. imports from all sources, 1984-86 and 1996-98¹						
Item	1984	1985	1986	1996	1997	1998
	Quantity (1,000 short tons)					
Romania	233	133	136	0	0	0
USSR/FSU	418	455	843	12 ²	0	(³)
Subtotal subject sources	651	588	979	12	0	(³)
Canada	880	771	1,189	1,543	2,017	1,932
Other sources	509	609	1,124	1,224	735	1,675
Total	2,040	1,968	3,292	2,779	2,752	3,607
	C.i.f. value (1,000 dollars)					
Romania	32,946	13,852	11,140	0	0	0
USSR/FSU	52,408	61,030	65,624	1,836 ²	0	(³)
Subtotal subject sources	85,354	74,882	76,764	1,836	0	(³)
Canada	116,055	98,735	127,243	223,383	316,999	322,828
Other sources	78,465	94,833	120,904	221,813	104,859	192,629
Total	279,874	268,450	324,911	447,032	421,858	515,457
	Unit values on a c.i.f. basis (per short ton)					
Romania	\$141	\$104	\$82	-	-	-
USSR/FSU	126	134	78	\$153	-	(³)
Subtotal subject sources	131	127	78	153	-	(³)
Canada	132	128	107	145	\$157	\$167
Other sources	154	156	108	181	143	115
Total	137	136	99	161	153	143
<i>Notes continued on next page.</i>						

Continuation of table I-3.

¹ Data reported on a dry, 100-percent-urea basis.

² The following U.S. imports were reported, by source, for 1996: 12,319 short tons from Lithuania (valued at \$1.8 million with a unit value of \$149 per short ton) and 53 short tons from Russia (valued at \$9,209 with a unit value of \$174 per short ton). There were no other reported imports from any other source subject to the antidumping order during 1996-97.

³ Less than 500 short tons (specifically, 126 short tons, valued at \$25,271, with a unit value of \$201 per short ton), which was imported from Russia). Commerce, citing the *Substantive Response of the Committee at Exhibit 2*, indicates that only 24 short tons from Russia remain classified as solid urea. (64 FR 48357, Sept. 3, 1999). However, there appears to be a second shipment of 101 short tons which Census continues to classify as solid urea for a total of 126 short tons (corrected for rounding error). (See Census (Foreign Trade Division) letter dated July 22, 1999 citing the June 1998 shipment of urea from Russia.)

Note.—Customs lists no U.S. urea imports from either Romania or the FSU as being subject to the antidumping duty orders for FY 1994 through FY 1998. *Antidumping/Countervailing Duty Annual Report*.

Source: *Staff Report of June 19, 1987*, p. A-56 for import data (which were questionnaire data for Romania and official Commerce statistics for all other sources) for 1984-86; official Commerce statistics for import data in 1996-98 (adjusted for Census corrections; see Census (Foreign Trade Division) letters dated Aug. 25, 1998, Dec. 16, 1998, Feb. 11, 1999, and July 22, 1999).

However, as a surrogate, the Ad Hoc Committee examined the unit values of urea exported from the subject countries to other markets, including Canada and China. They state that “{b}ased on official import statistics from those countries, it is clear that the subject countries continue to significantly undersell urea from other sources.”⁴² As shown in table I-3, unit values of U.S. urea imports from non-subject sources (but excluding Canada) declined from \$181 per short ton in 1996 to \$115 per short ton in 1998. Agrium asserts that this decline results, at least in part, from FSU pricing and that FSU world exports are “having an indirect effect” on the U.S. urea market. It states that the price of urea imported (as well as produced) in the U.S. Gulf region has “fallen in tandem with FSU export prices.”⁴³

Historically, Canada has been the primary source of U.S. urea imports. Industry sources state that competition for urea sales within the United States will further increase as a “very significant tonnage” of urea becomes available for export to the United States in late 2000 or early 2001 at Jose, Venezuela.⁴⁴

⁴² *Response of Ad Hoc Committee*, pp. 52-53 and exhibits 9 and 10.

⁴³ *Response of Agrium*, pp. 6-7 and attachment D.

⁴⁴ Pierre L. Louis, International Fertilizer Industry Association, *Fertilizers and Raw Materials Supply and Supply/Demand Balances (Preliminary Version)*, May 1999, p. 13.

Apparent U.S. Consumption

The total demand for urea is derived from several factors including (1) activity in the domestic farm sector (i.e., planted acreage and crop distribution), (2) weather and soil conditions, and (3) the availability of specific equipment for spreading the different nitrogenous fertilizers.⁴⁵ In addition, within the physical limits of substitutability, demand is affected by the price of urea relative to prices of the three other major nitrogen fertilizers (anhydrous ammonia, nitrogen solutions, and ammonium nitrate). Of the two solid nitrogen fertilizers, urea and ammonium nitrate, urea is usually the lowest cost per unit of nitrogen.⁴⁶

As shown in table I-4, the amount of solid urea consumed in the United States in 1996 was the same as that consumed in 1986 (6.7 million short tons). However, U.S. apparent consumption increased by 27 percent to 8.4 million tons from 1996 to 1998 as U.S. nitrogen fertilizer consumption reached record highs during the 1994-98 period. Rising demand was driven by an increase in global demand for downstream meats and grains, coupled with low grain inventories. U.S. producers' solid urea market share (57 percent in 1998) was somewhat higher than that reported in 1986 (51 percent).

The World Market

Urea is produced in many countries and is relatively widely traded throughout the world.⁴⁷ In the period following the original investigations, growth in world demand for urea exceeded that of world supply with resulting strong pricing and profitability for urea producers. However, there now exists a worldwide surplus of urea with a subsequent plunge in urea pricing.⁴⁸ Industry analysts state that “{t}he continuing fall in urea prices and other {unfavorable} market conditions have conspired to drive the nitrogen sector into near meltdown, and producers worldwide {see} no immediate prospect of a market upturn to relieve the immense financial pressures they currently face. ... To the normal ebb and flow of market cycles, several factors have combined to exacerbate the downward trend: these factors include the uneven impact of the {programs} to achieve self-sufficiency in nitrogen fertilizers in India, China and Pakistan; over-investment by North American ammonia {including urea} producers;⁴⁹ and the adverse effects of the economic cycle in Asia and Latin America. Most analysts underestimated the ability of China to bring worldscale nitrogen projects on stream, so the abrupt reduction of Chinese imports of urea wrong-footed the market in mid-1997. The steady rise in prices which had ensured a sales bonanza since 1993/4 was suddenly reversed, but too late for supply potential to be brought into line ...”⁵⁰

⁴⁵ Staff memorandum (EC-K-253) dated June 23, 1987, p. 9.

⁴⁶ Staff Report of June 19, 1987, pp. A-65 and A-66.

⁴⁷ Staff memorandum (EC-K-253) dated June 23, 1987, p. 4.

⁴⁸ According to Agrium, the period of strong urea prices resulted in many countries constructing additional nitrogen capacity available for urea production. *Response of Agrium*, p. 5. Data submitted by the Ad Hoc Committee shows a price decline of 39 percent for U.S. prilled urea (Gulf port), 38 percent for U.S. granular urea (Gulf port), 42 percent (on a f.o.b. basis) in the Caribbean price, 53 percent (on a f.o.b. basis) in the Black Sea price, and 51 percent (on a f.o.b. basis) in the Middle East price from 1996 to 1998. *Response of the Ad Hoc Committee*, exhibit 11.

⁴⁹ The major expansion of solid urea capacity in the United States was the CF Industries increase mentioned earlier.

⁵⁰ “Nitrogen in Crisis—Should We Blame the Russians?,” *Fertilizer International*, No. 369 Mar./Apr. 1999, p. 27.

Table I-4
Solid urea: U.S. production (less U.S. exports), U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1984-86 and 1996-98¹

Item	1984	1985	1986	1996	1997	1998
Quantity (1,000 short tons)						
U.S. production less U.S. exports	3,755	3,341	3,374	3,882 ¹	3,717 ¹	4,830 ¹
U.S. imports:						
Romania	233	133	136	0	0	0
USSR/FSU	418	455	843	12	0	(³)
Subtotal subject sources	651	588	979	12	0	(³)
Canada	880	771	1,189	1,543	2,017	1,932
Other sources	509	609	1,124	1,224	735	1,675
Total imports	2,040	1,968	3,292	2,779	2,752	3,607
Apparent U.S. consumption	5,795	5,309	6,666	6,661	6,469	8,437
Share of consumption (percent)						
U.S. production less U.S. exports	64.8	62.9	50.6	58.3	57.5	57.2
U.S. imports:						
Romania	4.0	2.5	2.0	-	-	-
USSR/FSU	7.2	8.6	12.6	0.2	-	-
Subtotal subject sources	11.2	11.1	14.7	0.2	-	-
Canada	15.2	14.5	17.8	23.2	31.2	22.9
Other sources	8.9	11.5	16.9	18.4	11.4	19.9
Total imports	35.2	37.1	49.4	41.7	42.5	42.8

¹ Also adjusted for inventory changes.

Source: *Staff Report of June 19, 1987*, p. A-62 for 1984-86 data (of which U.S. production data were from questionnaires and export and import data were official Commerce statistics, except for Romanian imports which were from questionnaires); 1996-98 imports are from (corrected) official Commerce statistics; and 1996-98 U.S. production less exports are from the *Response of the Ad Hoc Committee*, exhibit 3 (which presents data from the *Census Current Industrial Reports (Fertilizers)*, Report M28B, adjusted using official Commerce export statistics).

In addition to the closing of the Chinese urea market, other barriers to trade include an outstanding antidumping order against Russian urea imports into the EU that went into effect in 1995.⁵¹ Agrium reports that “{w}hile this order is set to expire in January 2000, the European Fertilizer Manufacturers Association, the petitioner in that investigation, has announced that it ‘will continue to challenge any unfair trade practices harming the European fertilizer industry.’”⁵² Also, on December 14, 1998, the Mexican government instituted an antidumping investigation against urea from Russia. According to the Ad Hoc Committee, this proceeding has not yet resulted in an antidumping order.⁵³

The Urea Industries in the Subject Countries

The current uncertainties in the world urea market are made worse by the economic situation in the FSU. With the political division of the USSR, market analysts had anticipated that a “rational cost structure” would develop and that the “output and export volumes of urea would be brought into line with prevailing prices.” However, any progress made from about 1991 to 1996 has been erased by the continuing disintegration of the FSU economies and currencies. Industry analysts describe the Russian agricultural situation as poor, with a large decrease in cereal production and consequent lowered domestic demand for nitrogen fertilizers, including urea. Further, the anticipated rationalization of FSU urea production capacity did not occur; old plants have not been closed down. Analysts state that “{t}he global industry is thus seriously distorted as many Russian and Ukrainian export plants remain insulated from conventional market influences.”⁵⁴ According to Agrium, production costs of the subject products have been reduced substantially through reduced major input costs for natural gas and through currency devaluation.⁵⁵ In their *Response*, they include a summary of the FSU fertilizer situation prepared by Fertecon which states: “Clearly in many cases, current prices are approaching cash costs and, for some producers, prices are below them. ... Costs in the FSU have fallen substantially in 1998, especially in Russia, and it is now clear that many producers are opposed to closure, either preferring to operate below cash costs, hoping for an improvement, or ignoring costs altogether.”⁵⁶ The Ad Hoc Committee states that urea exported from the subject countries has continued to be among the lowest priced product in the world (and has been exported into international markets in substantial quantities).⁵⁷

⁵¹ *Response of the Ad Hoc Committee*, p. 26.

⁵² *Response of Agrium*, p. 12.

⁵³ *Response of the Ad Hoc Committee*, p. 40.

⁵⁴ “Nitrogen in Crisis—Should We Blame the Russians?,” *Fertilizer International*, No. 369 Mar./Apr. 1999, p. 30.

⁵⁵ *Response of Agrium*, pp. 5-6. The largest single cash cost in producing urea is natural gas. The Commission’s section 332 investigation on the effects of the antidumping orders concluded that “{t}he ability to compete in world nitrogenous fertilizer markets ... depends mainly on the relative price of natural gas.” *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements*, USITC Pub. 2900, June 1995, p. 11-3.

⁵⁶ *Response of Agrium*, attachment G.

⁵⁷ *Response of the Ad Hoc Committee*, p. 5. Industry analysts point out that “{t}his is the only region in the world where fertilizer exports exceed domestic consumption; Russia, Belarus, and the Ukraine are the largest exporting countries.” IFDC, *Former Soviet Union Fertilizer Situation*, Feb. 1999 (Summary, pp. 1-3).

Table I-5 and table I-6 provide information on the production and shipment of urea in Romania and the FSU, respectively, for the current period (1996-98) and for that examined during the original investigations (1984-86). (Data for individual subject FSU sources are presented later in this report.)

At the time of the original investigations, Romania was a NME with state-controlled urea production. According to the Government of Romania, the Romanian urea industry is now in the process of restructuring and privatization; the respondents to the original investigations “are either no longer in existence or no longer involved in the production and exportation of urea.”⁵⁸ During 1984-86, the Romanian urea industry consisted of seven production facilities with a total annual rated production capacity of approximately 3.2 million short tons for all forms of urea. Since then, the 463,000 short ton rated facility at Arad has been closed, and the 331,000 short ton rated facility at Craiova is in the process of being liquidated. Further, 2 of the 6 plants remaining “open” in 1998 made no product and actual 1998 production totaled only 121,903 metric tons.⁵⁹ As shown in table I-5, during 1984-86 Romania’s capacity utilization ratios for its urea production facilities were above 90 percent; however, capacity utilization fell to 63 percent in 1996, then declined further to a negligible 4 percent as production plummeted in 1997 and 1998. Industry analysts state that the domestic agricultural sector in Eastern Europe faces many of the same problems as those in the FSU, with resulting reduced demand for fertilizer and production.⁶⁰ In 1986, Romania exported 43 percent of its production; in 1996, the ratio of exports to production was 88 percent. The total quantity of exports fell sharply from 1.5 million short tons in 1996 to 55,000 short tons in 1998.

The Government of Romania maintains that “{i}n the interim {since the original investigations}, the Romanian industry has maintained and developed a stable position in non-U.S. markets, and there are no major incentives to return to the United States with large, steady volumes. At most, reentry would consist of sales made on a spot basis during periods in which increased demand raises prices to acceptable levels.” Further, “{c}onsiderable additional investment remains necessary to bring the industry to a reasonably healthy and competitive condition. In short, it will be some time before the industry will be in a position to even contemplate participating in U.S. markets at a significant level.”⁶¹

Capacity utilization in urea plants located in the FSU has also fallen recently (from 74 percent in 1996 to 54 percent in 1998) as production declined (table I-6). Production in 1998 was 70 percent of the 1985 level; however, current capacity is comparable to that in place during the period of the original investigation. A much greater percentage of the urea produced in the FSU is now exported than during the period covered by the original investigations (87 percent in 1998 compared with 39 percent in 1985). But total exports are down following the decision of the Chinese to purchase less urea on the world market. Exports from the FSU to China decreased sharply from 1996 to 1998, although they were partially offset by increased exports to other countries. Agrium states that “{t}he shift of FSU product among various export markets shows its ability to shift patterns of export to exploit different market opportunities. As indicated on Attachment H {of its *Response*}, FSU urea exports quickly shifted from

⁵⁸ Specifically, Chimica, the state enterprise responsible for urea production and exports no longer exists. “Its assets and operations related to urea and other hydrocarbon-based products have been transferred to newly-formed companies that have been established and structured to facilitate privatization of a large complex of formerly state-operated enterprises.” *Response* of the Government of Romania, pp. 3 and 6.

⁵⁹ *Response* of the Government of Romania, p. 5, citing figures from the Romanian Ministry of Industry and Trade.

⁶⁰ IFDC, *Former Soviet Union Fertilizer Situation*, Feb. 1999 (Summary, pp. 1-3).

⁶¹ *Response* of the Government of Romania, pp. 3 and 6.

Table I-5
Urea:¹ Romania's capacity and shipments, 1984-86 and 1996-98

Item	1984	1985	1986	1996	1997	1998
<i>Quantity (1,000 short tons, except as noted)</i>						
Production	3,170	3,151	3,179	1,663	710	110 ²
Capacity	3,427	3,427	3,427	2,649	2,649	2,649
Capacity utilization (<i>percent</i>)	92.5	91.9	92.8	62.8	26.8	4.2
Shipments:						
Home market	1,530	1,783	1,825	(³)	(³)	(³)
Exports:						
United States	289	215	61 ⁴	0	2	(³)
China	698	425	629	134	0	(³)
Other	652	728	664	1,322	615	(³)
Total exports	1,639	1,368	1,354	1,456	617	55
Total shipments	3,169	3,151	3,179	(³)	(³)	(³)
Ratio of exports to production (<i>percent</i>)	51.7	43.4	42.6	87.6	86.9	50.0

¹ These data may include urea used in the production of UAN solutions. However, the amount of such production is relatively small compared to solid urea output and does not account for a significant volume of total urea production.

² The Romanian Government, citing the Romanian Ministry of Industry and Trade, provided a figure of 134,375 short tons. *Response of the Government of Romania*, p. 5.

³ Not available.

⁴ Exports of solid urea to the United States ceased prior to the initiation of the original investigations, with import volumes recorded in 1986 resulting from sales contracts entered into in 1985. *Response of the Government of Romania*, p. 2.

Note.--***.

Source: *Staff Report of June 19, 1987*, p. A-52 for 1984-86 data (which was provided by counsel for Romanian respondents); and *Response of the Ad Hoc Committee*, exhibit 12, for 1996-98 data (which was obtained through Fertecon).

Table I-6						
Urea:¹ FSU capacity and shipments, 1984-86 and 1996-98						
Item	1984	1985	1986	1996	1997	1998
Quantity (1,000 short tons, except as noted)						
Production	9,647	9,788	(2)	9,224	7,731	6,854
Capacity	11,885	12,740	13,877	12,502	12,273	12,694
Capacity utilization (percent)	81.2	76.8	(2)	73.8	63.0	54.0
Shipments:						
Home market	6,048	5,993	(2)	(3)	(3)	(3)
Exports:						
United States	418	455	843	33	47	7
China	(2)	(2)	(2)	5,027	2,754	223
Other	3,204	3,384	2,431	2,380	3,497	5,717
Total exports	3,622	3,839	3,274	7,440	6,298	5,946
Total shipments	9,670	9,832	(2)	(2)	(2)	(2)
Ratio of exports to production (percent)	37.5	39.2	(2)	80.7	81.5	86.7
<p>¹ These data may include urea used in the production of UAN solutions. However, the amount of such production is relatively small compared to solid urea output and does not account for a significant volume of total urea production. Further, the data for 1996-98 (in short tons) is the same as that presented in table I-7 (in metric tons).</p> <p>² Not available.</p> <p>³ Data on urea consumption within the FSU are no longer published.</p> <p>Note.—Data for the individual subject FSU sources are presented in table I-7.</p> <p>Source: <i>Staff Report of June 19, 1987</i>, p. A-53 for 1984-86 data (which was compiled from <i>Fertilizer Economic Studies Limited "Quarterly Urea Reports"</i> and from official Commerce statistics); and <i>Response of the Ad Hoc Committee</i>, exhibit 12, for 1996-98 data (which was obtained through Fertecon).</p>						

the closed U.S. market to China, and then from China to other markets, predominantly Latin America, after the Chinese market was closed."⁶²

Table I-7 provides information on the urea industries within each of the individual FSU countries. The Ad Hoc Committee notes out that some of the subject countries are expanding supply and

⁶² *Response of Agrium*, p. 10.

Table I-7
Urea:¹ FSU capacity, production, capacity utilization, and selected shipments, by source, 1996-99

Item	1996	1997	1998	1999 ²
<i>Quantity (1,000 metric tons, except as noted)</i>				
<p>Armenia (no urea capacity or production since the earthquake of 1988). Although Armenian plants have been idle for some time, published reports indicate that Armenia intends to re-activate its solid urea facilities and begin producing solid urea later this year. Reportedly, the privatization was accomplished with the assistance of Merrill Lynch International, and production is set to begin in 1999.</p>				
<p>Belarus (1 manufacturer, Grodno PO Azot). Unlike Russia and Ukraine, Belorussian producers rely more heavily on domestic demand to sell urea. However, that demand has diminished since 1996, resulting in decreased capacity utilization in 1997 and 1998.</p>				
Production	677	476	495	620
Capacity	1,026	1,026	1,026	1,026
Capacity utilization (<i>percent</i>)	66.0	46.4	48.2	60.4
Exports	91	267	280	100
<p>Estonia (1 manufacturer, Nitrofert JSC). Like Russia and Ukraine, Estonian producers rely heavily on exports to sell urea.</p>				
Production	112	91	100	110
Capacity	218	218	218	218
Capacity utilization (<i>percent</i>)	51.4	41.7	45.9	50.5
Exports	102	74	80	90
<p>Lithuania (1 manufacturer, JSC Achema). Although Lithuania's traditional export market is western Europe, there is no evidence that Lithuanian producers maintain long term contracts, leaving open the possibility of the direction of exports to the United States.</p>				
Production	310	263	255	255
Capacity	250	250	250	250
Capacity utilization (<i>percent</i>)	124.0	105.2	102.0	102.0
Exports	221	165	150	145
<p>Russia (11 manufacturing sites, at Angarsk, Berezniki, Cherepovets, Dzerzhinsk, Kemerovo, Nevinnomysk, Novgorod, Novomoskovsk, Perm, Salavat, and Togliatti). Decline in capacity utilization due to the institution of import barriers in some of Russia's traditional markets, primarily China and the EU.</p>				
Production	4,163	3,011	2,903	2,950
Capacity	5,698	5,490	5,872	5,872
Capacity utilization (<i>percent</i>)	73.1	54.8	49.4	50.2
Exports	3,688	2,626	2,880	2,500
<i>Continued.</i>				

Table I-7—Continued**Urea:¹ FSU capacity, production, capacity utilization, and selected shipments, by source, 1996-99**

Item	1996	1997	1998	1999 ²
<i>Quantity (1,000 metric tons, except as noted)</i>				
Tajikistan (1 plant, Vakhsh Nitrogen Mineral Fert Plant, which has operated intermittently since the early 1990s). Current capacity utilization is very low; production is now being sold domestically.				
Production	9	40	65	65
Capacity	200	200	200	200
Capacity utilization (<i>percent</i>)	4.5	20.0	32.5	32.5
Exports	0	0	0	0
Turkmenistan (2 current urea projects, one of which is under construction). It is expected that 330,000 metric tons of capacity will exist by the end of 1999, with 45 percent to 60 percent of that devoted to export.				
Production	0	0	0	165
Capacity	0	0	0	330
Capacity utilization (<i>percent</i>)	-	-	-	50.0
Exports	0	0	0	100
Ukraine (5 manufacturers, JSC Azot, JSC Dniepro Azot, JSC Stirol, Manufacturing Enterprise Azot, and Odessa Port Plant). Decline in capacity utilization due to the closure of China to Ukrainian imports. The Ukrainian urea industry exports most of its production.				
Production	2,690	2,681	2,050	2,150
Capacity	3,350	3,350	3,350	3,350
Capacity utilization (<i>percent</i>)	80.3	80.0	61.2	64.2
Exports	2,485	2,543	1,989	1,650
Uzbekistan (2 manufacturers, Chirchik PO and Fergana PO). The Uzbek government has hired a western firm to revamp its existing plants and build new capacity. China is Uzbekistan's primary export market.				
Production	408	452	350	350
Capacity	600	600	600	600
Capacity utilization (<i>percent</i>)	68.0	75.3	58.3	58.3
Exports	162	38	15	15
<i>Continued.</i>				

Table I-7—Continued**Urea:¹ FSU capacity, production, capacity utilization, and selected shipments, by source, 1996-99**

Item	1996	1997	1998	1999 ²
<i>Quantity (1,000 metric tons, except as noted)</i>				
FSU				
Production	8,368	7,013	6,218	6,665
Capacity	11,342	11,134	11,516	11,846
Capacity utilization (<i>percent</i>)	73.8	63.0	54.0	56.3
Exports:				
United States	30	43	6	(²)
China	4,560	2,498	202	(²)
Western Europe	472	491	1,117	(²)
Latin America	493	1,235	2,125	(²)
All others	1,194	1,446	1,944	(²)
Total	6,749	5,713	5,394	4,600
Ratio of exports to production (<i>percent</i>)	80.7	81.5	86.7	69.0

¹ These data may include urea used in the production of UAN solutions. However, the amount of such production is relatively small compared to solid urea output and does not account for a significant volume of total urea production.

² Projected.

Note.—Data on urea consumption within the FSU are no longer published.

Source: *Response* of the Ad Hoc Committee, pp. 37-51 and exhibit 12 (data obtained through Fertecon). Since there is little public information available concerning urea capacity and production for each of the subject countries, the Ad Hoc Committee commissioned Fertecon, a fertilizer industry consultant, to compile relevant data on the urea industry in the subject countries. *Response* of the Ad Hoc Committee, p. 25.

building new plants, even though solid urea is not domestically consumed in large amounts in most of those countries.⁶³ However, table I-7 shows only a minor net increase in capacity, principally for Turkmenistan, which will bring on a new 330,000 ton plant in 1999.

⁶³ *Response* of the Ad Hoc Committee, p. 36.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

**[Investigations Nos. 731-TA-339 (Review)
and 731-TA-340-A through 340-I (Review)]**

**Solid Urea From Armenia, Belarus,
Estonia, Lithuania, Romania, Russia,
Tajikistan, Turkmenistan, Ukraine, and
Uzbekistan¹**

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of expedited five-
year reviews concerning the
antidumping duty orders on solid urea
from Armenia, Belarus, Estonia,
Lithuania, Romania, Russia, Tajikistan,
Turkmenistan, Ukraine, and Uzbekistan.

¹ The investigation numbers are as follows:
Romania is 731-TA-339 (Review) and Armenia,
Belarus, Estonia, Lithuania, Russia, Tajikistan,
Turkmenistan, Ukraine, and Uzbekistan are,
respectively, 731-TA-340-A through 340-I
(Review).

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—On June 3, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 10020, March 1, 1999) of the subject five-year reviews were adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.² Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.³

² Commissioner Hillman dissenting. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

³ Commissioner Hillman dissenting.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on August 2, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,⁴ and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before August 5, 1999, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 5, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the reviews period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

⁴ The Commission has found responses submitted by Agrium US, Inc.; CF Industries, Inc.; Coastal Chem, Inc.; Mississippi Chemical Corp.; PCS Nitrogen, Inc.; Terra Industries, Inc.; the Ad Hoc Committee of Domestic Nitrogen Producers; and the Government of Romania to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-14909 Filed 6-10-99; 8:45 am]

BILLING CODE 7020-02-P

reviews from June 29, 1999 to August 30, 1999 (64 FR 36333, July 6, 1999). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: the staff report will be placed in the public record on September 28, 1999; the deadline for interested party comments (which may not contain new factual information) is October 1, 1999; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the reviews by any person that is neither a party to the five-year reviews nor an interested party is October 1, 1999.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-18148 Filed 7-16-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-339 (Review)
and 731-TA-340-A through 340-I (Review)]

**Solid Urea From Armenia, Belarus,
Estonia, Lithuania, Romania, Russia,
Tajikistan, Turkmenistan, Ukraine, and
Uzbekistan**

AGENCY: United States International
Trade Commission.

ACTION: Revised schedule for the subject
investigation.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT:
Debra Baker (202-205-3180), Office of
Investigations, U.S. International Trade
Commission, 500 E Street SW,
Washington, DC 20436. Hearing-
impaired persons can obtain
information on this matter by contacting
the Commission's TDD terminal on 202-
205-1810. Persons with mobility
impairments who will need special
assistance in gaining access to the
Commission should contact the Office
of the Secretary at 202-205-2000.
General information concerning the
Commission may also be obtained by
accessing its internet server ([http://
www.usitc.gov](http://www.usitc.gov)).

SUPPLEMENTARY INFORMATION: On June 3,
1999, the Commission established a
schedule for the conduct of the
expedited five-year reviews of the
subject investigations (64 FR 31610,
June 11, 1999). Subsequently, the
Department of Commerce extended the
date for its final results in the expedited

domestic interested parties and inadequate responses from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-5050 or (202) 482-1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to these antidumping duty orders is solid urea. This merchandise was previously subject to an antidumping duty order on solid urea from the Union of Soviet Socialist Republics (U.S.S.R.). However, with the dissolution of the U.S.S.R., the order was subsequently transferred to all 15 republics (57 FR 28828, June 29, 1992). This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States, item number 3201.10.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

On May 26, 1987, the Department issued a final determination of sales at less than fair value with respect to

DEPARTMENT OF COMMERCE

International Trade Administration

[A-831-801; A-822-801; A-447-801; A-451-801; A-821-801; A-823-801; A-842-801; A-843-801; A-844-801]

Final Results of Expedited Sunset Reviews: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan

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

ACTION: Notice of final results of expedited sunset reviews: solid urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan.

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan (64 FR 9970) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of the notices of intent to participate and adequate substantive comments filed on behalf of

imports of solid urea from the U.S.S.R.¹ In the final determination and subsequent antidumping duty order, the Department applied three weighted-average dumping margins: 68.26 percent for Soyupromexport (SPE), 53.23 percent for Philipp Brothers, Inc., and an all others rate of 64.93 percent.²

On December 1991, the U.S.S.R. divided into fifteen independent states. On June 29, 1992, the Department transferred the antidumping duty orders on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States and announced a change in the names and case numbers of the antidumping duty orders. The Department announced a country-wide rate of 68.26 percent for each new state and stated that the substance of each new order would not change from the original order and its amended administrative review (see 54 FR 39219).³ The Department conducted one administrative review prior to the division of the U.S.S.R.,⁴ and one administrative review after the division of the U.S.S.R.⁵

These reviews cover all producers and exporters of solid urea from Armenia, Belarus, Estonia, Lithuania, Russia, the Ukraine, Tajikistan, Turkmenistan, and Uzbekistan (collectively, "the Former Soviet States").

Background

On March 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on solid urea from the former Soviet States ("FSS") (64 FR 9970), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate for each of these reviews on behalf of the Ad Hoc Committee of Domestic Nitrogen Producers (the "Committee") and Agrium U.S. Inc. ("Agrium") (collectively the "domestic parties") on March 16, 1999, within the deadline

specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.

We received complete substantive responses from both the Committee and Agrium on March 30, 1999, and March 31, 1999, respectively, for each of these cases, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In each of its substantive responses, the Committee claimed interested-party status under section 771(9)(C) of the Act as a coalition of domestic producers of nitrogen fertilizers who produce domestic like product.⁶ In each of its responses, Agrium claimed interested-party status under section 771(9)(C) of the Act and as a manufacturer, producer, or wholesaler in the United States of solid urea. Additionally, both the Committee and Agrium were involved in the original investigation and in the sole administrative review that the Department conducted of these orders. We did not receive a complete substantive response from any respondent interested party in any of these proceedings. We received an incomplete and, therefore, inadequate response from the Embassy of Belarus on April 8, 1999. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department is conducting expedited, 120-day, reviews of these orders.

On July 6, 1999, the Department determined that the sunset review of the antidumping duty orders on urea from the FSS are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). See section 751(c)(6)(C) of the Act. Therefore, the Department extended the time limit for completion of the final results of these reviews until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.⁷

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the

Department shall consider 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 the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. As noted above, with the exception of Belarus, in these instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset*

¹ See *Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value*, 52 FR 19557 (May 26, 1987).

² See *Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value*, 52 FR 19557 (May 26, 1987).

³ See *Solid Urea From the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Orders on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 FR 28828-02 (June 29, 1992).

⁴ See *Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics*, 54 FR 33262 (August 14, 1989), and *Amendment to Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics*, 54 FR 39219 (September 25, 1989).

⁵ See *Final Results of Antidumping Duty Administrative Review; Solid Urea From Estonia*, 59 FR 25606 (May 17, 1994).

⁶ The Ad Hoc Committee of Domestic Nitrogen Producers is comprised of the following members: CF Industries, Inc., Coastal Chem. Inc., Mississippi Chemical Corporation, PCS Nitrogen, Inc., and Terra Industries, Inc. J.R. Stimplot Co. is also a member of the Ad Hoc Committee, but is not a producer of solid urea and, therefore, is not participating in these reviews.

⁷ *Extension of Time Limit for Final Results of Five-Year Reviews*, 54 FR 36333 (July 6, 1999).

Regulations, this constitutes waivers of participation.

In their respective substantive responses, both the Committee and Agrium argue that revocation of the antidumping duty orders on solid urea would be likely to lead to continuation or recurrence of dumping of solid urea from the FSS. (See the Substantive Response of the Committee at 6 and the Substantive Response of Agrium at 3.) With respect to whether dumping margins continued in existence after the issuance of the order, the domestic parties argue that dumping margins above *de minimis* continue to exist for all producers from all nine countries. (See Substantive Response of the Committee at 10 and the Substantive Response of Agrium at 5.) The Committee also states that a dumping margin of 68.26 percent remains in existence for imports of solid urea from all nine countries and that, as such, dumping is likely to continue if the orders were revoked.

With respect to whether imports of the subject merchandise ceased after the issuance of the original order, the domestic parties argue that, following the imposition of the order, imports of solid urea, first from the U.S.S.R. and, subsequently, from the FSS, have declined and have ceased with the exception of one or two shipments in very small volumes from Russia and Ukraine. The Committee argues that, prior to the imposition of the order in 1987, imports of solid urea from the U.S.S.R. ranged from 418,000 short tons to 843,000 short tons. (See Substantive Response of the Committee at 8.) In 1988, the year following the imposition of the order, there were no imports of solid urea from the U.S.S.R. Following the break-up of the U.S.S.R. and subsequent transfer of the order, the Committee argues that there have been no shipments at all from Armenia, Estonia, Tajikistan, Turkmenistan, and Uzbekistan. With respect to Belarus, Lithuania, Russia, and the Ukraine, however, the Committee argues that it "believes that *no* * * * urea has been imported into the United States since 1987." (See Substantive Response of the Committee at 8.)

Regarding Russia, the Committee argues that, although U.S. Census data report imports of solid urea from Russia in 1995, 1996, and 1998, it is unlikely that any of these shipments were actually shipments of urea. According to the Committee, shipments of Russian urea in 1998 were analyzed by the Department and found to have been incorrectly classified by the U.S. Census Bureau as imports of solid urea when, in fact, the majority of the shipments

were of either ammonium nitrate or urea-ammonium nitrate, neither of which is subject to this order. The result is that, of the 56,638 short tons originally classified as solid urea, only 24 short tons remain classified as solid urea, with the rest of the shipment being classified as a separate product. (See the Substantive Response of the Committee at Exhibit 2.)

With regard to Belarusian, Lithuanian, and Ukrainian imports of solid urea, the Committee raises the same issue. The Committee asserts, in its substantive responses, that it believes that the other shipments from Russia in 1995 and 1996, as well as any other shipments from Belarus, Lithuania, and Ukraine, are also incorrectly classified and, therefore, argues that the Department can correctly determine that imports have ceased since the imposition of the orders. (See Substantive Response of the Committee at 9.) Barring that decision, however, the Committee argues that imports have declined dramatically or have ceased and that, as such, the Department must find that there is a likelihood of continuation or recurrence of dumping if these orders were revoked.

Agrium also addressed the issue of whether imports of solid urea declined significantly or ceased after the issuance of the order. Agrium argues that in 1986, the year immediately preceding the issuance of the order, imports of Soviet solid urea totaled 843,374 short tons. In the year immediately following imposition of the order, however, Agrium argues that there was a complete cessation of imports and that, from 1988 (the year of the order) until 1994, there were commercially insignificant quantities, if there were any imports of urea, from the FSS. From 1995 to 1998, Agrium argues that, when there were imports from the FSS, the import volumes were quite small, measuring only between 2 and 9 percent of import volumes from the U.S.S.R. prior to the imposition of the order. (See Substantive Response of Agrium at 4.) Therefore, Agrium argues that, because import volumes have virtually ceased since the imposition of the order, the Department should find that there is a likelihood of continuation or recurrence of dumping if these orders were revoked.

In conclusion, the domestic parties argue that there is a likelihood of continuation or recurrence of dumping of solid urea from the FSS if these orders were revoked. The domestic parties argue that the continued existence of dumping margins above a *de minimis* level and that the virtual cessation of imports of solid urea after

the imposition of the order, first from the U.S.S.R. and later from these individual countries, is highly probative of the likelihood of continuation or recurrence of dumping.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63-64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above a *de minimis* level have existed and continue to exist for imports of solid urea from all producers/exporters from each of the FSS.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by the domestic parties, specifically by the Committee, in each of these cases, and confirmed by the Department using import statistics from U.S. Census Bureau IM146s, indicate that imports of the subject merchandise from the U.S.S.R. ceased following the imposition of the order. Following the break-up of the U.S.S.R., the imports from Armenia, Estonia, Tajikistan, Turkmenistan, and Uzbekistan have remained at zero and imports from the other FSS have been at very low volumes. While the Committee has argued that the Department should find that there has been a complete cessation of imports of subject merchandise, it is clear that, even with the incorrectly classified merchandise, imports have continued from some FSS, albeit at significantly lower levels than the pre-imposition levels.

Based on this analysis, the Department finds that the almost complete cessation of imports after the issuance of the orders coupled with the existence of dumping margins after the issuance of these orders is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise for all producers/exporters. Therefore, given the almost complete cessation of imports, that margins above *de minimis* levels have continued over the life of the orders, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if these orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the company-specific margin from the investigation for each company. Further for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determination. (See section II.B.2 and 3 of the *Sunset Policy Bulletin*.)

With respect to the magnitude of the margin likely to prevail if the antidumping duty orders were revoked, the domestic parties argue that the Department should report to the Commission the margin from the original investigation of 68.26 percent. This rate is the weighted-average dumping margin found in the investigation for the Soviet exporter, and it subsequently became the uniform cash deposit rate transferred to the fifteen independent states. The domestic parties assert that the 68.26 percent rate continues to reflect the behavior of exporters without the discipline of the antidumping duty orders.

The Department agrees with the domestic parties as to the magnitude of the margin likely to prevail should the antidumping duty orders on solid urea be revoked. While dumping margins from the original investigation were determined by the Department, prior to the U.S.S.R.'s disbanding, the dumping rate was officially transferred. This rate continues to be applied to each of the independent states.

Therefore, consistent with the Department's *Sunset Policy Bulletin*, we determine that the 68.26 percent rate that we calculated in the investigation, and subsequently transferred after the U.S.S.R. ceased to exist, best reflects the behavior of urea producers and exporters without the discipline of the order in place with the exception of imports from Phillipp Brothers, Ltd., and Phillipp Brothers, Inc., the Department finds that the dumping margin of 53.23 percent, assigned in the original investigation, is the rate likely to prevail if the order were revoked.

The Department will report to the Commission the rates at the level indicated in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter/Importer	Margin (percent)
Soyuzpromexport (SPE)	68.26
Phillipp Brothers, Ltd. & Phillipp Brothers, Inc.	53.23
Country-wide rate	*68.26

* This rate is the new rate that applies to all former Soviet Union countries subject to these orders.

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this five-year ("sunset") review and notice in accordance with sections 751(c), 752 and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-23049 Filed 9-2-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-485-601]

Final Result of Expedited Sunset Review: Solid Urea from Romania

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

ACTION: Notice of Final Result of Expedited Sunset Review on Solid Urea from Romania.

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on solid urea from Romania pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties

and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT:

Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482-5050 or (202) 482-1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

This review was conducted pursuant to section 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to the antidumping duty order is solid urea from Romania. Solid urea is a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. During the original investigation the merchandise was classified under item number 480.3000 of the Tariff Schedule of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under item number 3102.10.00 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and customs purposes. The written description of the scope remains dispositive.

History of the Order

On May 26, 1987, the Department issued its final determination that solid urea from Romania was being sold in the United States at less-than-fair-value. The weighted-average dumping margin

was 90.71 percent.¹ On July 14, 1987, the Department's antidumping duty order was published.²

The Department has conducted one administrative review since the issuance of this order, covering the period January 1987 through June 1988, and found no shipments.³ The order remains in effect for all Romanian producers and exporters of the subject merchandise. We note that, to date, the Department has not issued any duty absorption findings in this case.

Background

On March 1, 1999, the Department initiated a sunset review of the antidumping order on solid urea from Romania pursuant to section 751(c) of the Act. On March 16, 1999, the Department received a Notice of Intent to Participate on behalf of Agrium US, Inc. ("Agrium") and from the members of the Ad Hoc Committee of Domestic Nitrogen Producers⁴ (the "Committee"), collectively the ("domestic parties"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received complete substantive responses from the domestic parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The domestic parties claimed interested party status under section 771(9)(C) of the Act as United States producers, manufacturers, or wholesalers of the domestic like product. The Department did not receive a response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. 351.218(e)(1)(ii)(C)(2)), we are conducting an expedited sunset review on this order.

On July 6, 1999, the Department determined that the sunset review of the antidumping duty order on solid urea from Romania is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a

review of a transition order (i.e., an order in effect on January 1, 1995). See section 751(c)(6)(C) of the Act. As a result of this determination, the Department extended the time limit for completion of the final results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.⁵

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would likely lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider 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 the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt.1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2 of the *Sunset Policy Bulletin*). In addition, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above

de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3 of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interest party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive responses the domestic parties assert that revocation of the antidumping duty order of solid urea from Romania would likely result in the continuation or resumption of dumping. The domestic parties argue that imports of the subject merchandise ceased after the issuance of the order and provide import statistics to support their claim.

The domestic parties maintain that the Department should conclude that because imports of Romanian urea into the United States ceased after the issuance of the order, Romanian producers and exporters cannot sell solid urea in the U.S. markets without dumping.

In addition, the domestic parties argue that the dumping margin of 90.71 percent has remained unchanged since the investigation. The domestic parties assert that no Romanian urea producer or exporter has ever sought a review to obtain a reduced margin. Therefore, the domestic parties assert, the magnitude and longevity of the original antidumping margin indicates that Romania urea cannot be sold in the U.S. market at non-dumped prices.

For the reasons stated above, the domestic parties conclude that if the order on solid urea from Romania be revoked, there is likelihood of continuation and recurrence of dumping.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63-64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. Further, if imports ceased after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without

¹ See *Urea From the Socialist Republic of Romania; Final Determination of Sales at Less-Than-Fair-Value*, 52 FR 19557 (May 26, 1987).

² See *Antidumping Duty Order; Urea From the Socialist Republic of Romania*, 52 FR 26367 (July 14, 1987).

³ See *Final Results of Antidumping Duty Administrative Review; Solid Urea From Romania*, 54 FR 39558 (September 27, 1989).

⁴ The Committee maintains that it is comprised of a coalition of U.S. producers of nitrogen fertilizers and identifies its current members: CF Industries, Inc., Costal Chemical, Inc., Mississippi Chemical Corp., PCS Nitrogen, Inc., and Terra Industries, Inc. The Committee notes that J.R. Simplot Co. is a Committee member, but not producer of solid urea. See Substantive Response of the Committee, March 30, 1999, at 1 and 2.

⁵ See *Extension of Time Limit for Final Results of Five-Year Reviews*, 54 FR 36333 (July 6, 1999).

dumping and that to reenter the U.S market, they would have to resume dumping. In this case we find that imports ceased after the issuance of the order and dumping margins continued to exist. Therefore, given that imports ceased, dumping margins continue to exist, respondent interested parties waived their right to participate in this review, and absent argument and evidence to the contrary, the Department determines that dumping of solid urea from Romania is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the country-wide rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy permit the use of a more recently calculated margin, when appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

With respect to the magnitude of the margin likely to prevail if the antidumping duty orders were revoked, the domestic parties argue that the Department should provide the Commission the dumping margin from the final results of the original investigation, 90.71 percent. The domestic parties assert that this margin is the only rate that has been calculated by the Department and it is the only rate that reflects the behavior of Romanian producers and exporters of urea without the discipline of the order.

The Department agrees with the domestic parties concerning the choice of the dumping margin to report to the Commission. In our final determination of sales at less-than-fair-value, we reported a weighted-average dumping margin of 90.71 percent for I.C.E. Chimica (the only company investigated) and for all others. Therefore, consistent with the Department's *Sunset Policy Bulletin* we determine that the original margin, is probative of the behavior of the Romanian producers and exporters of solid urea if the order were revoked. We will report to the Commission the rate from the original investigation contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturers/ Exporters	Margin (percent)
I.C.E. Chimica	90.71
All Others	90.71

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.

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APPENDIX B
STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Solid Urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, Inv. Nos. 731-TA-339 (Review), 731-TA-340-A through 340-I (Review)

On June 3, 1999, the Commission determined that it should proceed to expedited reviews in the subject five-year reviews pursuant to section 751(c)(3)(B) of the Act, 19 U.S.C. § 1675(c)(3)(B).¹ The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve the same domestic like product.²

With regard to each of the reviews, the Commission determined that the domestic interested party group response was adequate. In this regard, the Commission received an individual response from an association a majority of whose members are producers of the domestic like product. That response contained company specific data from five participating domestic producers who collectively account for the majority of domestic solid urea production. The Commission also received an individual response from a sixth domestic producer of the domestic like product.

The Commission determined that the respondent interested party group response in each review was inadequate. In the review regarding Romania, the Commission received an interested party response from the Government of Romania. The Commission found this response to be individually adequate. However, the Commission did not receive any responses from Romanian producers or exporters or U.S. importers, and nothing in the Government's response indicated that the Government would be able to provide the Commission with the type of information that would be gathered in a full review. Accordingly the Commission determined that the respondent interested party group response was inadequate in the review concerning Romania. The Commission did not receive a response from any respondent producers, importers or exporters of the subject merchandise, nor from any other respondent interested party, in any of the remaining reviews.

The Commission did not find any circumstances that would warrant conducting full reviews.³ The Commission therefore determined to conduct expedited reviews.

¹Commissioner Hillman dissenting.

²See 19 U.S.C. § 1675(c)(5)(D); 63 Fed. Reg. 29372, 29374 (May 29, 1998).

³Commissioner Hillman found that a full review was warranted in the investigation concerning Romania in view of the response of the Government of Romania. She credits the Government's statement that the recently privatized Romanian industry is in a state of transition that has left the Government as the only entity currently in a position to represent Romanian interests in this proceeding. She believes the Government's active participation in the adequacy phase of the review, including through the submission of some (albeit limited) industry data, and its expressed intention to participate in any full review, presents a sufficient basis to proceed to a full review. In light of her decision in the review concerning Romania, she further determined that the remaining urea investigations in this grouped set of reviews should be full reviews in order to promote administrative efficiency.

