

July 13, 2010

The Honorable Gary Locke
U.S. Secretary of Commerce
U.S. Department of Commerce
Import Administration, Room 1870
14th Street and Constitution Avenue, N.W.
Washington DC 20230
Emailed to kgriffis@doc.gov

Ambassador Ron Kirk
US Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington DC 20508

RE: US Department of Commerce Antidumping Administrative Review of Solid Urea from Russia (Inv. No. A-821-801), 7/1/08-6/30/09 Review Period

Dear Secretary Locke and Ambassador Kirk:

I am writing on behalf of the members of the Agricultural Retailers Association (ARA) about the US Department of Commerce's antidumping administrative review of solid urea from Russia (Inv. No. A-821-801), 7/1/08-6/30/09 Review Period.

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: seed, crop protection chemicals, fertilizer, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

The agriculture industry is heavily weather dependant; thus, to ensure a strong US food supply, farmers require large volumes of agriculture inputs during tight time spans in the planting season. Hence, it is necessary for the US agriculture industry to have a strong and steady supply of fertilizer available to ensure adequate supply and to avoid wild price swings in the market. Agricultural retailers support the United States' efforts to decrease barriers to trade by joining and adhering to the rules of the World Trade Organization (WTO).

In February 2007, the US officially stopped using "zeroing" in weighted average to weighted average comparisons in original investigations to comply with one part of a challenge by the European Union (EU) in the WTO. The EU challenge dealt with specific uses of "zeroing" in

original investigations and administrative reviews. However, the US has declined to stop using zeroing in the context of administrative reviews, like this antidumping review of solid urea from Russia. Zeroing tends to drive up overall antidumping margins because the Department of Commerce (Commerce) does not consider negative dumping margins in the analysis.

Although the practice of using zeroing has been rejected in the WTO and North America Free Trade Agreement (NAFTA), Commerce applied the zeroing methodology in its preliminary antidumping decision as to solid urea from Russia. Commerce should alternatively consider the actual amount of dumping (positive or negative) on each sale.¹

The NAFTA panel recently ruled that “zeroing” is illegal under the US antidumping statute, including in Commerce’s administrative reviews.² The NAFTA panel found that Commerce’s interpretation that US law allows for the use of zeroing was not a “reasonable” interpretation of the relevant statute because the U.S. is obligated under WTO rules, as illuminated by WTO dispute settlement rulings, to not use zeroing.

Both the Court of International Trade (CIT) and the U.S. Court of Appeals have found that US statute does not require the use of “zeroing”. Therefore, the administration is able to discontinue the use of “zeroing” without going through Congress.

The Administration signaled its intentions to comply with the WTO challenge of “zeroing” methodology by requesting the EU to delay “zeroing” retaliation. On May 11, 2010, US Trade Representative Ron Kirk asked that the EU Trade Commissioner Karel De Gucht hold off on retaliation in light of the fact that the US is in the process of figuring out how to comply with the adverse case findings solely through administrative action.³ Furthermore, the USTR General Counsel has committed to bring the United States into conformance with its WTO obligations and the WTO Antidumping Code and no longer zero in antidumping decisions.⁴

For these reasons, ARA asks that the Department of Commerce consider rejecting the use of zeroing in the antidumping review of urea from Russia in its final decision.

Thank you for your consideration of this matter.

Sincerely,

Carmen Haworth
Public Policy Counsel

¹ U.S. Department of Commerce (DOC), *Solid Urea From the Russian Federation*, 75 Fed. Reg. 19610 (April 15, 2010).

² See *In the Matter of Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of 2004/2005 Antidumping Review*, case no. USA-MEX-2007-1904-01 (April 15, 2010).

³ “EU to Delay Zeroing Retaliation to Give US Time to Comply with Case,” *World Trade Online*, June 29, 2010.

⁴ “US Giving Up The Fight On Zeroing,” *Washington Trade Daily*, March 29, 2010.