

Testimony
of the Ministry of Economic Development and Trade
of Ukraine in a full review of antidumping duty order on ammonium nitrate from
Ukraine conducted by the United States International Trade Commission

Good afternoon, ladies and gentlemen!

Let me introduce on behalf of the Ministry of Economic Development and Trade Of Ukraine the position of the Ukrainian side at the hearing in the framework of the five-year review of antidumping duty order on ammonium nitrate from Ukraine (hereinafter - Merchandise) to determine whether revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or recurrence of material injury of damage to U.S. producers in the future.

At the beginning of my testimony let me cite Section 3.7.of Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter - WTO Agreement) :

“definition of threat of material injury based on facts and not merely on assumptions, conjecture or remote possibility. It must be clearly foreseen possibility (and it should be imminent) changes in circumstances which would create a situation in which the dumping would cause injury. In determining the existence of a threat of material injury, the authorities, among other things, considering such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.”

Accordingly to Section 3.7. WTO Agreement it is assured that the revocation of the antidumping duty order on ammonium nitrate from Ukraine would not be likely to lead to continuation or recurrence of material injury of damage to U.S. producers in the future due

to significant changes in the U.S. industries competitive position and fundamental changes in the Ukrainian market of ammonium nitrate during the last five years.

That statement of the Ukrainian side is grounded on the following.

Both in primary investigation and in the First five-year review of antidumping order in relation to Merchandise the Commission in the reports paid regard to importance of component cost of natural gas in producing Merchandise, marking that natural gas is a feedstock for the production of ammonia which is a main component for producing Merchandise. In the analyses Commission marked that the cost of natural gas is made by approximately 70 - 80 percents of value of production of ammonia and 30 - 50 percents of production of Merchandise.

Furthermore, in its report on the results of the first five-year review, the Commission noted that "projected natural gas prices in the U.S. market will continue to be volatile and high, and, at that time," Ukrainian producers have access to natural gas lower and less volatile prices than U.S. producers during the period of review of the event. "

However, the current situation with the price of natural gas in Ukraine, and thus the cost of production of goods, compared to the U.S. market, has changed dramatically. Nowadays U.S. ammonium nitrate market is in more favorable conditions compared to the Ukrainian market.

Specifically such changes occurred:

Changes in the U.S. market.

Since 2009 in the U.S. there is a sharp drop in natural gas prices due to the new technologies of gas production and access to new fields.

According to the U.S. Energy Information Administration (EIA), the working stock of natural gas in the lower 48 states is now 27 percent above one year ago and 25 percent above the five-year average.¹ Over the longer term, the U.S. is projected to become a net exporter of liquefied natural gas (LNG) in 2016, a net pipeline exporter in 2025, and overall net exporter of natural gas in 2021. The outlook reflects increased use of LNG in markets outside of North America, strong domestic natural gas production, reduced pipeline imports and increased pipeline exports, and relatively low natural gas prices in the U.S. compared to other global markets.²

¹ U.S. energy Information Administration, weekly Natural Gas Storage Report, June 28, 2012.

² U.S. Energy Information Administration, Annual Energy Outlook 2012 Early Release Overview.

It is notable that the U.S. industry itself has recognizes this fundamental shift in competitive advantage. CF Industries Holdings, Inc. (CF Holdings), which acquired Terra Industries, one of two U.S. producers of AN, in April 2010, to become North America's largest nitrogen producer, has acknowledged that "North America's growing supply of natural gas has placed us in one of the most advantaged cost position in the world"³.

Besides the company noted, "Strong production and record inventory levels of natural gas within North America suggest that prices should remain at low levels for the foreseeable future".

Because natural gas is the primary raw material in the production of ammonium nitrate, reducing its prices significantly affected the reduction of the cost of production of ammonium nitrate in the U.S., which in turn led to the growth of financial and economic indexes of U.S. manufacturers of ammonium nitrate and improve the competitive position in the U.S. market as a whole.

One of the significant changes in the conditions of competition is the ability of U.S. manufacturers nitrate fertilizer adapt to the weather changes and demand for chemical products, allowing them to avoid the economic and financial difficulties associated with a decrease in demand for a particular product of chemical fertilizers depending on changes in weather conditions and conditions of agricultural crops, as well as the opportunity to switch the production of ammonium nitrate to industrial use.

The analysis of financial and economic indexes of the largest producer of ammonium nitrate in the U.S. CF Industries for years 2007-2011 shows that in the last 3 years the company's assets, net profit and gross profit increased more than 3 times, which enables the company to constantly increase its production capacity and develop new geographic markets.

According to the 2011 annual report of the company, the average selling price increased primarily due to increased demand for fertilizer. Consolidated net sales in 2011 increased by \$ 2.1 billion (54%) to \$ 6.1 billion. This is due primarily to higher average selling prices in both nitrogen and phosphate segments and the impact from the acquisition of Terra. In 2011, the average prices of fertilizer nitrogen and phosphate segments increased by 38% and 36% respectively. Gross profit increased by \$ 1.7 billion (146%) to 2.9 billion in 2011 with \$ 1.2 billion in 2010.

³ CF Industries 2011 Annual Report, p. 15.

Basically, if to analyze past trends and dynamics of the CF Industries, it is safe to say that the company will further expand its production capacity and expand export capacity through expansion into international markets and through the use of low prices for natural gas.

Changes in Ukraine market.

In contrast to the U.S. market the prices for natural gas in Ukraine have increased largely from \$ 2.1 (2007) to \$ 12.4 (2012) per 1 MMBtu, which is 2.5 to 4 times higher than the current price of natural gas in the U.S. Such changes in the competitive position of Ukrainian producers resulted in the increasing of the cost of production of ammonium nitrate and as a result increase in export prices, which puts Ukrainian producers in a much worse competitive position compared with U.S. manufacturers.

As it's known, the main supplier of natural gas to Ukraine is Russia. As a result of disputes in January 2009, "Naftogaz" and "Gazprom" signed an agreement on gas supplying until the end of 2019. Under this agreement, the price for gas is formed on a quarterly basis based on a formula according to which Ukraine is obliged to purchase natural gas from Russia at prices much higher than world ones.

Despite persistent Ukrainian-Russian consultations and negotiations on gas issue at the highest state level the gas price for Ukraine is not diminished. Moreover, the recent statements of the head of "Gazprom" Alexander Miller suggest that "Gazprom" is not going to reduce the price for gas for Ukraine. Thus, in the medium term gas price for Ukraine will remain above U.S. gas prices, even in optimistic scenarios.

The average price for gas for Ukraine in 2012 was about \$ 425 per thousand cubic meters or \$12.04 per thousand cubic feet, while the daily price for natural gas on the spot market fluctuated between \$250 and \$350 per thousand cubic meters, or from \$07.08 to \$9.91 per thousand cubic feet.

$$1 \text{ MMBtu} = 28.263682 \text{ m}^3 (998.12 \text{ ft}^3)$$

$$1000/28,26 = 35,38$$

$$\underline{35.38 \text{ MMBtu} = 262,3\$}$$

$$\underline{1 \text{ MMBtu} = 7,41\$}$$

As a result Ukrainian producers of ammonium nitrate pay for gas 2.5 - 4 times more than current prices for natural gas in the U.S. At the same time high prices for natural gas in Ukraine are expected in the future.

So in contrast to the situation in 2000 and 2007, the Ukrainian manufacturers do not have the advantage of low prices for natural gas for the production of ammonium nitrate.

At the same time, it should be noted that there has been a change of ammonium nitrate consumption in the Ukrainian domestic market. The bulk of the sales of Ukrainian ammonium nitrate producers is aimed at the domestic market. This is the result of the significant development of Ukraine agricultural sector and its significant needs for fertilizer, particularly ammonium nitrate.

Ukrainian industry of ammonium nitrate and Ukrainian agricultural industry are mutually dependent.

In Soviet times, Ukraine was known as the breadbasket of Europe, producing $\frac{1}{4}$ of all Soviet agricultural products. During the final years of the Soviet era, crops such as winter wheat were the focus of a so-called intensive technology movement, which was marked by the use of improved varieties and the increased application of fertilizer and plant-protection chemicals. Yields climbed in response to the enhanced management practices. However, during the 1990's, in the early years of Ukraine's independence following the breakdown of the Soviet Union, the sudden loss of State agricultural subsidies severely affected Ukraine's agriculture. By the time of the original ITC investigation in 2000, Ukraine's grain production had fallen by 50 percent and fertilizer use fell by 85 percent. The jump in U.S. imports of ammonium nitrate from Ukraine during the period of the investigation should be understood as being a result of the chaotic situation in Ukraine's agriculture sector at that time.

Today, the situation in Ukraine's agriculture industry has turned around. Between 2000 and 2011, Ukraine's gross agricultural production grew by almost 55%. Currently Ukraine is a world market leader in exports of sunflower oil and barley. In recent years, Ukraine has been producing around 40-50 million tons of grain per year and has regained its status of a major supplier of grains to world markets. The country's agricultural industry represents almost 10 percent of the country's gross domestic product, and its potential for growth remains vast.

Specifically, in 2012 the sales of agricultural products abroad increased by 38.4% compared to 2011. In the next two years, revenue from exports of agricultural products could reach \$ 22 billion.

The situation in the Ukrainian ammonium nitrate industry also changed dramatically. Since 2000, with the growth of Ukrainian agricultural sector, applying of Ukraine nitrogen fertilizers, including ammonium nitrate, has increased by almost 500%.

Thus, consumption of ammonium nitrate will continue to grow, along with the increasing applying of fertilizers by Ukrainian farmers.

For the last 5 years there has been a very high level of capacity utilization by Ukrainian producers of ammonium nitrate in contrast to what the Commission noted in a report on the results of the first five-year review "the Ukrainian industry operates with excess capacity."

High capacity utilization of Ukrainian industry during 2007-2012 years is the result of a high level of sales on the Ukrainian domestic market. And since 2010 there had been an annual increase in capacity utilization up to 92.7% in 2012.

In this context it should be noted that the share of Ukrainian producers in the domestic market of ammonium nitrate during 2007-2012 was quite significant and was about 82.7%, and in 2012 increased to 87.8%.

Opening the adjacent bulk markets for Ukrainian products (revocation of anti-dumping measures in the EU 16/06/12), and the advantages of American industry in the production, transport costs and a number of regulations in American law for storage, transportation and sale of ammonium nitrate (additional financial costs for importers) make the U.S. market less attractive for Ukrainian exporters. Under these circumstances there is not enough incentive for Ukrainian producers of ammonium nitrate to export to the United States in significant quantities.

However, given the considerable sustainability and capacity of U.S. industry, it is very unlikely that imports from Ukraine will enter the U.S. market at prices considerably lower than prices for the domestic like products and will cut the price of the domestic like product.

In view of the above mentioned, there is no reason to expect that the revocation of anti-dumping order on imports from Ukraine would have negative impact on American industry in the near future.

Conclusions.

Summing up the above mentioned, I would like to note that there are no grounds to continue the anti-dumping order on ammonium nitrate from Ukraine accordingly to Section 3.7. of WTO Agreement, because key circumstances on Ukrainian market, which served as the basis for the imposition of antidumping measures, have changed.

Thus, we can't affirm that the revocation of antidumping order would be likely to lead to continuation or recurrence of material injury of damage to U.S. producers or renewed dumping from Ukraine in the future.