

МИНИСТЕРСТВО ЭКОНОМИЧЕСКОГО РАЗВИТИЯ РОССИЙСКОЙ ФЕДЕРАЦИИ
MINISTRY OF ECONOMIC DEVELOPMENT OF THE RUSSIAN FEDERATION

ДЕПАРТАМЕНТ КООРДИНАЦИИ, РАЗВИТИЯ И РЕГУЛИРОВАНИЯ
ВНЕШНЕЭКОНОМИЧЕСКОЙ ДЕЯТЕЛЬНОСТИ
DEPARTMENT OF COORDINATION, DEVELOPMENT AND REGULATION
OF FOREIGN ECONOMIC ACTIVITIES

Ovchinnikovskaya nab., 18/1
 Moscow, Russia, 115324

tel.: +495 651-77-03
 fax: +495 651-73-84

№ Д12 ~~24-1977~~

Date: November 18, 2015

Quantity of pages: 4

| | | | |
|-----------------|---|--------------|---|
| To: | Director Operations 1 Anti-Dumping Commission Australian Government | From: | Elena Stoyanova, Deputy Director of the Department |
| Country: | Australia | | |
| City: | Melbourne | | |
| Fax: | +61 3 8539 2499 | | |
| Email: | operations1@adcommission.gov.au | | |

Dear Sirs,

We are writing in connection with the notice dated on October 8, 2015 regarding the initiation of the continuation enquiry in respect of the antidumping measures applied by Australia to import of certain ammonium nitrate originated in the Russian Federation and exported either directly or via Estonia that are schedule to cease on May 24, 2016.

We would like to express our concerns with the decision to initiate such a continuation enquiry with the purposes to extend the application of the antidumping duties calculated 15 years ago on the basis of the methodology used for a country-in-transition. In our mind, export of nitrate ammonium from the Russian Federation could not have any sufficient influence on the Australian market, as it amounts insignificant share of Australian apparent consumption.

As to the GOR Questionnaire that was provided in frames of the continuation enquiry we note that in accordance with the provisions of the WTO Agreement on Implementation of Article VI of the GATT (hereinafter – the Anti-Dumping Agreement) as well as with the provisions of the Australia's Customs Tariff Act (hereinafter – the ACTA) the GOR is not the respondent to the current antidumping procedure and enjoys the rights of the interested party.

Meanwhile we would like to provide the Anti-Dumping Commission with some arguments in respect to the Application submitted by the Australian industry under the current review.

1. The methodology of dumping margin calculation for Russian exporters of ammonium nitrate.

In accordance with the Article 2 of the WTO Anti-Dumping Agreement normal value should be normally based on the prices paid or payable in the ordinary course of trade by independent customers. Costs are normally calculated on the basis of records kept by the parties under investigation. Adjustments may be made only if (i) records are not in accordance with generally accepted accounting principles of the country concerned, (ii) records do not reasonably reflect costs associated with production (not inputs) and sale of product (not inputs) under consideration, and (iii) in case of particular market situation.

It is clear that costs associated with the production and sale of inputs can not be reflected in the records of an investigated exporter. It is reasonable to suppose that such costs should be reflected in records of upstream suppliers. Producers of inputs are not a part of any antidumping procedure, thus investigated producers have no legal rights and responsibilities to respond the Anti-Dumping Commission even if they wished to do this.

The proposal to extend the current enquiry up to the producers of raw materials who are not related to the companies - respondents on the ground of “a particular market situation in gas and electricity sectors” is contrary to the concept of dumping under the WTO jurisprudence.

We would like also to remind that in 2012 Australia recognized the Russian Federation as a market economy country and the provisions of the Article 269TAC (5J) of the ACTA should not be applied to the Russian exporters any more.

We encourage the Anti-Dumping Commission to apply the granted in 2012 market economy status to the Russian Federation for the purposes under this review and to ensure a fair comparison between the export price and the normal value of the goods under the present enquiry that means an allowance for differences and terms of sale, taxation, levels of trade, quantities and physical characteristics as well as not to impose an unreasonable burden of proof on Russian exporters in accordance with the Article 2 of the WTO Anti-Dumping Agreement.

2. Russian natural gas market.

We strongly keep to the position that issues concerning gas market in the Russian Federation have nothing to do with the current review against import of ammonium nitrate from the Russian Federation.

We also take a position that there is no particular market situation in the gas sector. The GOR keeps control on gas prices only for the monopolist – PJSC “Gazprom”, in order

to protect a customer. The regulated prices (tariffs) in gas sector are set only with respect to the gas produced by PJSC "Gazprom" and services for transportation of gas produced by the privately owned companies through the pipelines owned by the PJSC "Gazprom".

The natural gas may be bought also by any entity in the Russian Federation at unregulated prices either from privately owned gas producers or at the "Saint-Petersburg international commodity exchange".

Legal acts establishing the methodology of natural gas price-setting, in particular the Federal Law No. 69-FZ of March 31, 1999 "On Gas Supply in the Russian Federation" (as last amended on 21 July 2014), the Federal Law No. 147-FZ of August 17, 1995 "On Natural Monopolies" (as last amended on 30 December 2012) and the Resolution of the Government of the Russian Federation No. 1021 of December 29, 2000 "On State Regulation of Gas Prices and Gas Transportation Services Tariffs on the Territory of the Russian Federation", are applied equally throughout the whole territory of the Russian Federation. These acts do not provide for any industry-specific exceptions, exemptions, discounts or preferences. The methodology for the calculation of gas prices is transparent and officially published on the web page of the Federal Antimonopoly Service of the Russian Federation in Internet.

The basic principle of price-setting of natural gas is to ensure economically viable production and recovery of costs, including, inter alia, the cost of production, overheads, financing charges, transportation, maintenance and upgrade of extraction and distribution infrastructure, investment in the exploration and development of new fields done or planned, and reasonable profits.

Regulated prices of natural gas produced by the PJSC "Gazprom" and its affiliates are differentiated according to the price regions that as a rule match the territory of the entities of the Russian Federation. Such differentiation is due to remoteness of consumers from gas fields that affects transportation costs. Tariffs for transportation services through the gas distribution pipelines depend also on volumes of gas supplies for individual industrial consumers. Therefore, the prices (tariffs) differentiation is based on objective economic criteria for all industrial consumers independently of their sectoral belonging.

Besides the GOR has been making steps towards modification of state regulation of gas prices and development of market pricing principles for the domestic gas market, with the objective of benefiting the economy of the Russian Federation. In accordance with the Resolution of the Government of the Russian Federation No 333 of May 28, 2007 the Federal Antimonopoly Service of the Russian Federation developed the price formula for

natural gas produced by the PJSC "Gazprom" and its affiliates that ensures equal return on gas supplies to the international and domestic markets.

Thus the existing pricing regulation does not create an unfair competitive advantage and does not grant any benefit to any enterprise or group of enterprises, or industry or groups thereof or specific sectors since it was equally applied to all sectors and cannot be considered within the current review in respect of import of ammonium nitrate.

3. Russian electricity market.

In accordance with the Federal Law "On Electric Power" No 35-FZ of March 25, 2003 distributors and sales companies selling electricity and capacity to industrial consumers except householders in retail markets at free market prices. The GOR regulates only some components of the final price for electricity in particular services for the transmission of electric energy. Such regulation is applied in accordance with antimonopoly legislation in the Russian Federation.

4. Material injury to domestic producers.

We encourage the Anti-Dumping Commission to provide the clear evidence in respect of the material injury the domestic producers claimed about.

We would appreciate if the Anti-Dumping Commission takes into consideration the presented comments and the antidumping measures calculated on the country-in-transition's methodology would not be extended.

Kind regards,



Elena Stoyanova