

John O'Connor and Associates Pty Ltd

(ABN 39098650241)

PO Box 329

Coorparoo QLD 4151

Telephone: 07 33421921

Facsimile: 07 33421931

Mobile: 0411252451

Email: jmoconnor@optusnet.com.au

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Mr Patrick Quiggan
Case Manager
Dumping Operations 2
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne Victoria 3000

Email: Patrick.quiggan@adcommission.gov.au

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Dear Mr Quiggan

Statement of Essential Facts No. 312 – Continuation of measures on ammonium nitrate exported from the Russian Federation

I. Executive Summary

The Australian industry manufacturing ammonium nitrate ("AN") as represented in this inquiry by CSBP Limited ("CSBP") and Orica Australia Pty Ltd ("Orica") welcomes the Anti-Dumping Commission's ("the Commission") proposed recommendation to the Parliamentary Secretary to continue anti-dumping measures against exports from the Russian Federation. The anti-dumping measures are due to expire on 24 May 2016.

The applicants for the continuation of the measures also endorse the Commission's finding that a 'market situation' for AN is applicable in the Russian Federation and that domestic selling prices are unsuitable for determining normal values under s.269TAC(1) of the *Customs Act 1901 (as amended)*. The market situation finding is based upon substantiated evidence that the government of the Russian Federation determines natural gas prices in the Russian Federation for industrial customers of the government-owned majority supplier, Gazprom. Natural gas is the key raw material input used in the manufacture of ammonia, from which AN solution is manufactured.

Normal values for AN in the Russian Federation have been determined upon a constructed cost methodology using the costs of a cooperative exporter (although not an exporter during the period of investigation). A market price for gas derived at the German border has been substituted for local Russian Federation gas prices in the exporter's costs. CSBP and Orica welcome the Commission's proposed methodology for deriving normal values for AN in the Russian Federation, subject to some minor evidentiary clarifications. These include assessments that the costs of the producer for maintenance and depreciation are consistent with industry values and not understated.

CSBP and Orica submit that the Parliamentary Secretary should not consider the application of the lesser duty rule and that the proposed 'floor price' for future AN exported to Australia from the Russian Federation be established at the normal value (as verified for Azot including a substituted German border gas price, inclusive of a gas transportation charge).

CSBP and Orica concur with the Commission's findings in Statement of Essential Facts ("SEF") No. 312 that should the measures be allowed to expire, the Australian industry would again encounter material injury from dumped exports of AN from the Russian Federation that the anti-dumping measures are intended to prevent.

II. Australian market for AN

The Commission has estimated the size of the Australian market for AN at approximately 2.2 million tonnes. Investment in increased production capacity by the Australian industry has been significant since the measures were first imposed in 2001 (and the market was 700,000 tonnes). In the five-year period since 2011, further investment has seen local production capacity increase from approximately 1.6 million tonnes to 2.2 million tonnes. This continued re-investment has been achieved with the knowledge that effective anti-dumping measures have applied to exports of AN from the Russian Federation.

The Russian Federation is a major source of supply for nitrogen based products including AN (both high density and low density AN). On export markets, the Russian Federation is the largest supply source for AN with the lowest export prices – influenced by the artificially low natural gas prices available to AN producers. In recent years, Russian Federation AN manufacturers have increased production of low density AN (i.e. explosive grade AN) and represent the benchmark price for all globally traded AN (both high and low density).

III. Particular Market Situation

The Australian industry alleged that a particular market situation for AN was evident in the Russian Federation. The assertions were based on the well-accepted understanding that prices for natural gas in the Russian Federation were artificially low and regulated by the Russian Federal Tariff Service ("FTS"). The Commission has again confirmed that Gazprom – Russia's largest natural gas producer – continues to be the dominant supplier on the domestic market with the Russian government owning a 50.23 per cent controlling interest in Gazprom.

In this inquiry, the Commission reports that the government of the Russian Federation ("GOR") has advised the following:

- “• *the Federal Law No. 147-FZ of 17 August 1995 'On Natural Monopolies' (as last amended on 21 July 2014) was enacted to enable the GOR to regulate the price of goods and services produced by natural monopolies;*
- *the Federal Law No. 69-FZ of 31 March 1999 "on Gas Supply in the Russian Federation" (as last amended on 30 December 2012) provides for the GOR with the authority to establish the principles used in formulating gas prices;*
- *the Resolution of the Government of the Russian Federation No. 1021 of 29 December 2000 "On State Regulation of Gas Prices and Gas Transmission Services Tariffs on the Territory of the Russian Federation" provides guidance on the setting of gas prices and tariffs for the transportation of gas on a cost plus profit basis;*
- *the regulated prices in the gas sector are only applicable to:*
 - *the gas produced by Gazprom and its affiliates; and*
 - *services for the transportation of gas produced by privately owned companies through pipelines owned by Gazprom and its affiliates;*

- *the price for gas continues to be calculated and regulated by the Federal Tariff Service taking into account:*
 - *recovery of economically justified costs covering gas production, overheads, financing charges, and gas transportation;*
 - *maintenance and upgrade of extraction and distribution infrastructure;*
 - *investment in exploration and development of new fields;*
 - *price regions, which generally match the territory and entities of the Russian Federation, to take into account the location of customers from the gas fields; and*
 - *recovery of reasonable profits.*
- *the price for transportation services of gas from non-Gazprom producers through the gas pipe network owned by Gazprom is dependent on the volumes of gas being transported as well as the distance travelled;*
- *the Resolution of the government of the Russian federation No. 333 of 28 May 2007 established regulated prices for Gazprom, with minimum and maximum price levels for different consumer categories and regions. The right to negotiate and determine gas prices within these minimum and maximum limits is granted to suppliers and buyers. The resolution also introduced measures whereby the domestic gas prices would be increased to align them with international gas prices by 2011."*

The Commission also noted that "the regulated prices are inclusive of transportation costs". Importantly, the Commission concluded that the *"information above demonstrates that the Russian Government continues to exert control over the Russian natural gas industry through its price regulation"* and that *"the natural gas costs recorded in the cooperating producer's accounts are not reasonably competitive market costs"*.

CSBP and Orica agree with the Commission's assessment that the GOR continues to control natural gas pricing in the Russian Federation for gas supplied by Gazprom. Additionally gas supplied via the domestic distribution network is the subject of regulation by the GOR and gas transportation costs are therefore artificially low.

In assessing the appropriate gas price to substitute into the cooperative Russian Federation producer's costs of production, the Commission raised with JSC Kemorovo Azot ("Azot") an appropriate benchmark substitution price. The Commission has stated that Azot indicated that *"the Russian government intends to move domestic gas prices towards parity with the price at the German border (excluding the cost of transport)"*.

CSBP and Orica consider that a German border gas price is an appropriate benchmark price to substitute into the Azot cost data. This price requires adjustment to take account of gas transmission costs back to source and then the gas transportation cost to the respective AN producer.

The substitute gas price to be included in Azot's production costs must include a transportation cost based upon free market (i.e. non-Russian) delivery expenses. In the absence of information that is reasonably available to the Commission concerning what a comparable market price for transporting gas to Azot for conversion to ammonia, it is recommended that the German border price adjusted for freight from source and then to the Russian Federation AN Azot, albeit at an artificially low price - should be used. In Report No. 248 involving the substitution of a primary aluminium cost (sourced from LME with a regional premium) the Commission stated that inland transport costs are necessary and that these costs *"reflect transport of the primary aluminium from the supplier's location to the exporter's location"*¹.

¹ Trade Measures Report No. 248, P.46.

Whereas CSBP and Orica welcomes the Commission's proposed intention to use a gas price at the German border as the basis for the substitute replacement cost of gas for calculation of the normal value, it is important that the net impact of gas transmission costs are also taken into account. The inclusion of a distribution cost is consistent with all pricing contracts for supply for AN producers globally and it would understate the benchmark price if gas distribution costs were excluded.

IV. GOR-influenced production costs

The Australian industry is further concerned that the Russian AN producer's costs in respect of ongoing plant maintenance expenditure and depreciation are inconsistent (i.e. artificially low) when contrasted with AN producer's costs in market economy countries. It is understood that the depreciation methodologies of producers in the Russian Federation are such that the "useful life" of the depreciable asset extends to a period far in excess of similar producers in western market economy countries. Similarly, concerns are held in respect of the treatment of maintenance capital and maintenance expense items, and whether the practices are consistent with methodologies in market economy countries. Typical maintenance costs in market economies are xxx % of initial capital investment.

CSBP and Orica are further concerned that costs associated with utilities and local government services do not reflect values consistent in market-based economy countries.

V. Likelihood of Dumping Recurring

The Commission has preliminarily concluded that in the absence of "better information" the constructed normal value assessed for Azot is suitable for assessing whether dumping for AN exported from the Russian Federation may recur.

The Commission's assessment of the Azot normal value with export prices (from other Russian federation AN exporters) during the investigation period confirms a calculated dumping margin of approximately 23.5 per cent.

The Commission's assessment confirms that it is likely that exports of AN from the Russian Federation at prices below the constructed normal value would be at dumped prices. The Commission's preliminary finding is consistent with the Australian industry's view that should the measures be allowed to expire, exports of AN from the Russian Federation would be at dumped prices resulting a recurrence of material injury that the anti-dumping measures were intended to prevent.

VI. Recurrence of material injury

CSBP and Orica welcome the Commission's recognition that the Australian industry has significantly scaled up production capacity and production volume to match increased demand over the period in which the measures have applied. The Commission – in the Australian industry's view – has correctly concluded that the measures have been effective in addressing material injury caused by dumping.

The Australian market for AN is transparent and pricing offers for imported AN are readily observed. The Commission has identified that price depression would likely occur if the measures were removed as offers for the supply of Russian Federation AN would emerge at reduced prices. As Russian Federation AN export prices abound on global markets, it is expected that already well-established distribution channels would be reactivated should the measures be allowed to expire. The subsequent impact on the Australian industry would include reductions in sales volumes and market share, depressed and suppressed prices, resulting in reduced profit and profitability for the Australian industry.

The removal of the measures on AN exported from the Russian Federation would undoubtedly result in a recurrence of material injury to the Australian industry. Russian Federation AN export prices that are typically the lowest export prices in the world would translate to import prices into Australia, resulting in

severe price undercutting of the Australian industry's selling prices. CSBP and Orica concur with the Commission's assessment that in the absence of measures on AN exported from the Russian Federation, the Australian industry would be exposed to a recurrence of material injury.

VII. Form of measures

The Commission has proposed that the current measures that are based upon the combination method (i.e. a fixed and variable component) be replaced with measures based upon a 'floor price'.

CSBP and Orica do not consider that measures determined on an *ad valorem* basis would operate sufficiently to remove the injury from dumping as it is likely that Russian Federation AN exporters would reduce export prices in an effort to secure increased sales volumes on the Australian market. Similarly, a fixed duty rate would not prevent exporters from reducing export prices to injurious levels.

The Australian industry views the proposed 'floor price' methodology as not dissimilar with the historic measures that have operated on a fixed and variable basis (i.e. combination method) except that no 'fixed' component is applied representing the margin of dumping during the investigation review period.

It is CSBP and Orica's view that a 'floor price' methodology should only be applied on the basis that the Parliamentary Secretary establishes the Ascertained Export price ("AEP") at the normal value (i.e. the full margin of dumping, without consideration of the non-injurious price – see below). The proposed methodology represents a significant concession for Russian Federation exporters by not applying measures on a combination basis (where a 'fixed' component representing the margin of dumping during the investigation period is typically applied) and parties only have to apply for 'duty assessment' reviews if they price below the floor price. The proposed floor-based methodology means that even through dumping occurred during the investigation period, Russian Federation exporters will not be levied with a 'fixed' interim duty of 23.5 per cent prospectively, provided actual export prices are at, or above, the designated floor price. Measures will only be collected where the actual export price is below the AEP floor price.

CSBP and Orica are supportive of measures changing from the current combination method to a floor price methodology on the basis that the floor price is determined at the Azot normal value and the Parliamentary Secretary does not apply the lesser duty rule.

VIII. Non-Injurious Price

The lesser duty rule is applied where it is desirable to apply a lesser amount of duty than the dumping (or subsidy) that is sufficient to remove the injury from the dumping (or subsidization). Recent amendments to the anti-dumping provisions (i.e. 'Tranche 6 Amendments') permit the Minister to not consider the application of the lesser duty rule in certain circumstances. One of these circumstances involving the publication of a notice under s.269TG91) or (2), or s.269TJ of the Customs Act includes where the normal value of the goods is not ascertained under subsection 269TAC(1) because of the operation of s.269TAC(2)(a)(ii) and a particular market situation applies to the goods the subject of the investigation.

In this continuation (and review) investigation into AN exported from the Russian Federation, the Commission has determined that a particular market situation in respect of AN sold domestically in the exporting country applies. The Minister (i.e. the Parliamentary Secretary on delegation) in this investigation has available the option of not considering the application of the lesser duty rule.

CSBP and Orica submit that the Parliamentary Secretary should not have regard to the lesser duty rule for AN exported from the Russian Federation. The Commission has recommended that the form of measures be altered from the historically applied *combination method* that involves a fixed and variable component where the former reflects the dumping margin applicable during the investigation period and the latter is applied at the AEP (which in this instance is recommended at the normal value), to the *floor price* method.

As indicated above, applying measures based upon the floor price method affords Russian Federation AN exporters a concession of not levying the fixed (or dumping margin) component evident on exports during the investigation period (and hence no duty assessment investigations apply for the refund of the fixed duty component). The application of the lesser duty rule in these circumstances would provide the Russian Federation exporters with a further benefit by reducing the floor price to a level less than the normal value, encouraging Russian Federation to export at dumped prices into the Australian market.

CSBP and Orica request the Commission to recommend to the Parliamentary Secretary that she not consider the application of the lesser duty rule for the purposes of establishing new variable factors in the current investigation.

IX. Summary

The Australian industry welcomes the Commission's proposed recommendation to the Parliamentary Secretary that she take steps to secure the continuation of the anti-dumping measures applicable to AN exported from the Russian Federation.

CSBP and Orica support the substitution of a gas price at the German border as the basis for the raw material gas input cost into the verified Azot production costs. CSBP and Orica, however, submit that the net gas distribution charge should also be included in the substituted gas price (back to source plus freight to AN plant). A gas distribution/transportation cost is required to be included in the German border gas price for substitution into Azot's production cost model.

CSBP and Orica seek the Commission to validate maintenance and depreciation expenses for the Russian Federation producer Azot, along with applicable local government charges, with market-based values for the AN costs. It is considered that these costs are determined at low levels and do not represent typical charges incurred by AN producers in market-economy countries.

The Commission has recommended that the form of anti-dumping measures to be applied to AN exported from the Russian federation be altered from the combination method to the 'floor price' method. CSBP and Orica highlight with the Commission that the change in methodology affords Russian Federation exporters a significant concession of not levying interim duties on the 23.5 per cent margin of dumping determined during the investigation period. CSBP and Orica contend that the floor price methodology can only be applied where the AEP is determined at the normal value and no consideration is afforded to the application of the lesser duty rule. To apply a lesser duty rule would provide the Russian Federation AN producers with a further concession and encourage AN exports to Australia at dumped levels.

CSBP and Orica urge the Commission to recommend to the Parliamentary Secretary that she not have regard to the lesser duty rule as s.269TAC(2)(a)(ii) applies to An exported from the Russian Federation. Additionally, it is recommended that the AEP to be used as the basis of the floor price be set at the normal value (as determined for Azot).

If you have any questions concerning the attached application please do not hesitate to contact me on (07) 3342 1921.

Yours sincerely



John O'Connor
On behalf of CSBP Limited and Orica Australia Pty Ltd