

MINISTRY OF ECONOMIC DEVELOPMENT OF THE RUSSIAN FEDERATION
Department of Development and Regulation of Foreign Economic Activity
Russian Federation, 123112, Moscow, Presnenskaya Naberezhnaya, 10/2
Tel.: +7 495 870-29-21, E-mail: D12@economy.gov.ru

September 28, 2020
№ Д12И-31520

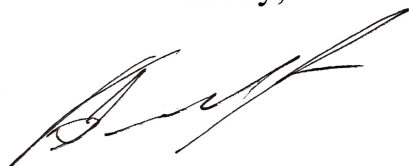
The Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
investigations2@adcommission.gov.au

Dear Sirs,

We are writing in connection with the anti-dumping notice No. 2020/093, according to which the Anti-Dumping Commission has initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of ammonium nitrate exported to Australia from the Russian Federation is justified (hereinafter – the inquiry).

We would like to provide the Anti-Dumping Commission with some arguments in respect of the current inquiry. Herewith we enclose comments of the Ministry of Economic Development of the Russian Federation regarding initiation of the inquiry.

Yours faithfully,



Andrei Bychenkov
Deputy Director

Enc.

**Comments of the Ministry of Economic Development of the Russian Federation
regarding initiation of a continuation inquiry into ammonium nitrate
exported to Australia from the Russian Federation**

According to the anti-dumping notice No. 2020/093, the Anti-Dumping Commission has initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of ammonium nitrate exported to Australia from the Russian Federation is justified.

The Ministry of Economic Development of the Russian Federation (hereinafter – Ministry) would like to express its concern with the decision to initiate the inquiry and believes the initiation of such a procedure, as well as continuation of the measures, are unjustified.

As to the Government of Russia (hereinafter – GOR) Questionnaire that was provided in framework of the continuation inquiry we would like to draw the attention of the Anti-Dumping Commission to the following.

As it was numerously noted by the WTO Appellate Body, “dumping” is “the result of the pricing behaviour of individual exporters or foreign producers” of the product under consideration.¹ Russian authorities do not determine the pricing policies of ammonium nitrate producers and exporters. Any information on their pricing policies the Anti-Dumping commission may need should be requested from the exporting companies themselves.

As for the GOR Questionnaire, most of the information it requests concerns the issues that are beyond the control of the exporting producers, and therefore cannot be attributed to their pricing behaviour.

For instance, a number of questions concern raw materials, which are used to produce the ammonium nitrate. However, if an ammonium nitrate producer does not itself manufacture the raw material and buys it from elsewhere, it cannot determine the price it pays for the raw material, and thus cannot be responsible for that price.

¹ Appellate Body Reports, *US – Zeroing (Japan)*, WT/DS322/AB/R, paras. 111 and 156. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds322_e.htm; *US – Zeroing (EC)*, WT/DS294/AB/R, para. 129. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds294_e.htm; *US – Stainless Steel (Mexico)*, WT/DS344/AB/R, para. 95 and fn. 208 to para. 94. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds344_e.htm; *EU – Biodiesel (Argentina)*, WT/DS473/AB/R, fn. 130 to para. 6.25. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm.

Generally, it should be noted that raw materials are not the products under consideration in this inquiry. Neither are they like products to ammonium nitrate. Thus, the question before the Anti-Dumping Commission is whether there is a likelihood of continuation or recurrence of dumping of ammonium nitrate, but not its inputs.

A number of questions in the GOR Questionnaire request information on financial assistance of the GOR to ammonium nitrate industry, whether direct or indirect. Such questions can be appropriate in a countervailing duty investigation, but not in a review of an anti-dumping measure. It should be noted that Article 32.1 of the WTO Agreement on Subsidies and Countervailing Measures explicitly states: “No specific action against a subsidy of another [WTO] Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement”. Anti-dumping investigations and reviews cannot be appropriate therefore, as they are designed for other purpose.

Summing up, the Ministry does not understand the relevance of the GOR Questionnaire to the inquiry whether the continuation of anti-dumping measures in respect of ammonium nitrate exported to Australia from the Russian Federation is justified. Moreover, the Ministry avails itself of this opportunity to warn the Anti-Dumping Commission against drifting away from the WTO-compatible analysis regarding continuation or recurrence of dumping within the present review.

As for the Application submitted by the Australian industry under the current inquiry, the Ministry would like to draw the attention of the Anti-Dumping Commission to the following considerations.

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

In accordance with the Article 2 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter – the Anti-Dumping Agreement) normal value is based on the prices in the ordinary course of trade for the like product when destined for consumption in the exporting country. However, in the current Application, the applicants constructed a normal value with a surrogate gas price (p. 4-5), which led them to an invalid conclusion that future exports of ammonium nitrate to Australia from the Russian Federation will be at dumped prices (p. 8).

Please note that such cost adjustments were found to be inconsistent with WTO rules by WTO Panels and the Appellate Body rulings, namely in *European Union — Anti-Dumping Measures on Biodiesel from Argentina*² and *Ukraine — Anti-Dumping Measures on Ammonium Nitrate*³. In particular, such methodologies were found to be inconsistent with Articles 2.2.1 and 2.2.1.1 of the Anti-Dumping Agreement.

Moreover, we would like to draw your attention to the most recent WTO Panel report in *European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint)*⁴. The cost adjustment methodology, whereby the EU authorities rejected the costs reflected in the exporting producers' records and replaced them with cost of production out of the country of origin, was found to be inconsistent with Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement. The application of the cost adjustment methodology in a sunset review was also found to be inconsistent with as Article 11.3 of the Anti-Dumping Agreement. Thus, the conclusion that dumping was likely to recur on costs of production calculated inconsistently with WTO rules was acknowledged illegal.

We urge the Anti-Dumping Commission to refrain from using such WTO-incompatible adjustments, as well as from relying on the Application, which urges to do so. Since, as it should be noted, in the previous anti-dumping proceedings concerning ammonium nitrate the Anti-Dumping Commission already used these methodologies, there is no ground for the maintenance of the measure and for continuation of the review.

2. Absence of material injury recurrence in case of expiration of the anti-dumping measure

Article 11 of the Anti-Dumping Agreement provides that the request by any interested party to review the need for the continued imposition of the anti-dumping measure should contain positive information substantiating the need for such a review. Particularly, it must be proved that expiry of the measure would be likely to lead to

² DS473: European Union — Anti-Dumping Measures on Biodiesel from Argentina. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm.

³ DS493: Ukraine — Anti-Dumping Measures on Ammonium Nitrate. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds493_e.htm.

⁴ DS494: European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint). URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds494_e.htm.

continuation or recurrence of dumping and injury. However, the Application does not contain any conclusive proof of a possibility of such a scenario.

In this respect, we argue that export of nitrate ammonium from the Russian Federation could not have any sufficient influence on the Australian market, as it accounts for an insignificant share of the Australian visible consumption. The applicants did not provide any clear evidence of the material injury to the domestic industry from the Russian exports.

It is worth noting that Australia currently applies an anti-dumping measure to China, Sweden & Thailand, which export to Australia larger volumes of ammonium nitrate and at lower prices than Russia. In this connection, we emphasize that according to Article 3.5 of the Anti-Dumping Agreement the authorities shall examine any known factors, which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the alleged dumped imports from Russia.

Moreover, according to the data provided by the Russian Fertilizers Producers Association, the Russian ammonium nitrate industry works almost at full capacity. In particular, the capacity utilization rate of the Russian industry worked out at 95.7 % in 2016, 97.3 % in 2017, 91.2 % in 2018 and about 96.7 % in 2019. Besides, Australia is not among the traditional export markets for Russian ammonium nitrate. This refutes the allegation of possible growth of the Russian exports in case of termination of the measure in question.

In addition to that, Australian producers of ammonium nitrate have strong economic and financial performance, which can be justified by their annual reports. For example, according to the Orica Annual Report 2019, in 2019 financial year (compared to the 2018 financial year) EBIT of \$ 665 million increased by 8 % with strong business performance across all regions and improvement in manufacturing operations, ammonium nitrate volumes grew by 4 % at 3.97 million tons, sales revenue of \$ 5.9 billion rose by 9 %.⁵ According to Wesfarmers 2019 Annual Report, Wesfarmers Chemicals, Energy & Fertilisers (WesCEF) in the 2019 financial year generated revenue of \$ 2,078 million, which was 13.6 % above last year, with Chemicals, Energy and Fertilisers all contributing

⁵ Orica Annual Report 2019. P. 12. URL: https://www.orica.com/ArticleDocuments/1762/201911_Orica_AR19.pdf.aspx.

to revenue growth. WesCEF generated earnings of \$ 433 million, 14.2 % above the prior year. ROCE increased to 32.6 %. The improved performance was driven among other factors by higher ammonia production.⁶ In view of the above stated the recurrence of any material injury to the Australian industry is highly unlikely.

Thus, the main criterion for the continuation of anti-dumping measures against Russia is not fulfilled (Article 11.2 of the Anti-Dumping Agreement) – the continued imposition of the duty is not necessary to offset dumping, the injury would not be likely to continue or recur if the measure were removed or varied.

3. Conclusion

Please note that Article 11 of the Anti-Dumping Agreement provides that an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. In this respect, we would like to point out that the measure was introduced 20 years ago on the basis of the methodology used for a transition economy.

Taking into account the long duration of the measure in question, the lack of intentions and capabilities of the Russian manufacturers to increase substantially ammonium nitrate exports to the Australia and injure (or threaten to injure) the Australian industry as well as strong performance of the Australian industry, the Russian side presumes that there are no grounds to maintain the measure.

The Russian side urges the Anti-Dumping Commission to take into consideration the information provided in these comments. We hope that the current inquiry will be terminated without the measure extension.

In accordance with Article 6.2 of the Anti-Dumping Agreement, we ask the Anti-Dumping Commission to organize public hearings in order to provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered.

⁶ Wesfarmers 2019 Annual Report. P. 40-41. URL: <https://sitefinity.wesfarmers.com.au/docs/default-source/reports/wesfarmers-annual-report-2019.pdf?sfvrsn=2>.