

MINISTRY OF ECONOMIC DEVELOPMENT OF THE RUSSIAN FEDERATION
Department for Foreign Economic Activity Development and Regulation
10, build. 2, Presnenskaya embankment, Moscow, 125039
Tel.: +7 495 870-29-21, E-mail: D12@economy.gov.ru

05.02.2021

Д12и-2961

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

Dear Sirs,

Position of MED of Russia for the meeting for interested parties on February 3, 2021

Following up on the meeting for interested parties on February 3, 2021 in relation to the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation, please find enclosed herewith a written submission of the Ministry of Economic Development of the Russian Federation to be considered by the Anti-Dumping Commission in the current inquiry.

Yours faithfully,

Andrey Nakhabin
Deputy Director

Enc.

Подлинник электронного документа, подписанного ЭП,
хранится в системе электронного документооборота
Министерства экономического развития Российской Федерации.

СВЕДЕНИЯ О СЕРТИФИКАТЕ ЭП

Сертификат: 00E1036E1B07E00081EB11CA3A4797F0B5
Владелец: Нахабин Андрей Игоревич
Действителен: с 10.12.2020 до 10.12.2021

Position of the Ministry of Economic Development of the Russian Federation for the meeting for interested parties in relation to the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation

The Ministry of Economic Development of the Russian Federation would like to present its views in relation to the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation.

The Australian Government's measures against ammonium nitrate were first imposed in 2001. They are the longest running measures of all Australian anti-dumping measures currently in place. Over the time the measures have been in place, the situation has changed. Russia is now a WTO Member, and it must be treated fairly and equally by Australia under the WTO Agreements.

The WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter – the Anti-Dumping Agreement) provides that “[a]n anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury”.¹ The Russian Federation also recalls that the Appellate Body explained with respect to Article 11.3 of the Anti-Dumping Agreement that this provision “imposes a temporal limitation on the maintenance of anti-dumping duties” and “it lays down a mandatory rule with an exception”.² The Appellate Body stated that “under Article 11.3 of the Anti-Dumping Agreement, the termination of the anti-dumping duty at the end of five years is the rule and its continuation beyond that period is the ‘exception’.”³ The Appellate Body also held that the words “review” and “determine” in Article 11.3 suggest that authorities conducting a sunset review must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination.⁴ The Appellate Body further clarified that “[t]he use of the word “likely” in Article 11.3 shows that “an affirmative likelihood determination may be made only if the evidence demonstrates that dumping [and

¹ Article 11.1 of the Anti-Dumping Agreement.

² Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, WT/DS244/AB/R, para. 104; Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, (Article 21.5 – Argentina), WT/DS268/AB/RW, para. 103.

³ Appellate Body Report, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, WT/DS282/AB/R, para. 108.

⁴ Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, WT/DS244/AB/R, para. 111.

injury] would be probable if the duty were terminated – and not simply if the evidence suggests that such a result might be possible or plausible.”⁵

We believe that statistics and current situation on the ammonium nitrate markets in Russia and Australia indicate that there are no grounds to extend the anti-dumping measure against Russia, since the expiry of the duty is unlikely to lead to continuation or recurrence of dumping and injury. Accordingly, the anti-dumping duties on imports of ammonium nitrate from the Russian Federation must be terminated.

With regard to **determination of likelihood of continuation or recurrence of dumping**, we would like to draw the attention of the Anti-Dumping Commission to the following.

In the period from January to November 2020, Australia did not import ammonium nitrate from Russia. In the two years prior to that, Russian exports were minimal in quantity compared to the massive production and market dominance of the Australian industry members. Should the Anti-Dumping Commission pose a question whether that situation is likely to change as a result of the expiry of the measures, the answer to this question must be no.

As for the alleged dumping of imports from Russia, please note that the Federal State Statistics Service publishes open data on producer prices for ammonium nitrate. The comparison of ammonium nitrate domestic and export prices shows that export prices for the product in question are always higher.

As for the allegations of dumping made by the applicants, they are invalid because the applicants have constructed the normal value of the Russian ammonium nitrate with a surrogate gas price. We would like to provide some comments regarding the use of such a methodology.

At the outset, it should be noted that comparison of the normal value at actual prices in Table 1 of the Application submitted by the Australian industry with export price in Table 4 would demonstrate lack of dumping. Having used surrogate gas price, the applicants attempted to convince the Anti-Dumping Commission that there was dumping, while there was actually none.

⁵ Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, WT/DS244/AB/R, para. 111.

It should be further noted that the use of surrogate input prices in the calculation of the cost of production was found to be inconsistent with WTO rules by WTO Panels and the Appellate Body, namely in disputes concerning EU anti-dumping measures on biodiesel from Argentina and Indonesia, Ukrainian anti-dumping measures on ammonium nitrate from Russia, EU cost adjustment methodologies and certain anti-dumping measures on imports from Russia. The substitution of the costs reflected in the exporting producers' records with surrogate input price in calculation of the cost of production and further use of the resultant sum in the ordinary course of trade test and construction of normal value were found to be inconsistent with Articles 2.2.1.1, 2.2.1 and 2.2 of the Anti-Dumping Agreement, and also with Article 11.3 of the Anti-Dumping Agreement.

As the WTO Appellate Body numerous explained, "dumping" is "the result of the pricing behavior of individual exporters or foreign producers" of the product under consideration.⁶ It should be recalled that prices for input materials, including gas, are beyond the control of the ammonium nitrate producers and have nothing to do with their pricing behavior.

Raw materials used for ammonium nitrate production are not the products under consideration in the current inquiry, neither are they like products to ammonium nitrate. The purpose of the present inquiry is to find whether the expiry of the anti-dumping duty would be likely to lead to continuation or recurrence of injurious dumping of ammonium nitrate, which is the product under consideration in the current inquiry.

Thus, the present inquiry should be focused on the analysis of the pricing behavior of the investigated producers of the product under consideration, i.e. ammonium nitrate, and not on input used to produce the product under consideration or the producer of that input.

We urge the Anti-Dumping Commission to refrain from using surrogate input prices in the calculation of the cost of production, as this would be a violation of the Anti-Dumping Agreement.

⁶ Appellate Body Reports, *US – Zeroing (Japan)*, WT/DS322/AB/R, paras. 111 and 156; *US – Zeroing (EC)*, WT/DS294/AB/R, para. 129; *US – Stainless Steel (Mexico)*, WT/DS344/AB/R, para. 95 and fn. 208 to para. 94; *EU – Biodiesel (Argentina)*, WT/DS473/AB/R, fn. 130 to para. 6.25).

We draw the attention of the Anti-Dumping Commission that it has all information on the record necessary for WTO-compatible assessment of likelihood of continuation or recurrence of dumping.

It has the information on prices of ammonium nitrate on the Russian market and data on actually incurred costs and on profits submitted by JSC Novomoskovsky Azot and JSC Nevinnomyssky Azot.

The information provided by Russian producers is sufficient for determinations of the Anti-Dumping Commission, and we urge the Commission to consider it properly and to abide by the WTO rules in its determination.

As far as **determination of the likelihood of continuation or recurrence of injury** is concerned, the following should be noted.

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.

Some more arguments and facts concerning Russian production capacity. An insignificant increase in the ammonium nitrate capacity in 2019-2020 is primarily due to the need to upgrade old production facilities and an increase in demand for fertilizers on the domestic market. This statement is true not only for the Russian industry in general, but also for individual major companies.

As for the investment projects of Russian ammonium nitrate producers one should note that an increase in Acron Group's production capacity is primarily aimed at meeting the needs of the Russian market. This is confirmed by the sales data in 2020. Acron Group in 2020 shipped 93 % more mineral fertilizers to the domestic market than in 2019. As a result, the supply of ammonium nitrate to Russian farmers in 2020 increased by more than twice.

With regard to export supplies of ammonium nitrate, due to high logistics costs, the Australian market is not a priority for Acron Group, and if the anti-dumping duty is lifted, Acron does not plan to change the traditional geography of supplies and reorient volumes

to the Australian market. Acron Group is interested in growing exports to other countries based on long-term contracts that enable supplying stable ammonium nitrate volumes.

The investment project of KAO Azot to increase the production of ammonium nitrate by 250 thousand tons was not implemented in 2020 due to the current situation amid the COVID-19 pandemic. The production start date was postponed to 2021. However, about 90 % of ammonium nitrate produced at KAO Azot is shipped to the Russian market.

URALCHEM JSC did not have any investment projects related to ammonium nitrate and nitric acid in 2019-2020, and the modernization carried out before this period concerned the replacement of old equipment and optimization of production processes.

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, as demonstrated by their annual reports. Australian producers of ammonium nitrate have increased their production capacity. These facts shall be taken into account by the Anti-Dumping Commission in its evaluation of the current state of the domestic industry.

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 %.⁷

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 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.⁸ A somewhat weaker performance of the Australian industry

⁷ Orica Annual Report 2019. P. 12. URL: https://www.orica.com/ArticleDocuments/1762/201911_Orica_AR19.pdf.aspx.

⁸ Wesfarmers 2019 Annual Report. P. 40-41. URL: <https://sitefinity.wesfarmers.com.au/docs/default-source/reports/wesfarmers-annual-report-2019.pdf?sfvrsn=2>.

in 2020 was mainly caused by COVID-19 and its repercussions, any impact of the Russian exports is ruled out due to absence thereof.

This buoyancy in the financial situation of the Australian industry members is reflected in the investment of Orica and Yara AB into a new production plant to service the Pilbara region of Western Australia. This increased capacity of the Australian industry will create greater internal competition, and is likely to drive prices lower, meaning that it will be even less likely for ammonium nitrate from such a far-away country, as Russia, to make any sales to Australian customers at all.

To sum up, the Russian side believes that the criteria for the continuation of the anti-dumping measure provided by the WTO Anti-Dumping Agreement are not fulfilled. The positive evidence on the record demonstrates that it is unlikely that the expiration of the anti-dumping duties on import of ammonium nitrate would lead to exportation of Russian ammonium nitrate at dumped prices that would cause injury to the Australian industry. Accordingly, the anti-dumping duties on imports of ammonium nitrate from the Russian Federation must be terminated.

Thus, the Russian Federation insists upon unbiased and objective assessment of the facts of this case in full conformity with the Anti-Dumping Agreement and the consequent expiry of these long-standing and unnecessary measures.