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Mr Tim King
Case Manager
Investigations 2
Anti-Dumping Commission
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Public File

Dear Mr King

Investigation 565 – Submission by Ministry of Economic Development of the Russian Federation

I. Introduction

I refer to the submission dated 5 February 2021 by the Ministry of Economic Development (“MED”) of the Russian Federation (“Russia”). The MED submission seeks to argue that grounds do not exist for the continuation of measures on ammonium nitrate (“AN”) exported from the Russian Federation to Australia.

The Australian Industry¹ rejects the contentions of the MED. The application seeking the continuation of the measures demonstrates that should the measures be allowed to expire:

- exports of AN from Russia to Australia would likely be at dumped prices; and
- the Australian industry would suffer material injury (or the threat thereof) that the measures are intended to prevent.

The available information confirms that exports of AN from Russia to global markets during 2019/20 were at dumped prices (as confirmed by the EC in EU Regulation 2020/2100). If the measures applicable to AN exported from Russia are allowed to expire, it is likely that the low export prices would be attractive to AN importers (including customers who import AN) in Australia. The dumped export prices would have the effect of undercutting the selling price of AN by Australian manufacturers, resulting in lost sales volumes and market share, price depression and price suppression, and a steep deterioration in profits and profitability.

The applicants’ therefore request that the Commissioner recommend to the Minister for Industry, Science and Technology (“the Minister”) that the measures be extended from 24 May 2021.

¹ The Australian Industry as represented in this investigation includes CSBP Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd.

II. MED Assertions

The MED refers to Article 11.3 of the Anti-Dumping Agreement ("The Agreement") which requires authorities to consider (upon request on behalf of the domestic industry) to conduct a review prior to the expiry of the measures to establish "*that the expiry of the duty would be likely to lead to continuance or recurrence of dumping and the injury.*" Article 11.1 however states that "*An anti-dumping duty shall remain in force as long as and to the extent necessary to counteract dumping which is causing injury.*"

Article 11.1 makes it clear that the anti-dumping measure shall remain in force for as long as necessary to prevent the dumping and injury.

Article 11 is reflected in Subsection 269ZHF(2) of the *Customs Act*:

"The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent."

The Anti-Dumping Commission ("the Commission") will therefore assess the likelihood of the recurrence of dumping and material injury should the measures be allowed to expire based upon the current available evidence.

III. Particular market situation

In continuation of measures Report No. 312 ("Report 312") the Commission determined "*that there is a situation in Russia such that sales of ammonium nitrate in Russia are not suitable for use in determining the normal values of the goods under subsection 269TAC(1).*"

The Commission's findings were based on its assessment that it was satisfied that² "*The GOR exerts substantial influence on the Russian natural gas market through OAO Gazprom (Gazprom), a state-owned enterprise with an exclusive licence to export gas, monopoly ownership of and provision of access to gas pipeline infrastructure and which is subject to substantial price controls (which also heavily influence the prices obtained by independent, unregulated suppliers). This influence results in Russian domestic gas prices which are substantially less than what would be achieved in a competitive market.*"

The MED has not provided any information to the Commission that would alter the Commission's earlier findings. It has not provided any data that would displace the finding in relation to the control exercised by GOR over Gazprom or any evidence that Russian gas prices have changed in any way subsequent to Report 312 (published in May 2016). It is the Australian Industry's contention that the GOR continues to substantially influence Russian gas markets and hence domestic gas prices in Russia are lower than they otherwise would be.

In the absence of a change in circumstances concerning the GOR's influence over the Russian gas markets and domestic gas prices, the Commission must continue to be satisfied that a particular market situation continues to exist in Russia for ammonium nitrate sold on the domestic market. Normal values for ammonium nitrate sold in Russia cannot be determined under subsection 269TAC(1).

² Report 312, P.21.

IV. Dumping of Russian AN

The application for the continuation of anti-dumping measures on AN exported from Russia included the Australian industry's assessment of the Russian normal value for AN in 2019/20 (based upon a surrogate gas price).

The application also included information as to Russian AN export prices to jurisdictions other than Australia (i.e. third country export prices).

A comparison of the third country export prices (of which a majority relate to export prices to Latin America) confirm that the Russian export prices are at dumped levels above negligible dumping margins.

Table 1 – Russian AN weighted average export prices and dumping margins 2019/20 – all destinations

Period	Export Vol	Export Price US\$FOB/MT	Normal Value US\$/MT	Margin as % of export price
Jul-Dec 2019	1,669,921	Xxxx	Xxxx	92.2%
Jan-Apr 2020	449,529	xxxx	xxxx	100.4%

Source: Refer to Australian Industry Application for normal value, export price details.

Table 1 confirms that Russian AN export prices to all destinations were – on a weighted average basis – dumped during the 2019/20 investigation period.

The analysis in Table 1 confirms the European Union's recent findings that dumping of Russian AN to third market destinations where anti-dumping measures do not apply occurred during 2019 (Refer EC Regulation 2020/2100 of 15 December 2020).

Contrary to MED's assertions AN exported by Russian producers was at dumped prices in the investigation period. It is reasonable to conclude that based upon the recent history of dumping by Russian AN producers that in the absence of measures exports of AN to Australia would be at dumped prices.

V. Likelihood of recurrence of material injury

MED asserts that the Australian industry would not suffer a recurrence of material injury if the measures on AN were allowed to expire. MED states that Russian AN producers are operating at close to full capacity and that the Russian AN producers already have well-established channels to other foreign markets. MED further states that the low volumes to Australia in 2020 (it is noted that this is not the full investigation period of 2019/20) support its position that the Russian AN producers would not increase exports to Australia in the absence of measures.

The applicant industry draws the Commission's attention to the volume of AN exported from Russia to Australia immediately prior to the current investigation period. In 2018/19, imports of AN from Russia were 30,691 tonnes and in 2017/18 there 21,756 tonnes exported to Australia. The Russian volumes accounted for 15 per cent and 16 per cent of total import volumes in the respective periods. Equally we draw the Commission's attention to the spread of countries around the globe to which the Russian AN industry exports at dumped prices.

In the event the anti-dumping measures are allowed to expire, it is the Australian industry's contention that the expanding Australian market for AN is an attractive export destination for Russian AN producers. The dumped export prices of Russian AN producers in 2019/20 would likely translate into increased export volumes to Australia at prices that undercut the Australian industry's selling prices.

The Australian industry's profit and profitability would be jeopardised with the Australian industry again experiencing the material injury that the anti-dumping measures were intended to prevent.

As has been noted in earlier investigations by the Commission [Report 473 and 312], the nature of the way customers procure ammonium nitrate in the Australian market through long-term contracts means that dumped goods have a long-lasting impact on prices. Once a contract price is finalised as an outcome of a competitive tender process, that price and associated margin is set for the remainder of the term of the contract which is typically xx-xx years, albeit subject to input cost rise and fall clauses. Because of the competitive tender process, the prices associated with dumped goods are used pervasively around the market and have an ongoing impact in contract price negotiations. Thus, the impact of ongoing dumped goods is significant on the Australian Industry and is likely to continue if measures were to be removed.

The claims of MED that the Australian market is not attractive to Russian AN producers due to current high plant utilisation rates, high logistical costs, and that the Australian market is not a traditional market for Russian AN producers, cannot be relied upon. The Australian market is an expanding market that is attractive due to its size and future growth prospects. The Russian AN industry has announced plans for capacity expansion as noted in the Australian Industry Submission. In the absence of measures, the Australian AN market is a viable export destination for large scale Russian AN producers.

The applicant industry submits that should the measures be allowed to expire the test contained in subsection 269ZHF(2) would be met and the Australian industry would be exposed to a recurrence of dumping and material injury that the anti-dumping measures are intended to prevent.

VI. Recommendations

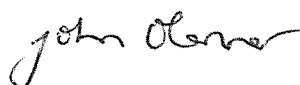
The applicant industry requests the Commission to disregard the MED comments that suggest that Russian AN exports to Australia would not be at dumped and injurious prices should the measures be allowed to expire.

The recent export pricing behaviour of Russian AN exporters confirms that future exports of AN to Australia would likely – in the absence of measures – be at dumped prices, resulting in a recurrence of material injury to the Australian industry.

The applicant industry requests the Commissioner to recommend to the Minister that the measures on AN exported from the Russian Federation not be allowed to expire on 24 May 2021.

If you have any questions concerning this submission, please do not hesitate to contact me on (07) 3342 1921.

Yours sincerely



John O'Connor
Director

On behalf of the Australian AN industry³

³ Supporting members CSBP Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd.