

25 March 2021

Mr Justin Wickes
Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Email: investigations2@adcommission.gov.au

Public File Version

Dear Mr Wickes

Statement of Essential Facts No. 565 – Ammonium nitrate exported from the Russian Federation – Submission by DynoNobel Asia Pacific Pty Ltd

A. Summary

DynoNobel Asia Pacific Pty Ltd ("DNAP") is an interested party to Investigation 565 and a member of the Australian industry manufacturing ammonium nitrate. DNAP operates an ammonium nitrate facility at Moranbah with an annual capacity of approximately 370kt.

DNAP has reviewed Statement of Essential Facts No. 565 (SEF 565). DNAP disputes the Anti-Dumping Commission's reasoning relied upon in its proposed recommendation to the Minister for Industry, Science and Technology (the Minister) to allow the measures on ammonium nitrate exported from the Russian Federation (Russia) to expire on 24 May 2021.

Specifically, DNAP rejects:

- the *indecisive* conclusion that future Russian exports of ammonium nitrate to Australia 'may' be at dumped prices;
- the finding that the Russian industry has limited spare capacity to supply the Australian market;
- that apparent demand increases in domestic demand in Russia will absorb new product expansions by the local industry;
- a finding that confidential arrangements between parties concerning supply from Russia diminishes the impact of Russian imports on the majority of the Australian market;
- the assumption that future Russian exports would be limited to the "spot market" in Australia; and
- that Russian export prices do not influence long-term contract negotiations between Australian industry members and customers.

The Commission's findings appear to ignore the impact of the anti-dumping measures that have applied on Russian exports to Australia since May 2016. These measures have been effective in limiting a recurrence of material injury from dumping from Russian exports.

DNAP agrees with the Commission that Russian exports of ammonium nitrate will be at the lowest price on the Australian market in the absence of the measures. Consistent with the recent European Commission (EC) finding,

DNAP concurs that it is likely that future exports of ammonium nitrate from Russia will be at dumped prices and will therefore likely cause material injury to the local industry. DNAP is firmly of the view that the expiration of the measures will result in a recurrence of material injury. DNAP urges the Commission to re-evaluate its findings and recommendation based upon the publicly available information that supports a recommendation for the Minister to take steps to ensure the measures do not expire.

Finally, DNAP considers that a change in the form of measures away from a floor-price methodology will likely result in absorption of the low dumping margin by Russian exporters.

B. Responses to questions in SEF 565

The ADC has requested information about the likely demand for AN from Lithium, Nickel, cobalt and rare earths mines (Section 4.3.4 of SEF 565). DNAP believes that demand for AN from these mines will be insignificant (likely nil) on the East Coast of Australia.

DNAP confirms that its profits and profitability (Section 5.4) have tracked a similar trajectory as that stated for the aggregated industry between 2016 and 2020. This is a matter of public record, as DNAP discloses its annual earnings, being a wholly owned subsidiary of an ASX listed entity (Incitec Pivot Limited). For comparison, DNAP's reported Earnings Before Interest and Tax ("EBIT") for its Financial Year ended 30 September 2020 was 80% of its FY16 EBIT, compared to the Aggregated industry profits index of 73.44, as listed in 5.4 Table 7.

C. Likelihood of Dumping

The Commission has determined that future exports of Russian ammonium nitrate to Australia *may* be at dumped prices¹. The EC Regulation² on the recent sunset review concerning Russian exports of ammonium nitrate was more definitive with its comparison of Russian export prices with Russian domestic prices for ammonium nitrate. The EC concluded that dumping margins were evident (approx. 9 per cent).

The EC's determination is considered more reliable as it had access to broader by three cooperative Russian producers. Future exports of ammonium nitrate from Russia to Australia are likely to be at dumped prices.

D. Likelihood of material injury

- **Volume impacts**

The Commission was satisfied that imports from Russia would likely continue. It was also satisfied that the landed price for the Russian imports would be the lowest of all import sources and it considered it *"reasonable that these prices (i.e. Russian landed prices) may impact price negotiations in the future"*. However, the Commission stated that *"competition from Russian sources will be unlikely due to ongoing agreements with parties related to the Australian industry and low spare capacity in Russia."*

DNAP notes that anti-dumping measures applying to exports of ammonium nitrate from Russia also apply in other jurisdictions, namely the European Union, India and Ukraine. This important consideration is not reflected in SEF 565.

It is appropriate to discuss the two key tenets of the Commission's concerns, namely:

- (i) Ongoing agreements with Australian industry parties; and
- (ii) Low spare capacity in Russia.

The Commission has referenced agreements involving the Australian industry that will reduce the likelihood of injury caused by dumping of Russian ammonium nitrate. While DNAP is not privy to the referenced agreements, DNAP would highlight that any agreements in place would unlikely prevent Russian producers from exporting to the

¹ Statement of Essential Facts No, 565, P.52.

² EC Regulation 2020/2100 at Paragraph 81.

Australian market (particularly as excess capacity exists and there is further new production capacity scheduled to come on line in late 2021 and 2022).

Additionally, the agreements do not extend to all members of the Australian industry, i.e. there are five key players in the production of ammonium nitrate in Australia.

DNAP does not understand the Commission's conclusion as to the low spare capacity in Russia. The EC recently confirmed that Russia had 440kte tonnes of spare capacity. Recently, Russia's Acron Group announced that it would be commissioning a further 180kte tonnes of ammonium nitrate late in 2021, with another producer, Kemerovo adding an additional 200kte tonnes in 2022. It is therefore well documented that there is substantial available production capacity – particularly once seasonal demand is considered – available for export to Australia. By the end of 2022, there will be spare capacity of circa 820kte tonnes available for Russian producers to supply, with a key focus on attractive markets such as Australia.

In respect of seasonality, DNAP notes that;

- (i) AN pricing from Russia typically follows a pattern of "high season" and "low season" demand, which strongly implies seasonal surplus capacity exists. (Refer "Fertecon Baltic AN Index"); and
- (ii) AN manufacture is a capital-intensive process, meaning producers are strongly incentivised to completely maximise output, due to a very high mix of fixed versus variable cost. For example, the ratio of fixed versus variable cost of production at the DNAP Moranbah facility is approximately [percentage] fixed.

DNAP notes the comments by Glencore that "*producers have a limited ability to flexibly alternate between fertiliser grade and explosive grade ammonium nitrate*". DNAP understands that a number of Russian producers have already made the necessary investments that Glencore describes, to enable such easy switching of production. DNAP therefore refutes the assertion made by Glencore that Russian producers cannot easily switch between LDAN and HDAN. In any event, DNAP respectfully and strongly refutes the suggestion that HDAN imports are less injurious than LDAN imports. DNAP notes that in its 2020 financial year, more than [percentage] of AN produced was supplied into emulsion – certainly a significant enough volume to cause material injury, regardless of the mix between LDAN and HDAN imported. [Commercially sensitive comment].

The Commission states that policies of the Government of Russia to improve the agriculture sector will result in an increase in domestic demand for ammonium nitrate. The initiatives have been in operation over the last five years and have been extended for a further five-year period. It is considered that the extension of the GOR program is unlikely to result in a sharp increase in domestic demand for ammonium nitrate in Russia.

- **Price impacts**

The Commission's conclusion that there is no future threat of material injury from Russian exports of ammonium nitrate is also premised on its view that pricing for long-term contracts will not be influenced by the "limited" availability of Russian export volumes to Australia.

This view is not shared by DNAP. DNAP disagrees with the interpretation that the existence of long-term (2 to 5 years) contracts between producers and customers in the Australian market means that Australian producers will be largely insulated from the effects of dumped imports. DNAP estimates that its weighted average contract tenure is [number] years, meaning that every year on average, about [percentage] of its contracts are renegotiated. In addition, [commercially sensitive comment about customer contracts].

The referenced "spot" pricing has a significant impact on longer-term contract pricing. DNAP considers the Commission is incorrect in asserting that there will be a "*minimal impact on volumes*" and "*would not likely lead to reduced industry prices*" from Russian exports of ammonium nitrate (particularly contracted volumes). DNAP estimates that a significant percentage (>10%) of East Coast Australian ammonium nitrate demand is supplied by companies who are not local producers. These companies have adopted a business model of sourcing some imported ammonium nitrate, combined with some locally sourced product from Australian producers. The mix of imported versus locally produced AN procured by these companies is logically designed to maximise the trading margin available to these non-local producers. The result is that the importation of dumped ammonium nitrate by

these companies is having a deleterious impact on both long-term contract pricing and volume of Australian producers, particularly on the East Coast.

The Commission's view on the spot market requires clarification. DNAP refutes the view of the Commission that "*the trend in imports leads...to the view that most of the purchases are on a spot basis or to address a shortfall in Australian industry supply*". [commercially sensitive comment about local capacity utilisation].

DNAP further believes that import shipments of ammonium nitrate are not truly made on a spot basis. They are facilitated by explosives companies whose business model is to profitably trade in ammonium nitrate, by using imported ammonium nitrate shipments to reduce demand for locally produced ammonium nitrate, and therefore put downward pressure on the price of locally produced goods. The underlying demand for ammonium nitrate from these explosives companies is underpinned by contracts with end-user mining companies and mining contractor companies. DNAP contends that these imports are therefore directly impacting the negotiated prices of domestically available ammonium nitrate.

A further valid and important clarification that DNAP seeks to make relates to competition in the emulsion market. DNAP respectfully considers the Commission has erred in its assessment of the proportion of ammonium nitrate that is sold into emulsion (i.e. which is substitutable for HDAN and ANsol). DNAP estimates that more than [percentage] of its production is used in the production of emulsion, [commercially sensitive comment]. A significant proportion of Russian exports to Australia have been of HDAN grade product.

DNAP does not consider that the Commission can be satisfied that the price and volume impact of future Russian exports of ammonium nitrate will be limited to the spot market only. The long-term contract market is equally susceptible to the influence of Russian export prices and as these will likely be the lowest landed price in the market in the absence of the measures, there will be a flow-through, wider impact on pricing in the long-term contract market for ammonium nitrate.

E. Form of measures

The anti-dumping measures that presently apply to ammonium nitrate exported from Russia are based upon a floor-price methodology. This form of measure has been effective in limiting a recurrence of material injury to the Australian industry from dumping.

SEF 565 is proposing a change to the form of measures to be applied (should the measures be continued). The Commission has proposed that the measures be applied on an *ad valorem* basis, which reflects a fixed percentage dumping margin applied irrespective of the actual export price.

Exporters can adjust the export price to absorb the size of the *ad valorem* penalty – particularly when the margin of dumping assessed is relatively small. As such, *ad valorem* measures are open to manipulation by the exporter and are not considered to be as effective as measures with a floor-price mechanism.

DNAP requests that the Commission not alter the form of measures to be applied to future exports of ammonium nitrate from Russia away from the current floor-price methodology (to maintain the effectiveness of the measures).

F. Conclusion and recommendation

It is DNAP's view that the findings relied upon by the Commission that form the basis for its recommendation in SEF 565 to the Minister that the measures be allowed to expire on exports of ammonium nitrate from Russia are deficient and cannot be relied upon.

The available evidence confirms that Russian producers of ammonium nitrate do not have limited excess capacity with which to supply to the Australian market. It is also likely that future exports of ammonium nitrate will likely be at dumped levels. It cannot be concluded that the excess supply of ammonium nitrate from Russia will be limited to supply in the 'spot' market in Australia; rather it is more probable that Russian landed prices into Australia will be used to depress and suppress wider industry contract prices – should the measures expire. It must be recalled that HDAN exported by Russian producers competes directly with supply by the local industry to the emulsion explosives market - a significant portion of the total Australian market.

Finally, DNAP is opposed to a change in the form of measures to be applied to ammonium nitrate imported from Russia away from a floor-price mechanism as *ad valorem* based measures are vulnerable to manipulation through exporters reducing prices to absorb the intended effect of the measure.

DNAP requests that the Commission re-evaluate its findings and proposed recommendation in SEF 565. DNAP is of the firm view that there is sufficient compelling evidence to conclude that the expiration of the measures will likely lead to a recurrence of dumping and material injury that the measures are intended to prevent.

DNAP therefore requests the Commissioner to recommend to the Minister that she take steps to ensure that the measures do not expire on 24 May 2021.

If you have any questions concerning this submission, please do not hesitate to contact me on 0409 810 860.

Yours sincerely,



Greg Hayne

PRESIDENT
Dyno Nobel Asia Pacific Pty Limited
A business of Incitec Pivot Limited