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Our Ref. QNP – 210325 QNP Public File Submission re SEF 565

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Mr Justin Wickes
Director
Investigations 2
Anti-Dumping Commission
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Public File

Dear Mr Wickes

Queensland Nitrates Pty Ltd response to Statement of Essential Facts No. 565

I. Introduction

I refer to Statement of Essential Facts No. 565 ("SEF 565") concerning the expiration of anti-dumping measures on ammonium nitrate ("AN" or 'the goods') exported to Australia from the Russian Federation ("Russia"). Queensland Nitrates Pty Ltd ("QNP") is a member of the Australian industry that manufactures AN that made the application seeking the continuation of anti-dumping measures against exports of the goods from Russia. The measures are due to expire on 26 May 2021.

SEF 565 is recommending to the Minister for Industry, Science and Technology ("the Minister") that the measures be permitted to expire on 24 May 2021. The recommendation of the Anti-Dumping Commission ("the Commission") is based on its view that a future likely threat of material injury from dumped exports from Russia does not exist. QNP submits that the Commission's assessment is incorrect and not supported by the available information about Russian export prices for the goods and available capacity to supply. Similarly, the Commission's reliance on exports of Russian AN to the referenced "spot" market in Australia ignores the commercial reality that contractual negotiations often reference import parity pricing.

QNP is opposed to a change in the form of the measures (i.e. to ad valorem) should the measures be continued. Continued measures should incorporate a floor-price to ensure Russian exporters do not further reduce export prices to absorb anti-dumping measures.

II. Future threat of dumping

QNP welcomes the Commission's finding that a particular market situation for AN continues to apply in Russia. QNP notes the Commission's conclusion that future exports of AN from Russia to Australia may be at dumped prices. QNP refers the Commission to the recent EC determination that confirms a more probable and definitive view that future exports of AN from Russia are likely to be at dumped prices. The EC's analysis comparing

Russian third country export prices with the three cooperative Russian exporters in the EC investigation confirmed that Russian exports to third countries were at dumped levels (i.e. above negligible margins)¹.

The EC's assessment of Russian exporters is considered more reliable (due to broader exporter cooperation for Russian normal values) than the Commission's selective assessment that is limited to the Eurochem cooperating exporters.

QNP contends that there exist a very real and highly probable likelihood that future Russian exports of AN to Australia will be at dumped levels (as opposed to the Commission's least probable "may" be at dumped prices).

III. Recurrence of material injury

The Commission has stated that *"the export of Russian ammonium nitrate will most likely be for spot sales and as these types of sales account for less than 5 per cent of the industry, it is unlikely to cause material injury to the Australian industry."*

This conclusion is erroneous and incorrect.

The Commission has determined that landed Russian prices for AN would be the lowest of all import sources². QNP highlights with the Commission the recent findings in Report 473 where the Commissioner was satisfied (and this was accepted by the Minister) *"that future exports of ammonium nitrate to Australia from China, Sweden and Thailand in the future may be at dumped prices and that continued dumping may continue to cause material injury to the Australian industry."* QNP was a local supplier that evidence injury that could be attributed to lower priced import AN from the subject countries.

The same principle applies in respect of exports of AN from Russia that do not attract anti-dumping measures.

The Commission contends that Russian AN producers' are limited from supplying AN to the Australian market under long-term contracts. QNP refers the Commission to the EC's recent findings published on 15 December 2020 that confirmed Russia has 440,000 tonnes of excess capacity which accounted for approximately 6 per cent of the European Union's consumption. The 440,000 tonnes accounts for approximately 16.66 per cent of the Australian market and is anticipated to grow later in 2021 with the recent announcement of the Acron Goup's 180,000 tonne expansion due to come on line in late 2021, and the additional 200,000 tonnes in capacity for Kemerovo scheduled for commencement in 2022. This excess Russian production could supply more than 23 per cent of the Australian market in 2021 rising to more than 30 per cent in 2022.

This significant available capacity is available to supply attractive growth markets such as the Australian AN market.

The Commission further contends that the cooperative exporters (of which there are only two, being JSC Novomoskovsky ("NAK Azot") and JSC Nevinnomyssky Azot ("Nevinka")) are operating at close to full production capacity and cannot supply under long-term contracts in Australia. The Commission's assessment concerning the ability of Russian exporters to supply long-term contracts fails to consider the excess production of all Russian AN producers. A further consideration by the Commission involved highlighting that the GOR has extended its import ban on certain agricultural products and has introduced domestic policies to encourage the agricultural sector (making an assumption that an increase in domestic demand for AN would be likely). This conclusion is unreliable as Russian AN producers have continued to operate with excess production capacity throughout the duration of the referenced GOR policies over recent years. The opportunity for Russian AN producers to export is often seasonal and this is factored into sales by producers for supply to export markets.

¹ Refer EC Regulation 2020/2100 at Paragraph 81.

² Statement of Essential Facts No. 565, P. 45.

It should be noted that a high percentage of sales of Russian exported AN are sold through opportunistic traders (that often stockpile at Russian ports) and then on-sell as appropriate. The Russian producer may not be involved in the sale of the goods to the final destination.

QNP therefore does not consider that the Commission's view that Russian producers have limited excess capacity to supply the Australian market can be relied upon. Rather, there exists a higher likelihood that in the absence of the anti-dumping measures, due to Russia's available excess production (of 440,000 tonnes confirmed by the EC) and lower landed prices than from other import sources, Russian AN exporters will re-connect with distribution channels into the Australian market and again cause material injury that the measures are intended to prevent.

QNP does not consider that future exports from Russia will be limited to the spot market. As has been evidenced in Investigation 473, the Commission was satisfied that the lowest priced imports during the investigation period influenced contract negotiations and represented a future threat of material injury to the Australian industry. As Russian AN prices would be the lowest landed prices in Australia (as acknowledged by the Commission) and there exists significant excess capacity with which to supply a large proportion of the Australian industry, Russian exports to Australia would rapidly escalate and in the absence of anti-dumping measures it is likely that the Australian industry would experience a recurrence of material injury that the measures are intended to prevent.

This likelihood appears more likely given the advantage of lowest pricing and freely available excess production capacity (scheduled to increase further from late 2021) for Russian AN supply.

[Commercially sensitive details concerning pricing information].

The relevant consideration is that it is import pricing that has significantly impacted QNP's volume and pricing. It is therefore likely that in the absence of measures the landed import prices for Russian AN would materially impact on forward contract prices and volumes. It is evident that there exists a likely recurrence of material injury from Russian export prices should the measures be allowed to expire.

IV. Form of measures

The Commission has proposed that subject to responses to SEF 565 that should the measures be continued it is proposed to recommend that the measures be applied on an ad valorem basis. QNP understands the administrative benefit of an ad valorem measure including the reduced need for regular reviews of measures. However, the prime consideration in applying a measure is to ensure that it has its desired effect – to remove the material injury (or threat thereof) to the Australian industry.

The proposed ad valorem measures would not achieve this objective. The measures applied in Report 312 were based upon a floor-price mechanism. This form of measure was effective in removing the injurious effects of dumping from Russian AN supply – with exporters (and importers) observing the floor-price particularly during the 2018-19 period when Russian AN exports to Australia exceeded 30,000 tonnes. Ad valorem measures can be regularly manipulated with exporters reducing export prices so that the measure (i.e. interim dumping duty) is absorbed. This is particularly apparent when the unit export price is of low value (as has been evident for AN with average Russian export prices of US\$180/MT in 2019/20 – refer Australian Industry Confidential Attachment 8) and the dumping margin is similarly low (as will be the case based upon the Commission's maximum dumping margin of 14 per cent determined for uncooperative Russian exporters).

The appropriate measure to be applied to future exports of Russian AN to Australia is that based upon the floor-price mechanism, as was applied by the Minister in Report 312 and was effective in minimizing the injurious impact of dumped Russian AN exports to Australia.

V. Recommendations

The Commission's proposed recommendation to the Minister that the anti-dumping measures on AN exported from Russia be allowed to expire on 24 May 2021 is based upon a number of erroneous assessments including:

- (i) A misunderstanding as to the availability of excess Russian AN production which the EC concluded in its EU Regulation of 15 December 2020 was 440,000 tonnes (or 16.66 per cent of Australian demand);
- (ii) The failure to acknowledge the independent confirmation of the Acron Gorp's 180,000 tonne expansion in late 2021, and Kemerovo's new expansion of a further 200,000 tonnes supply in 2022 (taking the excess capacity to more than 30 per cent of Australian demand);
- (iii) The failure to adequately consider that the current anti-dumping measures that operate on a floor-price mechanism have been effective in limiting injurious Russian AN exports to Australia;
- (iv) A narrow view that Russian supply (based upon erroneous views (i) and (ii)) is limited to the referenced "spot" market that accounts for only 5 per cent of the Australian AN market; and
- (v) A failure of the Commission to recognise (unlike the Commission's findings in Investigation 473) that the lowest priced imports have an injurious impact (with a pervasive effect) on pricing negotiations in long-term contracts sales for AN across the whole of the market due to price transparency.

The findings of the Commission in SEF 565 including claims of limited Russian AN capacity to supply, the GOR's policies to encourage growth in agriculture in Russia, and apparent supply arrangements between individual parties, do not outweigh the substantial influence that dumped exports of Russian AN to Australia will have on the whole of the Australian AN industry should the measures be allowed to expire. It can only be concluded that future exports of Russian AN to Australia will **likely** be at dumped prices (consistent with the EC's sunset review finding of 15 December 2020) and that Russian AN producers have the excess capacity to supply the Australian market which will **likely** result in a recurrence of material injury to the Australian industry that the measures are intended to prevent.

QNP proposes that the Commissioner recommend to the Minister that she take steps to ensure that the anti-dumping measures on AN exported from Russia not be allowed to expire on 24 May 2021. QNP further recommends that the form of measures to be applied for the continued measures is that based upon a floor-price mechanism to ensure the effectiveness of the measures (and prevent manipulation of export prices by exporters).

If you would like to discuss any aspect of this submission, please do not hesitate to contact me on (07) 4997 5100.

Yours sincerely



David Armstrong
General Manager