

25 March 2021

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## PUBLIC FILE

Dear Mr Wickes

### Investigation 565 – CSBP Limited submission re Statement of Essential Facts

#### I. Summary

CSBP Limited (“CSBP”) has reviewed Statement of Essential Facts No. 565 (“SEF 565”) and strongly opposes the Anti-Dumping Commission’s (“the Commission”) proposed recommendation to the Minister for Industry, Science and Technology (“the Minister”) *“that the dumping notice in respect of ammonium nitrate exported to Australia from Russia expire on the specified expiry date (being 24 May 2021).”*

The proposed recommendation to the Minister is flawed and relies upon an erroneous view that ammonium nitrate supplied under contractual arrangements is not influenced by import parity pricing, in this instance, from the Russian Federation (“Russia”). This incorrect conclusion is premised on the apparent absence of offers from traders and customers for the supply of ammonium nitrate offered in contract negotiations during the injury review period and ignores the fact that existing dumping duties have operated effectively to minimise injurious exports of dumped ammonium nitrate from Russia.

CSBP requests that the Commission re-evaluate the impact of imports on contracted business as was recently undertaken in Investigation No. 473 (“Investigation 473”). As was evidenced in that inquiry, imports at dumped prices with a relatively small share of the Australian market can have a significant, injurious impact on negotiations in long-term contracts. The Commission’s findings are that future exports of ammonium nitrate from Russia may be dumped – the Commission’s finding is extremely cautious given the long-term historical practice of Russian exporters of ammonium nitrate to supply at dumped prices to global markets (including markets where measures apply e.g. the European Union (“EU”), Ukraine and India).

CSBP strongly opposes the Commission’s recommended form of measures should the measure be continued. Measures based the proposed *ad valorem* methodology would expose the Australian industry to dumping – particularly given the unsafe and conservative normal value determination. Effective measures – as have applied since May 2016 – must be based upon the floor price method.

CSBP is seeking to engage with the Commission so that it may fully understand the injurious impact of imported ammonium nitrate from Russia in long-term contract negotiations. Once re-evaluated, CSBP is confident that the correct recommendation to the Minister is that the measures should not be allowed to expire on 24 May 2021. It is further recommended that the form of measures to be applied is that based upon the floor-price method (as have applied since 2016).

## **II. Market situation for ammonium nitrate in Russia**

CSBP concurs with the Commission's assessment that the Government of Russian ("GOR") influences the domestic gas prices in Russia and that a market situation for ammonium nitrate in Russia applies.

CSBP does not dispute this finding.

## **III. Dumping of Russian ammonium nitrate**

It should be noted that anti-dumping measures continue to apply in the following jurisdictions on ammonium nitrate exported from Russia: the European Commission, India and the Ukraine. This relevant consideration was not referenced in SEF 565.

In its dumping assessment in SEF 565, the Commission has constructed normal values for ammonium nitrate in Russia based upon the production cost data supplied by cooperative Eurochem companies JSC Novomoskovsky ("NAK Azot") and JSC Nevinnomyssky Azot ("Nevinka"), and a comparison with a benchmark cost for gas (determined by the Commission as the NetConnect German ("NCG") hub "month ahead" price with adjustments.

The Commission has utilised certain information from the Eurochem commissioned "Eurochem – Brattle Report" in the benchmark for a market gas price for comparison with NAK Azot and Nevinka gas prices. CSBP has examined the Commission's benchmark methodology followed in SEF 565 and it appears that it has been guided by the Eurochem – Brattle Report. CSBP considers that the Commission has not detailed how the methodology to arrive at the Russian gas benchmark in SEF 565 differs to the methodology in Report 312. It is considered that it is appropriate for this to be demonstrated so that interested parties can compare and contrast the previous methodology with that detailed in SEF 565.

This step is required before the Australian industry can comment on the appropriateness of the constructed normal value for the cooperative Russian exporters.

The Commission compared the benchmark gas price with NAK Azot and Nevinka gas prices and, considered the purchased gas prices of the two producers to be comparable with the benchmark. As the Commission found the producer's purchased gas price was comparable with the benchmark, the Commission considered it appropriate to determine normal values for the two Russian exporters under subsection 269TAC(1) based upon domestic selling price information.

CSBP submits that the Commission cannot determine the uncooperative Russian exporters with the same gas cost input as the cooperative Eurochem companies NAK Azot and Nevinka, as it is likely the other Russian producers do not source gas from Independent Gas Suppliers ("IGS") in Russia.

The decision of the Commission to base normal values under subsection 269TAC(1) using domestic selling prices is at odds with past decisions as to a market situation finding for ammonium nitrate sold in Russia. For this reason, CSBP questions the methodology of the benchmark determination as it is well documented that the Russian gas industry has not experienced structural reform to remove the GOR influence over the sales by the GOR majority-owned Gazprom.

Also, it cannot be concluded that even for the IGS in Russia that they operate freely from GOR influence as all of the transmission of gas is undertaken in Gazprom-owned pipelines where the GOR determines rate for transportation.

The Russian gas industry does not operate free from GOR influence and Russian domestic gas prices (including those from IGS) cannot be accepted as market-determined for the purposes of normal value calculations.

The calculated dumping margins therefore (of negative 0.9 per cent and 10.9 per cent for NAK Azot and Nevinka, respectively) understate the actual margins of dumping that exists on their respective third country export sales during the investigation period<sup>1</sup>. CSBP submits that the determined margin for uncooperative Russian exporters should not be based upon "the highest weighted-average normal value in the inquiry period from cooperative exporters" as this affords the uncooperative exporters the benefit of the higher IGS gas price in the constructed normal value.

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<sup>1</sup> It being noted that NAK Azot and Nevinka did not export to Australia during the investigation period.

CSBP notes that the European Commission (“EC”) recently confirmed in its sunset review inquiry that the cooperative Russian exporters (that included NAK Azot and Nevinka, along with Uralchem JSC and the Acron Group), that during the review investigation period “the average ex-works export price of the three sampled exporting producers to third countries was 133 EUR/tonne, while their average ex-works domestic prices was 145 EUR/tonne.”<sup>2</sup> This finding represents a 9 per cent dumping margin on a straight comparison of Russian export prices with Russian domestic selling prices at the ex-works level.

Importantly, the EC followed this finding with its conclusion that:

*“Therefore, it was considered likely that, if the current measures were to be repealed, the Russian exporting producers would sell to the Union at dumped levels.”*

CSBP does not understand why the Commission has not arrived at a similar conclusion to the EC and only considers that Russian exporters of ammonium nitrate “may” only export at dumped prices given that the Australian market for explosives grade ammonium nitrate (that includes significant volumes of HDAN for emulsion explosives manufacture) is more attractive than the EC’s predominant fertilizer grade market.

It is CSBP’s considered view that there exists a very real prospect that should the measures expire, future exports of ammonium nitrate to Australia will *likely* be at dumped prices.

#### **IV. Likelihood of a recurrence of material injury**

CSBP challenges the Commission’s finding in SEF 565 that the expiration of the measures is unlikely to lead to a continuation of, or recurrence of, material injury.

Firstly, CSBP considers the Commission’s finding “that the export prices of Russian ammonium nitrate will most likely be for spot sales” is incorrect and not supported by recent events in the Australian market. CSBP’s concerns and reservations with the Commission’s finding that injury is limited to spot sales is in direct conflict with the Commission’s findings in Report 473.

Secondly, even if exports of Russian ammonium nitrate to Australia are only for spot sales, such spot sales are used by industry and its customers to inform themselves around import parity pricing, which in turn is used in negotiations to set the pricing of contracts for ammonium nitrate in Australia, even if those contracts are not supplied by Russian ammonium nitrate. This conclusion was also reached in Report 473, and SEF 565 is at odds with this report.

Thirdly, it is incorrect to conclude that Russia does not have the available spare capacity to export to Australia. The EC found that Russia has excess capacity of 440,000 tonnes per annum of ammonium nitrate, which together with the planned 200,000 tonnes per annum expansion of the Kemerovo Azot plant (Confidential Attachment 7 to Australian Industry Application), and an announcement on 22 March 2021 that the Acron Group would be expanding its ammonium nitrate production capacity by 180,000 tonnes with a scheduled start in late 2021 (refer Non-Confidential Attachment 1), accounts for approximately 31 per cent of the Australian ammonium nitrate market. Further, HDAN is a direct substitute to locally manufactured ANsol and ammonium nitrate used in emulsion, which makes up some 25 - 30 per cent of the Australian market.

These arguments are expanded on further below.

In Report 473 the Commission concluded the following concerning the impact of dumped prices on ammonium nitrate from China, Sweden and Thailand<sup>3</sup>:

*“The Commissioner found that the applicants reduced their prices following contract negotiations conducted during the investigation period and following the investigation period.”*

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<sup>2</sup> Commission Implementing Regulation (EU) 2020/2100 of 15 December 2020, Paragraph 81.

<sup>3</sup> Report 473 Ammonium nitrate exported from China, Sweden and Thailand, April 2019, Section 9.9, P. 93.

*The Commissioner undertook a ‘but for’ analysis in order to compare the Australian industry’s negotiated prices with prices in the absence of dumping in order to assess whether the injury caused by dumping is material to the Australian industry.*

*While factors other than dumping may also have caused injury to the Australian industry, the Commission found that the reduction in price that is attributable to dumping is significant. The Commissioner found that the injury caused by dumping is material.”*

CSBP is therefore perplexed by the Commission’s findings in SEF 565 that the export volumes from the Russian industry would likely be supplied for “spot” sales only. The Commission concluded that during the inquiry period *“the estimated Russian price sat below other countries that exported to Australia”*<sup>4</sup>. The Commission then acknowledges that *“it is reasonable to assume that these prices may affect contract negotiations going forward.”* However, the Commission states that there are “many limitations” with this analysis which the Commission considers relates to the ability of the Russian exporters *“to service large ongoing contracts in the Australian market is limited by its high capacity utilisation”*.

The Commission’s assessment in SEF 565 that Russia has insufficient spare capacity does not appear to take account of current available production capacity. The EC’s findings in EU Regulation 2020/2100 established that the Russian ammonium nitrate industry had excess production capacity of 440,000 tonnes per annum. The EC concluded that this accounted for approximately 4.2 per cent of Russian nameplate production capacity, although it should be recalled that it is not unusual for ammonium nitrate producers to exceed production capacity levels. The 440,000 tonnes per annum of excess capacity accounts for approximately 16.66 per cent of the Australian ammonium nitrate market. It should also be recalled that the Australian industry included in its application information from an independent third party that specialises in nitrogen industry analysis that the Russian producer Kemerovo Azot is scheduled to commission an expansion of 200,000 tonnes per annum in 2022. This would extend the available capacity in Russia to 24 per cent the size of the Australian ammonium nitrate market. On 22 March 2021 it was announced that the Acron Group would be expanding its ammonium nitrate production capacity by 180,000 tonnes with a scheduled start in late 2021 (refer Non-Confidential Attachment 1). This in turn would increase the available capacity in Russia to 31 per cent of the Australian market.

The Commission’s assessment that the Russian ammonium nitrate industry is somewhat restricted from supplying the Australian market is incorrect and not based upon any reliable evidence. The Commission states that due to the GOR import ban on agricultural goods and a *“state support program for agricultural producers”* that has been extended to 2025 do not specifically confirm that Russian producers will not export excess tonnes in the foreseeable future. The Commission’s assessment cannot be relied upon as there is no evidence confirming that Russian producers/exporters will not seek out the Australian market in the absence of measures. The EC’s view is that there is no restriction on the ability of Russian producers to export. In fact, the excess 440,000 tonnes was sufficient for the EC to be satisfied that there exists a future threat of dumping and injury from Russian exports should its anti-dumping measures be revoked.

CSBP submits that the EC’s assessment is reliable and is based upon facts that reflect the actual likelihood of future export intentions of Russian producers. Reliance on unsupported assertions by parties that their facility(ies) are fully utilised should not form the basis for a finding as to the whole of the Russian ammonium nitrate industry.

The Commission’s conclusion that Russian HDAN would not compete in the Australian market because Australia is predominantly a LDAN market ignores the ability make use of HDAN in producing emulsion. CSBP estimates that around 25-30 per cent of the ammonium nitrate market in Australia for explosives is for ANsol or ammonium nitrate used in emulsion, for which HDAN is a direct substitute, as recognised by the Commission in Report 473, at P.18. A volume of 25-30 per cent is a very material portion of the market.

The Commission has acknowledged that the Australian industry has experienced a deterioration in profit and profitability as the margin between the CTMS and selling prices have been eroded. Further deteriorations would be expected when dumped Russian exports are landed into Australia at prices below “all other source countries” – as has recently occurred with imports from Chile, Vietnam and Egypt that have replaced imports from China, Sweden and Thailand.

CSBP rejects the Commission’s findings as to the apparent inability of Russian producers to enter into long-term contracts for supply into the Australian market. The Australian market for ammonium nitrate is a more attractive market for supply

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<sup>4</sup> Statement of Essential Facts No. 565, P.54.

than the broader fertilizer ammonium nitrate market and so it is logical that producers are incentivised to actively seek-out supply for higher-value, explosives market sales that are commonplace in the Australian market.

The anti-dumping measures that were continued in Investigation 316 have been effective in preventing the material injury that would have flowed from dumped exports of Russian ammonium nitrate to Australia. This important conclusion has been cast aside in the Commission's analysis in SEF 565, even though the Commission acknowledges that Russian exports of ammonium nitrate would have landed into Australia at the lowest level of all import sources during the investigation period. The Commission's conclusions that Russian producers would not seek out the growth opportunities in the Australian market defies reasoned logic.

CSBP challenges the Commission's reasoning in finding that Russian exporters would limit future supply to the "spot" market in Australia. Recent negotiations have demonstrated that customers and traders have switched sources of supply away from countries the subject of anti-dumping measures to those countries where measures do not apply. Should the measures be allowed to expire on Russian exports to Australia, those same customers and traders will source from supplier who dumps product at the lowest price (i.e. Russia).

Even if Russian exports were limited to the "spot" market in Australia (which CSBP does not concede), this still will cause material injury to the Australian market. The Commission has concluded that the landed price of Russian exports will be below the landed prices from other countries, which will result in a reduction in the import parity price in Australia. CSBP's experience is that negotiations with customers around pricing for ammonium nitrate are based on a discussion about the import parity price, and CSBP regularly refers to the statistics published by the Australian Bureau of Statistics in this regard. These statistics, which would include "spot" imports from Russia, and that customers also have available to inform themselves around import parity pricing, will in turn be used in negotiations to set the pricing of contracted volumes of ammonium nitrate in Australia, even if those contracts are not supplied by Russian ammonium nitrate.

CSBP disagrees with the Commission's conclusion that the expiration of the anti-dumping measures on ammonium nitrate exported from Russia would not lead to a likely recurrence of material injury. The Commission's is correct that Russian ammonium nitrate would land at the lowest price of all import sources. Similarly, the conclusion that exports from Russia may be dumped is also correct. The recent "country hopping" by importers to seek out new sources of supply following the imposition of measures on ammonium nitrate exported from China, Sweden and Thailand would also see importers seek-out Russian exporters for supply should the measures expire. The referenced limitations on Russian exporters due to capacity constraints and increased demand domestically in Russia by the agricultural sector cannot be relied upon as guarantees that Russian exporters will not export to Australia at dumped prices resulting in material injury to the Australian industry. In fact, spare capacity amounting to 31 per cent of the Australian industry will soon exist in Russia, and a material portion of the Australian market is directly substitutable with imported Russian HDAN. The findings and proposed recommendations in SEF 565 are therefore unrealistic and based upon false premises.

CSBP maintains that the anti-dumping measures on ammonium nitrate exported to Australia from Russia have been effective. Should the measures be allowed to expire it is likely that Russian exporters would use the opportunity to supply excess production capacity to the growing Australian market, resulting in material injury that the measures are intended to prevent. There exists a real and probable likelihood of a recurrence of material injury in the absence of measures from dumped imports from Russia.

## **V. Form of measures**

CSBP notes the Commission's proposed recommendation concerning the form of measures to be applied, subject to submissions received in response to SEF 565. In Report 316, the Minister continued anti-dumping measures on the basis of the floor-price methodology. The measures that have applied since May 2016 have been effective in addressing the injurious effects of dumping by Russian exporters of ammonium nitrate from Russia.

SEF 565 is proposing to alter the form of measures to be applied to Russian exports, in the event the measures are continued, from the floor-price methodology to measures determined on an *ad-valorem* basis. That is, where export prices increase or decrease, the applicable measure to be applied will be based upon the margin of dumping only. Therefore, in instances where Russian export prices decline – to levels that are reflected in Russian export prices to third countries (e.g.

as low as US\$173 to Brazil in early 2020<sup>5</sup>), a 14 per cent dumping margin would be applied only – even though the actual margin of dumping would be higher than this. The Russian exporter can elect to artificially lower the export price to absorb the impact of the *ad valorem* measure on the Australian importer.

A floor-price mechanism therefore is a more effective anti-dumping measure to be applied where an industry has the ability to supply excess production capacity (as is evidenced above that applies for the Russian industry) and restricts the material injury that would likely result from measures based on the *ad valorem* methodology.

## VI. Conclusion and Recommendation

CSBP disagrees with the Commission's proposed findings in SEF to recommend to the Minister that the anti-dumping measures on ammonium nitrate exported from Russia be allowed to expire on 24 May 2021.

CSBP further disputes the Commission's findings that any future exports of ammonium nitrate from Russia will be limited to the "spot" market for supply or that spot supplies have no impact on the ammonium nitrate market in Australia.

In contrast, the evidence supports the following conclusions:

- the anti-dumping measures applied in Report 316 have been effective throughout their duration;
- there is a strong likelihood that future exports of ammonium nitrate from Russia to Australia will be at dumped prices;
- there is significant excess capacity available in Russia (i.e. 440,000 tonnes currently, increasing by a further 180,000 tonnes in late 2021, and a further 200,000 tonnes in 2022) that is available for supply (and will unlikely be exported to the EU due to the continuation of measures);
- HDAN imported from Russia can be directly substituted for ammonium nitrate used in the production of emulsion which represents a material and significant portion of the Australian market;
- contract negotiations examined by the Commission in Investigation 473 confirmed that low priced imports not the subject of measures were used by customers and traders in re-negotiating contracts;
- on the basis of the foregoing, neither Russian exports to Australia nor the effect of these exports will be limited to the spot market;
- anti-dumping measures are justified and necessary to limit the injurious effect of dumped prices from the lowest priced import source (i.e. Russia); and
- in order to be effective in preventing a recurrence of material injury, the anti-dumping measures to be applied must be based upon the floor-price mechanism.

CSBP requests the Commission to rescind its proposed recommendation to the Minister to allow the measures to expire on 24 May 2021 and substitute a recommendation that the Minister take steps to ensure the anti-dumping measures on ammonium nitrate exported from Russia do not expire.

If you have any queries concerning CSBP's submission, please do not hesitate to contact me on (08) 9411 8593.

Yours sincerely



Gerard Chan  
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<sup>5</sup> Refer Confidential Attachment 8 to Industry Application).

## Russian fertilizers major Acron Group unveils three new projects

ICIS News

22 March 2021

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LONDON (ICIS)--Russian fertilizers manufacturer Acron Group on Friday disclosed it will complete three new plant capacity projects as part of a \$210m capital expenditure (capex) drive in 2021.

At the firm's Novgorod site, a 100,000 tonne/year calcium nitrate production facility is under construction, while the complex's Ammonia-3 unit is being upgraded to boost capacity by 200,000 tonnes/year.

The projects are scheduled for commissioning in 2022 and 2023, respectively.

**At the producer's Dorogobuzh site, work has begun on a new nitric acid unit and capacity hikes at existing ammonium nitrate (AN) units to increase output by 180,000 tonnes/year.**

**That project is expected to come on stream in late 2021.**

Looking back at 2020, Acron Group chairman, Alexander Popov, disclosed capex reached \$249m.

"We have successfully implemented three investment projects: construction of a new nitric acid unit and a new urea granulation unit, and upgrades to the Ammonia-4 unit," he said.

"The group also continued its Urea 6+ project [which will triple capacity to around 700,000 tonnes/year], which is expected to come on stream in Q2 2021.

"The COVID-19 pandemic affected the implementation of our Talitsky potash project, and we postponed the execution of project financing due to increased uncertainty.

"That said, in 2020 we completed the construction of two vertical shafts and plan to resume raising the project financing in the near future."

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