

25 March 2021

The Director  
Investigations 2  
Anti-Dumping Commission  
GPO Box 2013  
Canberra  
Australian Capital Territory 2601

**Canberra**  
6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
Australian Capital Territory 2609

Canberra +61 2 6163 1000  
Brisbane +61 7 3367 6900  
Melbourne +61 3 8459 2276

[www.moulislegal.com](http://www.moulislegal.com)

**Brisbane**  
Level 4, Kings Row Two  
235 Coronation Drive  
Milton, Brisbane  
Queensland 4064

**Melbourne**  
Level 39, 385 Bourke Street  
Melbourne  
Victoria 3000

Australia



commercial + international

By email

Dear Director

## **EuroChem Group**

### **565 – ammonium nitrate exported from Russia**

### **Comments concerning Statement of Essential Facts**

We refer to the Statement of Essential Facts dated 5 March 2021 in this matter ("SEF 565").

This is the submission of our client EuroChem Group AG ("EuroChem") and, specifically, group companies JSC Novomoskovsky Azot ("NAK Azot") and JSC Nevinnomyssky Azot ("Nevinka"), with respect to SEF 565.

According to sections 1.3 and 1.4 of SEF 565 respectively:

*...the Commissioner is not satisfied that the expiration of the anti-dumping measures in respect of exports of ammonium nitrate from Russia would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent*

and, accordingly:

*...the Commissioner proposes to recommend to the Minister that the dumping notice in respect of ammonium nitrate exported to Australia from Russia expire on the specified expiry day (being 24 May 2021).*

EuroChem agrees that the Commissioner cannot be satisfied that the expiration of the anti-dumping measures in respect of exports of ammonium nitrate from Russia would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

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EuroChem supports the Commissioner's proposed recommendation to the Minister, which is that the dumping notice in respect of ammonium nitrate exported to Australia from Russia expire on the specified expiry day of 24 May 2021.

EuroChem wishes to make the following comments about certain aspects of SEF 565 and the investigation procedures.

- 1 Neither NAK Azot nor Nevinka made any exports to Australia in the inquiry period.<sup>1</sup> Nonetheless, the Commission calculated dumping margins for NAK Azot and Nevinka on an assumed basis. This used normal values for each of the two companies established on the basis of Section 269TAC(1) (domestic selling prices) compared to an export price established using all-Russia export data as obtained from a proprietary source. On that basis SEF 565 arrived at an "ascertained dumping margin" of negative 0.9% for NAK Azot (no dumping).
- 2 With respect to Nevinka, a positive 10.9% "ascertained dumping margin" was arrived at. However EuroChem has identified an error in the way in which that margin was calculated. The Commission, in line with the "benchmarking" approach adopted to streamline its inquiry procedures, used NAK Azot's factory to port costs for Nevinka, and inflated them using a distance ratio. This ratio was based on the assumption that Nevinka shipped its ammonium nitrate from the same Baltic Sea port as NAK Azot. However, Nevinka shipped its ammonium nitrate from a Black Sea port which is quite proximate to the Nevinka factory. Correction of the export cost adjustment results in a negative "ascertained dumping margin" for Nevinka also (no dumping).
- 3 In light of this correction, EuroChem requests that the Commission revisit its finding that *"the low volumes of exports that may arrive in Australia in the future may be dumped"*. This should be done to the extent that the Commission relied upon the assumption of a possible 10.9% dumping margin for Nevinka in arriving at that finding, and notwithstanding the overall conclusion that the measures should be allowed to expire.
- 4 Another aspect of SEF 565 that is of concern to EuroChem relates to the "particular market situation" findings. It is noted that the Commission undertook a full evaluation of the Brattle Report as submitted by EuroChem to the Commission, to test its net-back gas price assessment ("the benchmark"). As will be recalled, SEF 565 chose NetConnect Germany prices, which incorporate Germany's purchases of Russian natural gas, to establish a benchmark price. That evaluation led to the following findings:
  - (a) for one of the EuroChem companies, its actual costs were below the benchmark for five months, in close alignment with the benchmark for two months and above the benchmark for five months, and that on an average basis, the company's gas costs were broadly consistent with the average benchmark price for the inquiry period; and
  - (b) for the other EuroChem company, its actual costs were above the benchmark for 10 months of the inquiry period and below the benchmark for two months, and that on an average basis, the company's gas costs were above the benchmark for the inquiry period.

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<sup>1</sup> The Commission does state, in SEF 565, that NAK Azot and Nevinka did not make any exports to Australia in the inquiry period.

- 5 On that basis, the Commission made the following findings:

*The Commission has found that the cost of gas for NAK Azot was comparable to the competitive price benchmark during the inquiry period. Therefore, the evidence before the Commission does not demonstrate that the market situation is having a substantial effect on domestic prices. In turn, the Commission considers it does not demonstrate that the market situation is having a different relative effect on domestic and export prices. Accordingly the Commission considers that a proper comparison is permitted.*

*As a result, the Commission is not satisfied that the situation in the market of the country of export during the inquiry period is such that sales in that market are not suitable for use when determining a price under section 269TAC(1) for NAK Azot.*

- 6 EuroChem does not dispute and fully supports the decision that sales in the Russian market are suitable for use in determining normal value. Nonetheless, EuroChem does wish to place on the record its continued opposition to the manner in which the Commission arrived at that decision, which was through the prism of Australia's interpretation of the reference to a "particular market system" in Article 2.2 of the WTO *Anti-Dumping Agreement*. We will not here repeat the submissions made by EuroChem with respect to what it considers to be the proper interpretation and application of the "particular market situation" concept, and about market economy conditions in Russia; the market-based operations of gas producers; private competition in that market; and the market exchange systems that allow open price discovery of gas prices between sellers and buyers. Our client stands by those submissions and again recommends them to the Commission.
- 7 Positively, EuroChem notes and supports these observations and findings made by the Commission in SEF 565:
- (a) No evidence was provided that Russian exports are currently or are likely to be in competition with the Australian industry for specific contracts that will be due for re-negotiation in upcoming years.
  - (b) No direct link was found in price adjustment clauses under Australian industry supply agreements between the prices under those agreements and import prices.
  - (c) Competition from Russian sources will be unlikely due to ongoing agreements with parties related to the Australian industry and low spare capacity in Russia.
  - (d) The Commission found that EuroChem Group's capacity utilisation rate was over 100%.
  - (e) The "*Ammonium Nitrate Russia Market 2021*" report points to an increase in the production capacity of Russian producers of ammonium nitrate, and a corresponding increase in the demand for ammonium nitrate in its domestic market.
  - (f) The high capacity utilisation of LDAN plants in Russia was not disputed by any of the parties to the inquiry.
  - (g) It is not likely that profitable Russian producers would change plant production for the purpose of exporting LDAN at dumped prices to Australia because the majority of the Russian producers' domestic market demand is agricultural and uses HDAN.

- (h) The freight costs to ship ammonium nitrate to Australia are significant.
- (i) Exports of Russian HDAN would not compete with the majority of Australian industry sales, which are in the form of prilled LDAN.
- (j) Growing Russian demand for HDAN for the domestic agricultural market makes it more likely that Russian producers will supply growing domestic demand and its established export markets, rather than increase exports to Australia.
- (k) To compete with Australian industry, Russian exporters (or importers of Russian ammonium nitrate) would need to bid for long-term contracts and lock in set volumes over a period of time.
- (l) Russian imports are more likely to be spot sales or purchases to make up a shortfall (as in the case of the Australian industry's own imports).
- (m) Any opportunistic sales by Russian producers to increase capacity utilisation is also limited in the Australian market due to sales being in accordance with long term contracts.
- (n) The evidence demonstrated that even if importers ceased to import from current source countries and commenced importing from Russia, there is no indication that this would be at the expense of Australian industry volumes or market share.
- (o) Due to the trends found in import data, and sales that appear to be on a spot basis, the mere existence of distribution links does not make increased exports to Australia likely in the absence of measures.
- (p) The evidence before the Commission indicated that exports from Russia entering the Australian market will remain at minimal volumes.
- (q) It is not possible to know if the low FOB prices at which Russian producers exported ammonium nitrate to other countries is the price at which Russian exporters would export to Australia.
- (r) The possibility that Russian landed prices would be below landed prices from other countries does not necessarily mean that ammonium nitrate coming in at these estimated prices would be dumped.
- (s) Due to the limitations on Russian exporters participating in negotiations to supply ammonium nitrate through ongoing contracts or in any significant volumes, the impact of Russian pricing on contract negotiations will be limited.
- (t) The expiration of the measures applying to ammonium nitrate exported to Australia from Russia would not be likely to lead to reduced Australian industry prices.
- (u) The expiration of the measures applying to ammonium nitrate exported to Australia from Russia would not be likely to lead to reduced Australian industry profits and profitability.
- (v) Confidential information before the Commission reduces the likelihood of Russian exports competing with Australian industry.

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We submit that SEF 565 irrefutably establishes that the expiration of the anti-dumping measures in respect of exports of ammonium nitrate from Russia cannot be shown as being likely to lead, as a matter of probability, to a recurrence of dumping on the part of NAK Azot or Nevinka and of the material injury that the anti-dumping measures are intended to prevent.

We thank the Commission for its comprehensive investigation and detailed treatment of the issues arising, and look forward to the Minister's confirmation of the recommendations proposed by the Commission in SEF 565.

Yours sincerely



**Daniel Moulis**  
Partner Director

**+61 2 6163 1000**