

1 April 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

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

Response to certain comments concerning SEF 565

In making this submission, our client is fully conscious of the meaning and import of Section 269TEA(4) of the *Customs Act 1901*, whereby the Commissioner is not obliged to have regard to any submission made in response to a statement of essential facts in an investigation that is received more than 20 days after the publication of same.

However in this submission our client offers no new evidence on behalf of JSC Novomoskovsky Azot (“NAK Azot”) or JSC Nevinnomyssky Azot (“Nevinka”), nor does it need to, given that it has already provided all of the information requested of it during the investigation.

The submissions of Australian industry members in response to SEF 565 can be dissolved into three main arguments.

The first is that the Anti-Dumping Commission should give the findings of a foreign investigating authority, namely the European Commission, more weight than the evidence before the Anti-Dumping Commission in this inquiry. We remind that those findings were not made under Australian law; were made with respect to different facts; and relate to a different time period. Further, it is claimed in two of the Australian industry submissions that the findings of the European Commission are “*more reliable*” than the Anti-Dumping Commission’s present assessment because of “*broader exporter cooperation*”.¹

NAK Azot and Nevinka were completely cooperative in this inquiry. The facts they presented, both as to their financial records and their industrial situation, were thoroughly verified.

¹ Submissions of Dyno Nobel Asia Pacific Pty Ltd and Queensland Nitrates Pty Ltd– EPR 565, Doc Nos 037 and 038.

Negative dumping margins, worked out by a method selected by the Commission, were ascertained for NAK Azot and Nevinka² with respect to the inquiry period. Cooperation by exporters is important to the ability of an investigating authority to make reliable findings with respect to those exporters. "Broader" cooperation of exporters is not required so as to be more certain of findings made specifically in relation to those exporters that do cooperate.

The second is the contention that there is excess capacity, and will be increasing excess capacity, amongst Russian producers of ammonium nitrate in Russia, and that such excess capacity could be directed towards production for the Australian market in the future. References are made in a number of the Australian industry's submissions with respect to a plant conversion and/or expansion (Acron, at Novgorod) and a capacity expansion (SBU Azot, at Kemerovo).³

NAK Azot and Nevinka were completely cooperative in this inquiry. The facts they presented, both as to their financial records and their industrial situation, were thoroughly verified.

NAK Azot demonstrated full capacity utilisation for LDAN and HDAN, in the separate shops in which the respective types were produced, and overall. The LDAN shop is fully committed to LDAN production. Nevinka demonstrated full capacity utilisation for HDAN. It does not make LDAN, and its HDAN capacity cannot switch to LDAN. No expansion projects are planned with respect to either NAK Azot or Nevinka.

The third argument is an attempt to rebut the Commission's conclusion that any future Russian export sales to Australia would likely only be "spot sales" and would not be made pursuant to longer-term contracts.⁴ Further, the Australian industry argues that even spot sales would be injurious because such price offers by Russian exporters would pull already-contracted prices down, due to import parity pricing.⁵

NAK Azot and Nevinka were completely cooperative in this inquiry. The facts they presented, both as to their financial records and their industrial situation, were thoroughly verified.

Any suggestion that there would be injurious price behaviour on the part of the EuroChem companies would first have to overcome two evidentiary hurdles. The first of these is that negative dumping margins were ascertained for NAK Azot and Nevinka⁶ with respect to the inquiry period. Thus a relevant indication of the potential for future dumping by NAK Azot and Nevinka simply does not exist. The second is the Commission's findings with respect to certain confidential information we provided to the Commission, being information that is unique to the EuroChem group of companies.

² With respect to Nevinka, we refer to the margin as it would be once corrected in line with our client's previous submission. See EPR 565, Doc No 041.

³ Submissions of Dyno Nobel Asia Pacific Pty Ltd, Queensland Nitrates Pty Ltd, CSBP Chemicals and Orica Limited. See EPR 565 Doc Nos 37, 38, 39/42/43 and 40, respectively.

⁴ Submissions of Dyno Nobel Asia Pacific Pty Ltd, Queensland Nitrates Pty Ltd, CSBP Chemicals and Orica Limited. See EPR565 Doc Nos 37, 38, 39 and 40, respectively.

⁵ Submission of Orica Limited. See EPR 565 Doc No 039.

⁶ See footnote 2.

In conclusion, NAK Azot and Nevinka were fully cooperative exporters in this inquiry and are entitled to be dealt with on their own merits.

Arguments by the Australian industry members that rely on allegations with respect to uncooperative exporters, and which are not challenged by those exporters, must not be allowed to prejudice the interests of our client companies.

Yours sincerely



Daniel Moulis
Partner Director

+61 2 6163 1000