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На № _____ от _____

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au

Comments of MED of Russia and MIT of Russia in frame of reinvestigation of certain findings in relation to continuation inquiry No. 565 (ammonium nitrate from Russia)

Public Record

Dear Sirs,

We are writing in connection with the File Note of the Anti-Dumping Commission concerning reinvestigation of certain findings in relation to Continuation Inquiry No. 565 relating to Ammonium Nitrate exported from the Russian Federation.

Please find enclosed herewith comments of the Ministry of Economic Development of the Russian Federation and Ministry of Industry and Trade of the Russian Federation in frame of the reinvestigation to be considered by the Anti-Dumping Commission.

Enc. *4p.*

Sincerely,

Andrey Nakhabin
Deputy Director of Department
of Development and Regulation of Foreign
Economic Activity

Comments of the Ministry of Economic Development of the Russian Federation and the Ministry of Industry and Trade of the Russian Federation in frame of the reinvestigation of certain findings in relation to Continuation Inquiry No. 565 relating to Ammonium Nitrate exported from the Russian Federation

In accordance with the notice of the Anti-Dumping Review Panel of Australian Government of 19 July 2021 a procedure of review of a decision made by the Minister of Industry, Science and Technology of Australia Mr. C. Porter of 20 May 2021 in respect to the termination of the anti-dumping measure in relation to ammonium nitrate exported from the Russian Federation (Continuation Inquiry No. 565) has been initiated.

The procedure has been initiated in connection with the applications of Australian companies: CSBP Limited, Dyno Nobel Asia Pacific Pty Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd (hereinafter – “the Applications”). The Applicants asked to review certain aspects of the decision, namely whether the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping and injury.

The Russian side notes that the reasons presented in the applications for the review of the decision are not sufficient for reconsideration of the said decision.

It should be noted that within the framework of the review procedure completed till 20 May 2021, the issues raised before the Anti-Dumping Commission have already been studied in sufficient detail. The Russian side provided comprehensive information confirming the need to terminate the said measure within the review proceeding.

With reference to the part of the reinvestigation request which concerns methodology of ascertainment of the normal value we would like to note the following.

The Commissioner is requested to reinvestigate the methodology of the ascertainment of normal value, and the resulting effect on the dumping margins of the Russian exporters. The request suggests adjustment to the normal value based on reconsideration of the cost of natural gas due to an allegation that those costs were distorted by the effects of “the particular market situation”.

Article 2.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter – the Anti-Dumping Agreement)

prescribes to determine the normal value based on the prices in the ordinary course of trade for the like product when destined for consumption in the exporting country. Article 2.2 of the Anti-Dumping Agreement envisages that, as one of the secondary sources, the normal value may be based on the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

However, in their reinvestigation request the Applicants appear to suggest to disregard these conditions, which would ultimately lead to invalid conclusion that future exports of ammonium nitrate to Australia from the Russian Federation will be at dumped prices.

It should be noted that the use of surrogate input prices in the calculation of the cost of production was found to be inconsistent with WTO rules by WTO Panels and the Appellate Body, namely in disputes concerning EU anti-dumping measures on biodiesel from Argentina and Indonesia, Ukrainian anti-dumping measures on ammonium nitrate from Russia, EU cost adjustment methodologies and certain anti-dumping measures on imports from Russia. The substitution of the costs reflected in the exporting producers' records with surrogate input price in calculation of the cost of production and further use of the resultant sum in the ordinary course of trade test and construction of normal value were found to be inconsistent with Articles 2.2.1.1, 2.2.1 and 2.2 of the Anti-Dumping Agreement, and also with Article 11.3 of the Anti-Dumping Agreement.

Besides, we would also like to draw the attention of the Anti-Dumping Commission to the following. As it was numerously noted by the WTO Appellate Body, "dumping" is "the result of the pricing behaviour of individual exporters or foreign producers" of the product under consideration.¹ It should be recalled that prices for input materials, including natural gas, are beyond the control of the ammonium nitrate producers and have nothing to do with their pricing behavior.

Moreover, we should reiterate our serious concerns about the WTO Panel decision in *Australia – Anti-dumping measures on A4 Copy Paper* which is numerously cited in support of the request. Namely, at the meeting of the WTO Dispute Settlement Body (DSB) when

¹ Appellate Body Reports, *US – Zeroing (Japan)*, WT/DS322/AB/R, paras. 111 and 156. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds322_e.htm; *US – Zeroing (EC)*, WT/DS294/AB/R, para. 129. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds294_e.htm; *US – Stainless Steel (Mexico)*, WT/DS344/AB/R, para. 95 and fn. 208 to para. 94. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds344_e.htm; *EU – Biodiesel (Argentina)*, WT/DS473/AB/R, fn. 130 to para. 6.25. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm.

the said panel report was adopted, the Russian Federation explained that “the Panel had deviated from customary rules of interpretation of public international law and, therefore, its interpretations and reasoning were legally flawed”², which consequently led to tainted findings. In light of the explanations provided at the said DSB meeting, we would like to reiterate the warnings against systemic consideration of that panel report expressed in our comments within the review.³

In light of the aforesaid, we would like to warn the Anti-Dumping Commission against calculation of the normal value based on out-of-country benchmarks and against making its determinations based on flawed interpretations. We urge the Anti-Dumping Commission to conclude its analysis with due adherence to the WTO rules.

With regard to other relevant parts of the reinvestigation request, we would also like to draw the attention of the Anti-Dumping Commission to the following.

We want to refer to the comments of the Russian side that Russian producers do not have the opportunity to significantly increase their supplies to the Australian market. In particular, to the corresponding data on almost full capacity utilization of Russian enterprises were during the review of the measure⁴.

The Applicants mention the expansion of production capacities at KAO “Azot” (Kemerovo). However, we emphasized that it implies capacity building by the company first of all in order to meet the growing demand in the domestic market of the Russian Federation⁵.

² Minutes of the meeting of the WTO Dispute Settlement Body on 27 January 2020, paras. 4.4-4.7. URL: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DSB/M440.pdf&Open=True>.

³ Comments of the Ministry of Economic Development of the Russian Federation in respect of the statement of essential facts concerning the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation of March 24, 2021, No Д12и-8265.

⁴ Comments of the Ministry of Economic Development of the Russian Federation regarding initiation of a continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation of September 28, 2020, No Д12и-31520, Comments of the Ministry of Economic Development of the Russian Federation in respect of the statement of essential facts concerning the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation of March 24, 2021, No Д12и-8265, Position of the Ministry of Economic Development of the Russian Federation for the meeting for interested parties in relation to the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation of February 02, 2021, No Д12и-2961.

⁵ Position of the Ministry of Economic Development of the Russian Federation for the meeting for interested parties in relation to the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation of February 02, 2021, No Д12и-2961, Comments of the Ministry of Economic Development of the Russian Federation in respect of the statement of essential facts concerning the continuation inquiry into ammonium nitrate exported to Australia from the Russian Federation of March 24, 2021, No Д12и-8265.

The Russian side notes that ammonium nitrate is traded on the terms of long-term contracts. The traditional export markets for the Russian manufacturers are, first of all, the CIS countries, and a possible reorientation of supplies to the Australian market seems unlikely.

In addition, we emphasize that the threat of an increase in imports of products from Russia should be sufficiently substantiated and based on concrete arguments, and not on assumptions and conjectures. At the same time, such arguments are not presented in the Applications.

Moreover, according to the annual report of Orica Australia Pty Ltd, which is one of the applicants, its activities in 2021 were negatively affected by the consequences of the pandemic of COVID-19, the strengthening of the Australian dollar, as well as trade tensions with China, that aren't connected with imports from Russia.

The Russian side asks the Anti-Dumping Commission of the Australian Government to take into account the abovementioned arguments when conducting the reinvestigation review and to confirm the decision of 20 May 2021 made by the Minister of Industry, Science and Technology of Australia on the termination of the anti-dumping measure concerning ammonium nitrate from the Russian Federation.