
25 March 2022

Mr Tim King

Assistant Director

Anti-Dumping Commission

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Public File

Dear Mr King

ADRP Investigation No. 134 – Reinvestigation 565 Ammonium Nitrate exported from the Russian Federation – Submissions by interested parties

Orica Australia Pty Ltd (“Orica”) has reviewed the submissions to the Anti-Dumping Commission’s (“the Commission”) re-investigation No. 565. Orica provides the following comments in respect of the submissions provided.

I. Glencore

Glencore has made comments in respect of the reinvestigation grounds that require rebuttal. Each item is addressed hereunder.

(a) Benchmark gas cost

It is unsurprising that Glencore agrees with the Commissioner’s finding in Report 565. The ADRP’s direction to the Commissioner, however, confirms otherwise. The ADRP Member has correctly questioned the appropriateness (and indeed the sensibility) of the deduction of the gas export tax from the benchmark which will then deliver an effective artificially low price equivalent to the distorted domestic gas price that exists in Russia due to government influence.

The assertion by Glencore that there can be no basis for “suspicion” regarding the nature of the export tax is incorrect. The ADRP Member has correctly identified that Gazprom is a majority government-owned and controlled monopoly supplier on the domestic market and the only government-authorised exporter of Russian gas. The Russian government levies the 30 per cent export tax to compensate itself for the domestic market distortion to gas supplied within Russia. The 30 per cent export tax is not a broad ranging, multiple product export tax such as a value-added tax or a consumption tax, but merely an impost applied to correct subsidised domestic gas prices to fund the Russian government expenditure.

The ADRP Member was correct in questioning whether an adjustment to the benchmark gas price is required when the export tax is not a usual economy-wide tax.

Orica rejects Glencore's statement at Footnote 6 on P.3 that the "ADRP may be using the term monopoly as a shorthand to describe Gazprom's predominant role as the exporter of Russian natural gas". There is no basis for this alternate interpretation of "monopoly" that applies to Gazprom as a majority government owned and controlled domestic and export monopoly supplier. The export tax is more than a typical export duty with its intended purpose to correct the distortion that applies to Russian domestic gas prices.

The Commission has acknowledged that Russian domestic gas prices are not determined on a competitive basis therefore the Russian domestic gas prices cannot be used as a suitable benchmark. An external benchmark gas price, appropriately adjusted (without an adjustment for the 30 per cent export tax) derives the appropriate benchmark gas cost for inclusion in the Russian ammonium nitrate exporter's production costs.

It is similarly incorrect to compare the German benchmark gas price (inclusive of the erroneous adjustment of the 30 per cent export tax) with market determined gas prices in the USA. There is an absence of influence in USA gas prices unlike the Russian government influenced domestic (and export) gas pricing.

The assertions by Glencore that it is appropriate to include an adjustment to the benchmark for the 30 per cent export tax cannot be sustained as the effect of the adjustment is to provide for a benchmark selling price for Russian export gas that is the same as the Russian distorted domestic gas price.

(b) Fair comparison

The Commission has determined in Investigation 565 that domestic gas prices in Russia were distorted by the policies of the Russian government. The Commission concluded that Russian domestic gas prices were "*artificially lower than would have otherwise been*" due to the capped costs imposed by the Russian government.

Orica agrees with the sentiments of the ADRP Member that the Commission based its assessment of whether Russian domestic sales were "suitable" for the purposes of section 269TAC(1) of the Customs Act to be consistent with the Australia's obligations under the Anti-Dumping Agreement ("ADA") and the WTO Panel's interpretation in the Panel Report on A4 Copy Paper. However, the exclusion of the gas export tax as an adjustment to the benchmark leads to a conclusion that the domestic and export prices cannot be fairly compared – contrary to the final recommendations in Report 565. It is therefore appropriate for normal values for the Russian ammonium nitrate producers to be determined on a constructed cost basis.

(c) Recurrence of dumped exports

Glencore contends that the recalculation of normal values and the determination of positive dumping margins provides "limited utility" in determining the likelihood of future exports at dumped prices.

Orica disagrees. Orica provided the Commission with information about Russian ammonium nitrate exports and export prices to third countries. Further updated Russian export data was recently provided in Orica's 11 March 2022 submission.

The Russian export prices for ammonium nitrate to other third country destinations are typically priced well below export prices to Australia (due to anti-dumping measures in Australia). If measures in Australia are not continued, it is entirely plausible and indeed likely, that the low priced tonnes will be brought into Australia from Russia and displace locally manufactured tonnes which will be injurious to the Australian industry.

Additionally, the presence of low-priced dumped ammonium nitrate from Russia will be used by competitors to underpin price offers for business. In that way the low prices from Russia will have an injurious effect on the domestic selling price irrespective of whether any import volume is physically made. We note that the Glencore submission only considers injury from physical flow of product rather than this price suppression consideration.

The absence of measures in a large growth market such as Australia is therefore attractive to Russian ammonium nitrate exporters and would **likely** result in increased exports to Australia at injurious levels.

(d) The recurrence of further exports

Orica contends that the recurrence of further exports of Russian ammonium nitrate is considered highly likely given that Russian exporters have established supply channels into the Australian market (and have been maintained in excess of 20 years).

The “new information” confirms that the Kemerovo plant will be operating at increased production capacities that will be supplied to domestic and export markets. There is no basis to support a view that the increased production would not be exported to a growth market such as the Australian ammonium nitrate market. In fact the new information provides evidence that exporters in Russia are actively touting for export customers

On Pages 9-10 of Glencore’s submission, reference is made about the distance of Kemerovo from export ports and that this makes it “financially unattractive” to export to Australia, despite these ports offering “the most efficient transit to Australia”. Orica notes the reality that rail tariffs in Russia are subsidized and bare no resemblance to the freight tariffs faced by Australian industry. Secondly, exports of ammonium nitrate have been consistently made through Eastern Russian ports to supply Asian countries. Extension of supply to Australia is a likely logical extension. According to the export statistics from Tradedata International Pty Ltd, Russian exports of ammonium nitrate through Vladivostok and Port Nakhodka in Eastern Russia in 2019 and 2020 were 12,000te and 30,000te respectively. Of these, exports from Kemerovo Azot accounted for in excess of 83% of the volume exported.

It therefore cannot be disputed that in the absence of anti-dumping measures, further exports of ammonium nitrate at export prices that would be the lowest traded prices globally (due to the Russian government distorted domestic gas prices that enables ammonium nitrate selling prices to be artificially low), will likely increase into the Australian market.

II. Submission by JSC Novomoskovsky Azot and JSC Nevinnomyssky Azot of 28 January 2022

This submission on behalf of the two cooperative Russian ammonium nitrate producers contains the similar arguments put forward by Glencore. It is considered that the above comments by Orica address the matters concerning the determination of a benchmark price and normal values for Russian ammonium nitrate producers as required for the reinvestigation.

Orica would, however, reiterate that the finding that future Russian export sales of ammonium nitrate would be limited to “spot” sales on the Australian market that account for less than five per cent of total sales is incorrect and is inconsistent with [*commercially sensitive contract arrangements*]. Orica reiterates the point that country hopping of imports away from China, Sweden and Thailand to other cheaper sources once measures were imposed is strong evidence that importers will move to the cheapest source once product is available. The Commission has noted that imports from Russia are likely to land in Australia at prices lower than other sources so are highly likely to be used by customers and competitors in negotiations for supply contracts against which Orica will need to meet to retain supply.

III. Ministry of Economic Development of the Russian Federation submission of 3 March 2022

The Ministry of Economic Development (“MED”) of the Russian Federation states that it has been advised by the Russian Fertilizers Producers Association that the expanded production facilities at Kemerovo “*are not facilities aimed at increasing production of commercial ammonium nitrate*” but is for “*the solution of ammonium nitrate is fully used for shipment to consumers of the Kemerovo region and for the production of urea-ammonium nitrate mixture (CAS)*”.

Orica rejects the claims by MED as inconsistent with the exporter trade activity of Russian agents selling ammonium nitrate that have sought out supply opportunities for increased production of ammonium nitrate into the Australian market. Announcements by Kemerovo Azot also indicate that their expansion plan and capital expenditure programme is set to target low density ammonium nitrate product sales in domestic and export markets.

IV. Conclusions

The submissions by Glencore and the Russian ammonium nitrate producers JSC Novomoskovsky Azot and JSC Nevinnomissky Azot do not provide any justifiable reasons as to why the 30 per cent export tax should be included as an adjustment to the benchmark gas price (as is consistent with the Commission's benchmark methodology in Investigation No. 312).

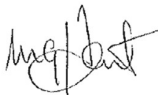
It is erroneous to adjust the benchmark gas price for a mark-up that is included as a means of compensating the Russian government for distorting domestic gas prices in Russia.

The available evidence confirms that Russian exporters of ammonium nitrate are exporting to other countries¹ at prices substantially below previously determined non-injurious price levels (set in 2016) and would therefore be injurious to the Australian industry. It is therefore *likely* that future exports of Russian ammonium nitrate to Australia will be at dumped prices that will *likely* result in a recurrence of injury to the Australian industry. Further, an increase in production capacity at Kemerovo of ammonium nitrate will likely have impacts onto the global ammonium nitrate market through increased supply at reduced prices.

Orica reiterates its long-held position that the anti-dumping measures on imports of ammonium nitrate from Russia are necessary to prevent a recurrence of material injury from dumping that the anti-dumping measures are intended to prevent. Orica requests that the Commissioner re-consider the findings in Report 565 as per the ADRP Member's reinvestigation request and recommend that the retention of the measures is required to remove the likelihood of a recurrence of injury that is material from dumping.

If you have any questions concerning this submission please do not hesitate to contact me on (03) 9665 7309.

Yours sincerely,



Malcolm Hart

Senior AN Market Manager - APA

¹ Refer TradeData International export data for Russian Federation exports of ammonium nitrate.