

15 July 2022



The Director
Investigations Unit 2
Anti-Dumping Commission
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Attention: Ms Leora Blumberg

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Dear Sir/Madam,

Preliminary Reinvestigation Report of certain findings in Report No. 565 – Ammonium Nitrate from Russia

I. Summary

Dyno Nobel Asia Pacific Pty Ltd (“DNAP”) acknowledges the release of the Preliminary Reinvestigation Report (the “Report”) No. 565 on 1 July 2022 concerning ammonium nitrate exported from the Russian Federation (“Russia”).

DNAP disagrees with the preliminary recommendations of the Anti-Dumping Commission (“the commission”) on the following grounds:

- (a) a decision that the 30 per cent Gas Export Tax (“GAS”) imposed on exports of natural gas by Russia is an appropriate adjustment to a German benchmark gas price for the purpose of determining a market derived gas price for Russian ammonium nitrate exporters is not the correct decision as the tax is not a ‘typical’ export tax;
- (b) the determination of normal values and dumping margins for Russian exporters is therefore also incorrect as it is based upon the incorrectly determined gas benchmark; and
- (c) the Commissioner’s decision that he remains not satisfied that the expiration of the anti-dumping measures would lead, or be likely to lead, to a continuation of or a recurrence of the material injury that the anti-dumping measures are intended to prevent, is also incorrect as it is formulated on the basis of an absence of dumping determined in the reinvestigation.

DNAP submits that the Commission’s preliminary findings detailed in the Report have not altered from the recommendations contained in Report No. 565 (and relied upon by the then Minister) and therefore continue to reflect the incorrect and not preferred decision.

II. The Reinvestigation

The Commissioner was requested to reinvestigate the “appropriateness of the Gas Export Tax” [or GET] adjustment to the benchmark in determining a competitive cost for natural gas in Russia. The ADRP Member considered there was merit in the review application as:

- *the “tax” applies only to sales by Gazprom, a majority government owned monopoly exporter (and is thus, in effect, a mark-up by a seller rather than an external impost);*
- *Gazprom’s prices net of that “tax” are not the product of competitive market conditions and the appropriate benchmark is the price at which gas is sold into a competitive market; and*
- *the Gas Export Tax should be considered a levy that corrects the artificially low Russian gas price to an equivalent competitive market gas price that compensates Russia for the export of its natural resource.*

The Commission’s Reinvestigation Report appears to focus on validating the adjustment to the benchmark gas price. As required by the ADRP Member, the Commission examined whether the GET was a “usual” type of tax and

whether the rate was unusual. The Commission concluded that export taxes on 'natural resources' was not unusual for "about one third of WTO members" and that the typical export tax rate applied to Russian resources was between 5% and 6.5%. Therefore, the rate of the GET at 30 per cent is unusually high and would suggest the Government of Russia (GOR) is motivated in some other way to impose a higher level on natural gas. An export tax levied at a significantly higher rate would appear, in DNAP's view, to be applied for different reasons than the typical base rates that apply to export taxes imposed by the GOR on other natural resource products exported by Russia.

DNAP contends that the GOR imposes the GET at the ultra-high 30 per cent rate as an acknowledgment that Russian domestic gas prices (that are determined by the GOR) are distorted and artificially low. For these reasons, the 30 per cent GET cannot be considered a typical export tax applied to a natural resource n exportation.

In its reinvestigation the Commission examined the relationship of Gazprom and the GOR to establish any connection for levying a higher export tax on natural gas exports. The Commission considered that the level of ownership in Gazprom by the GOR does not mean that it effectively controls Gazprom and that whilst the GOR likely has significant influence over the operation of Gazprom "*there is no evidence that the GOR directly influences the pricing decisions of Gazprom*". DNAP highlights that as the GOR has a majority ownership in Gazprom it is in a position of determine the level of the GET (thereby influencing the export price for the gas) and to ensure the tax is paid to the GOR by the monopolistic distributor and gas exporter (that is majority owned and controlled by the GOR).

DNAP also notes that the Commission considers that whilst Gazprom is majority owned by the GOR it "*still has a significant proportion of non-GOR shareholders, is a corporation incorporated under Russia's corporation laws and cannot be considered as an 'agency' solely owned and answerable to the GOR*". This viewpoint would appear to be highly questionable in light of the GOR's efforts to halt supply of gas as it dictates. The Commission's preparedness to accept that minority shareholders ensure that Gazprom remains a profit-oriented entity free of GOR influence does not reflect the actual situation.

The Report provides no independent confirmation that an adjustment to the German gas benchmark price is an appropriate adjustment to be made in determining a market derived gas price for comparison with Russia's distorted domestic gas prices. The Commission has relied on the following to arrive at its finding:

- its own interpretation of Gazprom's financial accounts in 2019 and 2020 to identify the liability for the tax;
- its examination of Gazprom's Articles of Association concerning its corporate objectives (i.e. profit oriented);
 - whether export taxes apply in other jurisdictions;
 - whether the GET is a *usual* tax that is commonly applied; and
- that Russia is a pricing into Germany as one of numerous suppliers (although at 40 per cent share Russia would be the influential price setter).

DNAP does not consider that the Commission has adequately substantiated grounds for adjusting the German gas benchmark to arrive at a market determined price for gas in Russia. The calculated benchmark price cannot be considered an "external" gas price as it is a price that has originated in Russia, is heavily influenced by the GOR (both at its source and with the 30 per cent GET impost), and is a price that a government-owned and controlled monopolistic supplier and distributor has established. There is an absence of independence to cite that the GET is a market driven price free of influence by the GOR.

DNAP rejects and disagrees with the Commission's findings concerning the adjustment of the GET to the German gas benchmark price. DNAP maintains its view that Finding One in respect of the is merely an affirmation of the Commission's position as contained in Report 565. The Commission has not sought external advice in support of its conclusion(s) with the reinvestigation finding heavily reliant on what the Commission refers to as available 'evidence'. The arguments and reasoning of the Commission do not support a conclusion that involves an adjustment to a benchmark price that effectively returns that price to a distorted GOR domestic price for natural gas.

DNAP considers that the Commission's finding in respect of the 30 per cent GET adjustment (or the effective 28.4 per cent equilibrium model adjustment) to the benchmark gas price continues to be the incorrect and not preferred decision.

The decision of the Commission to apply the adjustment to the benchmark gas price therefore impacts the determination of normal values and dumping margins for ammonium nitrate producers in Russia. The assessed normal values are therefore lower than they otherwise would be in the absence of the adjustment for the 30 per cent GET and in DNAP's view (based on the Commission's preliminary) are at artificially low levels. The dumping margins calculated by the Commission therefore do not reflect the actual margins of dumping if no adjustment to the

benchmark was made. DNAP considers that the Commission's determination of normal values and dumping margins are incorrect and not the preferred decision(s).

DNAP does concur with the Commission on the finding that it is likely that future exports of ammonium nitrate from Russia to Australia will be at dumped prices.

Concerning Finding Two, DNAP also disagrees with the Commission concerning its findings in the Preliminary Report. The Commission maintains that in the absence of above negligible dumping margins (which DNAP contends have been erroneously calculated) any future Russian exports to Australia would be limited to the 'spot' market for supply. DNAP does not agree that future Russian exports to Australia will be limited to the spot market. DNAPP considers that the Commission has not adequately considered the effectiveness of the measures that have applied and have limited Russian supply (at undumped levels) to the contractual segment of the market. In the absence of the measures, suppliers (i.e. importers) will revert to dumped Russian sourced ammonium nitrate – just as Chile, China, Lithuania, Sweden, Thailand and Vietnam in recent times – have been used to influence prevailing contract prices. The likely recurrence of material injury extends well beyond the spot market. The Commission has failed to acknowledge this valid concern raised by the local industry members.

Additionally, DNAP does not consider that the Commission has fully understood the impact of the Russian producer Kemorovo's announced plant expansions. Russian producers of ammonium nitrate are predominantly exporters that seek out supply opportunities in large markets – including Australia. Kemorovo's additional production capacity will enable it to offer increased volumes of supply – in particular, for large contract requirements – in the absence of anti-dumping measures.

The Commission's Finding Two concerning the Commissioner remaining of the view that he is not satisfied that the expiration of the measures would lead to, 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 is not the correct or preferred decision.

III. Conclusion

The Reinvestigation Report in respect of Report No. 565 affirms the Commissioner's original findings as accepted by the then Minister.

DNAP submits that the findings in the Reinvestigation Report that the 30 per cent GET is an appropriate adjustment to the German gas benchmark price is incorrect and the subsequent determination of normal values and dumping margins, continue to reflect the incorrect and not preferred decisions (as assessed in Report 565 and relied upon by the then Minister).

DNAP also considers that the Commissioner's finding that he is not satisfied that the expiry of the measures would lead, or would likely lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent, that is based upon the erroneous adjustment for the 30 per cent GET in the benchmark gas price for normal values for Russian ammonium nitrate producers remains the incorrect and not preferred decision. The correct and preferable decision is that the Commissioner is satisfied that the exports from Russia will lead, or likely lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent and that the Commissioner recommends to the Minister that he take steps to secure the continuation of the measures.

If you have any questions concerning this submission please do not hesitate to contact me on 0409 810 860.

Yours sincerely,



Greg Hayne
President