12 July 2022

The Director
Investigations Unit 2
Anti-Dumping Commission
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CANBERRA ACT 2600

Email: investigations2@adcommission.gov.au

Cc: ADRP@industry.gov.au
Attention: Ms Leora Blumberg

For Public File

Dear Sir/Madam

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

I. Summary

CSBP Limited (CSBP) has reviewed Preliminary Reinvestigation Report No, 565 (the "Report") published on 1 July 2022. CSBP does not agree with the findings contained in the Report including:

- the adjustment for the 30 per cent gas export tax (GET) to the benchmark gas price; and
- that the Commission 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.

CSBP maintains its position that the Commission's recommendation to the Minister is not the correct or preferable decision following the reinvestigation.

II. ADRP Request for reinvestigation

The ADRP Member requested that the Commissioner 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.

The Commission also examined the relationship of Gazprom and the GOR to establish any connection for levying a higher export tax on natural gas. The Commission considers 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*". CSBP 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).

CSBP 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 willingness to accept that minority shareholders ensure that Gazprom remains a profit-oriented entity free of GOR influence is indeed optimistic.

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).

CSBP 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.

CSBP rejects and disagrees with the Commission's findings concerning the adjustment of the GET to the German gas benchmark price. CSBP 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.

CSBP 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 CSBP's view 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. CSBP submits that the Commission's determination of normal values and dumping margins are incorrect and not the preferred decision(s).

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

Concerning Finding Two, CSBP again disagrees with the Commission concerning its findings in the Preliminary Report. The Commission maintains that in the absence of above negligible dumping margins and on the basis that any future Russian exports to Australia would be limited to the 'spot' market for supply. CSBP considers the Commission has not adequately considered the effectiveness of the measures that applied that have limited Russian supply to the contractual segment of the market. In the absence of the measures, suppliers (i.e. importers) will utilize 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 producers.

CSBP does not consider that the Commission has fully understood the impact of the Russian producer Kemorovo's 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. Recommendation

The Reinvestigation Report in respect of Report No. 565 affirms the Commissioner's original findings as accepted by the then Minister. CSBP considers that the findings in the Reinvestigation Report that the 30 per cent GET is a permissible adjustment to the German gas benchmark price and the subsequent determination of normal values and dumping margins, continue to reflect the incorrect and not preferred decisions. Similarly, 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, remains the incorrect and not preferred decision.

If you have any questions concerning this submission please contact CSBP's adviser Mr John O'Connor on (07) 3342 1921.

Yours sincerely

Therese Barker
Commercial Manager