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IŠORINIŲ EKONOMINIŲ SANTYKIŲ IR EKONOMINIO SAUGUMO POLITIKOS
DEPARTAMENTAS**

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Investigation No. 605 into alleged dumping by imports of Ammonium Nitrate Exported from Chile, Lithuania and the Socialist Republic of Vietnam

Written submission of the Republic of Lithuania

The Ministry of Foreign Affairs of the Republic of Lithuania (hereinafter – “Ministry”) would like to thank the Anti-Dumping Commission for the opportunity to submit comments regarding investigation No. 605 into alleged dumping by imports of Ammonium Nitrate Exported from Chile, Lithuania and the Socialist Republic of Vietnam.

Lithuania and Australia are doing a lot to increase mutual relations and, above all, trade. Both countries have experienced China's acts of economic coercion. Therefore, diversifying exports and increasing trade turnover with strategic partners is one of the most important goals of the government of Lithuania. This was also discussed during the recent visit of the Foreign Affairs Minister. Unfortunately, the anti-dumping investigation that has been launched demonstrates a worrying trend and put at risk positive development and expansion of further trade relations.

With reference to the Notice of Initiation No. 2022/050 of 8 June 2022 and after having analysed the non-confidential version of the Consideration report No. 605 and the Industry Application, the Ministry would like to underline several issues that raise serious concerns and flags possible inconsistencies to the WTO Anti-dumping Agreement (hereinafter – “ADA”) and related jurisprudence. In the following sections of the written submission, we present comments regarding (1) rights of the parties and confidentiality; (2) exports originating from Lithuania to

Australia of the product under investigation; (3) material injury to domestic producers or threat thereof; and (4) causation.

It has to be stressed that any trade defence investigation disturbs trade flows and therefore investigating authorities should not initiate such investigations lightly, but only in cases where all the relevant WTO criteria are fulfilled.

The Ministry is deeply concerned that the Industry application nor the Consideration report No. 605 issued by the Anti-Dumping Commission gives any evidence-based assessment of dumping or injury. Furthermore, no causality analysis is provided that would indicate the link between the allegedly dumped imports and the injury. Thus, as the Industry Application is non-compliant with the fundamental requirements of Art. 5.2 of WTO ADA, the investigation should not have been initiated at all.

Nevertheless, the Ministry confirms its readiness and availability to participate at all stages of the antidumping investigation. Lithuania has one of the biggest ammonium nitrate (hereinafter – “AN”) producers in the EU, which sells products primarily to the customers within the EU and also exports to other markets outside the EU. It should be underlined that the company is a private one without any connection to the Government. However, it is a general practice of the Ministry to support and defend exporters if a trade remedy investigation would be started by the respective authorities in any third country.

I. Rights of the parties and Confidentiality

The Ministry would like to stress that the Embassy of Lithuania in Canberra nor the exporting producer based in Lithuania were not properly informed about the Industry Application and the decision of the Anti-Dumping Commission to launch the investigation into alleged dumping by imports of Ammonium Nitrate Exported from Chile, Lithuania and the Socialist Republic of Vietnam. Regrettably, this raises legitimate concerns regarding impartiality and due process. The Ministry kindly requests to evaluate properly not only the arguments of the Applicants, but also the information and arguments provided by all other interested parties.

Furthermore, the non-confidential versions of the Industry Application and the Consideration report No. 605 issued by the Anti-Dumping Commission are highly deficient, as the majority of information is missing or is not properly disclosed and, therefore, does not allow for a reasonable understanding of the substance. In particular, the essential data of prices and their development, the calculations of the normal value, the calculations of dumping margins and the development of other relevant economic indicators are not disclosed. **The Ministry would like to stress that incomplete information effectively limits the right of defence of interested parties.** Thus, we kindly request the Anti-Dumping Commission to remedy the transparency issue and add meaningful non-confidential summaries of information during the later stages of the investigation.

II. Exports originating from Lithuania

Concerning the assessment of the volume of dumped imports, Article 3.2 of the WTO ADA determines that “the investigation authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing member”.

With regard to the volume analysis, the Ministry respectfully submits that the Applicants have provided different data for the same years (Table A-9.1 versus Table B-1.5), further raising

questions as to the purpose and legality of the dumping and injury allegations. Nevertheless, it can be concluded that imports from the subject countries have decreased by 15% in 2021, compared to the base year. The imports from Lithuania decreased by 30% in 2021. According to the Industry Application (see Table A-9.1), during the period 2018 – 2021, imports from Chile, Lithuania and Vietnam were the lowest in 2021.

Thus, the statement of Applicants that “export volumes from the nominated countries to Australia increased gradually in 2019 and then rapidly again in 2020 (by 49 per cent)” (see p. 25 of the Industry Application) is erroneous and conflicting with the data provided in the Industry Application.

Referring to the period of investigation, it should be underlined that imports from Lithuania have considerably decreased in 2021 and 2022, as compared to 2019 (see Annex 1). As presented, no significant exports have been recorded to Australia originating from Lithuania since October 2021.

The Ministry respectfully submits that, based on the facts and official statistics, it should be concluded that **imports from Lithuania did not increase during the period from 1 April 2018 to 31 March 2022. Furthermore, the imports from Lithuania consisted negligible 0,8% of the market share.**

Based on the above-provided information, it cannot be reasonably concluded that imports of AN from Lithuania had any negative impact on the domestic industry in Australia. Therefore, the Ministry kindly **requests to terminate the investigation regarding imports from Lithuania.** Alternatively, the Ministry submits **that imports from Lithuania should be decumulated for the purpose of the injury analysis**, i.e. the Anti-Dumping Commission must analyse and present a dynamic assessment of volume and price developments and trends for Lithuania individually.

III. Material injury to domestic producers or threat thereof

Article 3.4 of the WTO ADA lists a number of factors that need to be analysed in order to demonstrate injury to the domestic industry, such as a decline in sales and profits; decline in market share, productivity, and capacity utilisation; negative effect on cash flow, inventories, and employment.

The current investigation was initiated because of an anti-dumping Application submitted by the following three companies: Orica Australia Pty Ltd, CSBP Limited and Queensland Nitrates Pty Limited. We agree that separate companies' data are confidential, however, sum of three companies' data is not confidential and has to be summarized and disclosed in a non-confidential version.

Consequently, the consolidated application's non-confidential version has to include cumulated data of three Australian producers on the price level, sales volume, market share, profits/losses, production, employment, productivity, return on investments and cash flow.

In this respect, such macro-economic indicators (at the level of all 5 Australian producers) of the Australian market as total consumption, import/export volumes and market share, production, production capacity and capacity utilisation have also been included and available in the non-confidential version.

The Ministry recalls the breach of rights of defence because the Anti-dumping Application for inspection by interested parties (non-confidential version) did not disclose the summarized data related to the economic situation of the Applicants. In the absence of meaningful information, it is impossible to provide arguments concerning material injury or threat thereof.

The domestic industry alleges lost revenue, negative impact on financial performance and employment, and negative results with regards to the return on investments, but no further details have been provided. Nevertheless, based on the information available in the application, the injury picture of the domestic industry remains unclear.

Also, Consideration report No. 605 does not deliver much more information on the domestic industry situation. However, it shows that:

- the Australian industry sales volume has been stable throughout the injury period and has increased in 2021;
- the Australian industry has consistently held the largest market share, and that has been increasing since 2018 (close to 100% in 2021);
- the revenue per unit has been increasing since the base year (2018).

Moreover, the Applicants also acknowledge that they import AN, i.e., the product under investigation to Australia (see Part 2.8 of the Industry Application). Based on the information provided above, the Ministry kindly requests to exclude the Applicant company from the definition of domestic producers because the complainant is an importer of AN. We can reasonably assume that the Applicants' imports contributed to self-inflicted injury if any.

The Ministry respectfully submits that the claims of the Applicants that exports to Australia from Chile, Lithuania and Vietnam continued in 2019 and 2020 and were price-setters in 2021 (see p. 21 of the Industry Application) are not supported by any rational and economically sound arguments explaining how and to what extent the negligible imports from all subject countries which barely reach of 2-3% (or less than 1% from the individual country) could have any significant impact of the price setting and profitability of the domestic industry.

Furthermore, it should be underlined that the examples provided by each of the Applicants in order to highlight the price undercutting that has occurred from the imports from Chile, Lithuania and Vietnam (see p. 26-34 of the Industry Application) should be disregarded as they do not meet the minimum statutory requirements to support the claims of the Applicants. It should be underlined that the mentioned examples selectively present a one-off case without disclosing all circumstances surrounding particular negotiations. And, in any way, such selectively presented examples do not represent usual market trends and the evolution of the AN prices over a certain period of time. Moreover, any of the examples is negligible having in mind the Australian market size as well as the overall production and sales of the Applicants.

Based on the facts of the case, it can be reasonably concluded that the Applicants prefer avoiding any competition, as their market share is even higher than 97%, and domestic sales and market share are only increasing. Also, in 2019 anti-dumping duties were already imposed on imports from Sweden, China and Thailand. Therefore, the claim that domestic producers continue to suffer injury is highly questionable unless they face injury from factors other than imports. For example, some local producers' activities are much broader than ammonium nitrate production, so the investigation must clearly demonstrate the harm they suffer from ammonium nitrate production, although we doubt whether harm exists at all.

Regarding the threat of material injury, the Applicants also do not provide further evidence supporting their claims. The Ministry would like to recall that AN imports from Lithuania almost ceased from October 2021. This can be explained by the drastic increase in gas prices which forced the JC Achema, the Lithuanian AN producer, to reduce production¹. Uncertainty regarding the gas prices and, in particular, gas supply to the EU, continues in 2022. Therefore, the limited production of fertilizers by the Lithuanian producer will be directed to guarantee a stable supply to local farmers in Lithuania and the rest of the EU. Also, it should be underlined that the Lithuanian producer was exporting substantial quantities of AN to Ukraine and these sales were negatively affected by Russia's war. Nevertheless, the Ukrainian customers are ready to restart the imports of fertilizers constantly needed for the local agricultural sector.

IV. Causation

Article 3.1 of the WTO ADA requires also to examine any known factors other than the dumped imports, which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

It should be underlined, that, if the domestic industry had experienced any difficulties caused by other factors, such as the COVID-19 pandemic (during 2020 and 2021), these are factors unrelated to imports and may not be used to justify the initiation of the investigation and/or the imposition of measures.

Furthermore, the Ministry respectfully submits that the Anti-Dumping Commission in its injury and causation analysis should evaluate different factors that directly influenced the performance of the domestic industry. As mentioned, such factors should include the consequences of the COVID-19 pandemic, China's coercive actions stopping the import of coal from Australia, which obviously negatively affected the mining industry and the demand for ammonium nitrate. Moreover, the exports of coal from Australia sharply decreased in 2020 (see Annex 2).

Furthermore, it should be recalled that natural gas comprises up to 60 – 80% of all production costs of AN fertilizers and currently we observe a sharp increase in gas prices worldwide. Therefore, the injury and causation analysis should also evaluate recent increases in costs of various raw materials and gas prices in particular.

Conclusion

Once again, the Ministry would like to underline that the initiation of the anti-dumping investigation No. 605 was based on the Industry Application which is non-compliant with the fundamental requirements of Art. 5.2 of WTO ADA. As outlined above in several parts of this written submission, the Industry Application contains erroneous and conflicting data, as well as claims that are not supported by rational and economically sound arguments. Regretfully, the Industry Application nor the Consideration report No. 605 issued by the Anti-Dumping Commission do not give any evidence-based assessment of dumping or injury.

The Ministry kindly requests the Anti-Dumping Commission to take duly into account all arguments outlined in this written submission.

¹ <https://www.vz.lt/pramone/2021/09/17/del-duju-kainu-achema-stabdo-puse-pajegumu>

In particular, the Ministry kindly requests:

- to disclose aggregated data of three Australian producers (the applicants) on the price level, sales volume, market share, profits/losses, production, employment, productivity, return on investments and cash flow.
- to disclose macro-economic indicators (at the level of all 5 Australian producers) of the Australian market as total consumption, import/export volumes and market share, production, production capacity and capacity utilisation.
- to exclude from the definition of domestic producers an Applicant company which is an importer of AN also.
- to take into account the impact on the domestic industry of other factors: a decrease in coal production in Australia and exports, an increase in natural gas prices.
- to acknowledge there is no significant increase in imports in terms of Article 3.2 of the ADA. In fact, imports decreased (Table A-9.1 of the Industry Application).
- to declare the imports of AN from Lithuania negligible (mere 0,8% of market share) and, consequently, terminate the anti-dumping investigation regarding the import of AN from Lithuania. Alternatively, the imports from Lithuania should be decumulated for the purpose of the injury analysis.

The Ministry trusts that the Australian Anti-dumping Commission will thoroughly examine the points and weaknesses raised above and refrain from the imposition of any anti-dumping measures if their compliance with the WTO Anti-dumping Agreement is not fully respected. The ongoing Investigation No. 605 into alleged dumping by imports of Ammonium Nitrate Exported from Chile, Lithuania and the Socialist Republic of Vietnam should be terminated without any measure adopted.

Yours sincerely,

Director



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