

GLENCORE

PUBLIC RECORD

7 October 2020

The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

By email: investigations2@adcommission.gov.au

Dear Director

Continuation 565 – ammonium nitrate from Russia

Glencore Coal Assets Australia and Mount Isa Mines (collectively **Glencore**) have a strong interest in the Australian ammonium nitrate market. Glencore is a purchaser of ammonium nitrate, and ultimately a major end user of the goods, in the form of bulk explosive products used for blasting purposes in its mining operations. The competitiveness of Australia's mining industry depends in no small part upon the competitiveness of the markets for the various inputs it requires.

Accordingly, Glencore is significantly concerned about the prospective outcomes of the continuation inquiry presently being undertaken by the Anti-Dumping Commission (**ADC**) with respect to ammonium nitrate exported from Russia (**Continuation 565**).

1	Introduction	2
2	Legal standard for continuation of measures	2
3	Market situation finding is no longer warranted	3
	Price comparability of natural gas	5
	It is unlikely that dumping has occurred	7
4	Factors militating against the continuation of measures	8
	Capacity utilisation levels are high	9
	The Australian industry has a pattern of Russian imports	10
	Low likelihood of change to Russian export patterns in future	10
	Removal of measures in other countries	12
	Modalities of domestic competition more significant factors than imports	12
5	No likelihood of material injury measures are intended to prevent	13
6	Conclusion and necessary outcome	15

GLENCORE

1 Introduction

Glencore has reviewed the application documentation submitted by certain members of the Australian industry, namely CSBP Limited (**CSBP**), Orica Australia Pty Ltd (**Orica**) and Queensland Nitrates Pty Ltd (**QNP**) (collectively **the Applicants**). Based on that review, Glencore considers the application to be a largely unreliable basis on which to decide to continue the measures. The application is not representative of the circumstances of the industry nor of the relevant markets involved.

Glencore is well placed to provide accurate information about the ammonium nitrate industry and market in Australia and Russia, based on its own experience and on its access to a broad range of independent parties with deep experience and expertise in the industry worldwide.

Glencore provides this submission to the ADC so that it can be better informed in discharging its important responsibility to advise the Minister. In summary, Glencore believes there can be no doubt that the measures should be allowed to expire, and requests the ADC to make that recommendation to the Minister.

2 Legal standard for continuation of measures

Glencore notes the test for continuation of such measures as stated in the Customs Act 1901 (**Customs Act**):

The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.¹

For measures to be continued, the Minister must be satisfied that both the recurrence of dumping and material injury caused thereby is “likely”, in the sense of being “more probable than not”.² This is a test that we will return to throughout this submission.

As explained by the ADC’s Dumping and Subsidy Manual:

In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence where ‘likely’ has been taken to mean ‘probable’ and the evidence relied upon will be appropriate to circumstances of practical reasoning intrinsic to a review process.³ [footnote omitted]

It is within this framework that the ADC must consider whether expiry of measures with respect to ammonium nitrate from Russia would be likely to lead to a continuation or a recurrence of dumping

¹ Customs Act, section 269ZHF(2)

² *Siam Polyethylene Co. Ltd v Minister of State for Home Affairs* (No 2) [2009] FCA 838, Justice Rares. Confirmed in ADRP Report 119 at page 17 - https://www.industry.gov.au/sites/default/files/adrp/2019_119_power_transformers_-_adrp_report_no_119_-_public_redacted.pdf.

³ *Dumping and Subsidy Manual* at page 168 - https://www.industry.gov.au/sites/default/files/2019-05/adc_dumping_and_subsidy_manual.pdf.

GLENCORE

and the material injury that the anti-dumping measure is intended to prevent. If this cannot be established to the requisite level, the measures must be allowed to expire.

We have no doubt that the circumstances we spell out in this submission clearly prevent a view being formed that expiry of the measures would thereby encourage Russian exporters to dump ammonium nitrate in Australia. The Russian industry is running at very high capacity. It is enjoying high profitability. Of all world ammonium nitrate producing countries it is the furthest or equal furthest away from Australia. Russian exporters face a huge freight penalty in comparison to, say, the Australian industry itself. It would make no sense for them to sell at low or loss-making levels to the highly concentrated Australian market when they are operating at high capacity and are profitable in the markets in which they currently operate. Indeed, based on the proper application of WTO law, the world trend is to *terminate or remove dumping charges* against Russian exporters, rather than to *maintain them*.

Glencore offers the opinion that these matters discredit the proposition that it would be more probable than not that dumping would recur and cause material injury to the Australian industry if the measures were to expire *even before* one turns to a consideration of the specific circumstances of the Australian industry.

3 Market situation finding is no longer warranted

The Applicants have alleged that a *“particular market situation for ammonium nitrate sold in the Russian Federation continues to apply due to the GOR influence resulting in artificially low raw material gas input prices”*.⁴

The finding that natural gas input prices in Russia were “artificially low” was first applied in the original investigation. In subsequent inquiries, this finding has continued to be adopted. Instead of using domestic prices for ammonium nitrate sold in Russia, the particular market situation finding has been used to justify the use of a constructed normal value. A surrogate gas cost, which on those previous occasions was much higher than the Russian gas price, has been used in that constructed normal value. This has had the practical effect of inflating the normal value to levels which have not been representative of Russian prices for ammonium nitrate, or of the costs of producing ammonium nitrate in Russia.

This approach can no longer be maintained, nor does it need to be. We say this because of changing circumstances in the Russian market and changed legal conditions with respect to the mandatory use of costs in the country of export in constructed normal values.⁵

⁴ Application, page 10.

⁵ See the Report of the Appellate Body in *Ukraine - Anti-Dumping Measures on Ammonium Nitrate*, at para 6.121:

As set out above, the phrase “cost of production in the country of origin” indicates that whatever information or evidence is used to determine the “cost of production”, it must be apt to yield or capable of yielding a cost of production “in the country of origin”. Therefore, an investigating authority has to ensure that the information it collects is used to arrive at the “cost of production in the country of origin” and compliance with this obligation may require the investigating authority to adapt that information.

[footnotes omitted]

GLENCORE

The ADC relied on two matters in arriving at its particular market situation finding in the previous continuation inquiry.⁶ The first of these was the claimed “artificially low” gas prices in Russia. This submission establishes that this claim cannot presently be substantiated.

The second was a belief that the domestic price for fertiliser grade ammonium nitrate in Russia was collectively agreed between Russian producers with reference to the price of Russian ammonium nitrate at the Black Sea and Baltic Sea ports as published in Fertecon Weekly. The ADC saw this interaction between the export price and the domestic price ceiling, as agreed between producers, as creating a “feedback loop” where export prices influenced domestic prices. Whether or not that was an accurate way of depicting how prices were set in the Russian market at that time, Glencore is advised that this is not the case today. Prices are established independently by individual producers and there is no price coordination between Russian producers.⁷ Prices are established independently by individual producers and result from negotiations between the seller and the buyer. International price quotations still influence domestic Russian prices, but this is a normal economic reality for a commodity product such as ammonium nitrate.

The Applicants submit, in their application for this inquiry:

...that as domestic prices for gas sold by Gazprom in 2019 were approximately 30 per cent of the prices for gas sold outside of Russia and the FSU, the artificially low prices continue to influence the domestic selling prices for HDAN and a particular market situation continues to apply for ammonium nitrate sold in Russia.⁸

Whether or not this is true, it leads nowhere, based on current legal precedent. However, it is not even factually correct, and therefore has no merit. It is not substantiated by the application, which is no surprise, because the evidence to make that claim does not exist.

To its credit, the ADC recognises this:

Having considered the applicants’ estimate of gas costs used in the proposed normal value, the Commission is of the view there is no basis (in either the application, or in the methodology previously adopted in REP 312) to support the use of a three year average, as opposed to a one year average, at this time.

Using the data submitted in the application, the Commission has therefore amended the applicants’ calculation of gas costs for this purpose to reflect an average cost across the previous 12 month period, less the proposed amount for transmission costs. The Commission considers that the applicants’ estimate of all remaining costs in the constructed normal value are relevant and reliable for this purpose. Having accounted for the change to estimated gas costs, the Commission has calculated a revised dumping margin of seven per cent.⁹

Glencore hopes that the ADC will undertake its own more detailed investigations, and that it will be provided with actual cost information to be able to do so, in this inquiry. Glencore expects - given the

⁶ See Report No 312 – Continuation inquiry concerning certain ammonium nitrate exported from the Russian Federation, either directly or via Estonia (4 April 2016) - https://www.industry.gov.au/sites/default/files/adc/public-record/028_-_final_report_312.pdf

⁷ Glencore understands that the Federal Antimonopoly Service regularly monitors market operation in Russia and guards against cartel behaviour, with significant fines for violation of antimonopoly legislation.

⁸ Application, page 4.

⁹ See ADN 2020/093, at page 6 - https://www.industry.gov.au/sites/default/files/adc/public-record/565_-_002_-_notice_adn_-_adn_2020-093_-_initiation_of_a_continuation_inquiry.pdf

GLENCORE

inaccuracy of the Applicant's claims, upon which the ADC's initial calculations must be partly based - that the reality of present costs and prices will be far removed from the opportunistic estimates that have been advanced by the Applicants.

Price comparability of natural gas

There has been a seismic change in the cost and availability of natural gas in international markets over the past ten years, driven by the "shale gas revolution". This refers to the technological advances whereby oil and natural gas can be more easily extracted from shale rock, and the granting of government approvals for this to be done.

The largest impact has been in the US market, where gas prices have been significantly reduced, and have remained low, due to the substantial increase in supply.¹⁰ Where the US was previously an importer, and invested in import infrastructure for liquefied natural gas (LNG),¹¹ it is now established as a large scale exporter of LNG, particularly to Europe.¹²

Prior to 2016, Russia was the key exporter of natural gas to Europe. That is no longer the case, with supply readily available to Europe from both the US and Qatar. This increased LNG supply has decreased both European natural gas prices, and the Russian share of the European gas market. Russia remains a major gas producer in its own right, and has always been export oriented as well, meaning that there is now a more-than plentiful supply of gas in Russia.

Increased investment and increased gas supplies has caused both a downward and equalising shift in gas prices the world over. For example, European gas prices are now similar to the Russian domestic gas price. The perceived low cost advantage of Russian domestic gas prices, which was blamed in previous ADC inquiries on government interventions, and said to be creative of an "artificiality" in the ammonium nitrate market, no longer exists. The claimed "artificiality" can no longer be demonstrated, no matter whether it is sought to be attributed to government interventions, or to anything else for that matter.

¹⁰ See article, *The U.S. Is Becoming The World's Largest Oil And Natural Gas Exporter* - <https://www.forbes.com/sites/judeclemente/2020/03/22/the-us-is-becoming-the-worlds-largest-oil-and-natural-gas-exporter/#aca7d605cb21>

¹¹ LNG is the liquefied form of natural gas that allows for the transport of the gas by the sea.

¹² The USA started exporting LNG to Europe from February 2016 - <https://ca.reuters.com/article/idUSKCN0VY08B>.

GLENCORE

This equalisation of gas prices is made clear by these July 2020 price observations:

Market point	Price
Natural gas price at the Netherlands TTF hub	USD1.70/MMBtu ¹³
US Henry Hub natural gas price	USD1.77/MMBtu ¹⁴
Russian gas price at the European border	USD1.80/MMBtu ¹⁵
Western Australia gas price	USD1.88/MMBtu ^{16 17}

¹³ Based upon the average of the price published by Fertecon on 6, 13, 20 and 27 July 2020, converted at the average interbank mid-rate for July 2020 from Oanda.com.

¹⁴ See <https://www.eia.gov/dnav/ng/hist/rngwhhdm.htm>.

¹⁵ See <https://www.indexmundi.com/commodities/?commodity=russian-natural-gas>.

¹⁶ Conversion from AUD2.83 based at the average interbank mid-rate for July 2020 from Oanda.com. <http://www.gastrading.com.au/13-historical-prices-and-volume/27-price-history-table>.

¹⁷ It should be noted here that the Western Australian Government has passed legislation that requires LNG exporters to reserve 15% of all exports for the domestic market, thus arguably providing an unfair competitive advantage to CSBP and its natural gas purchases for conversion to ammonia and then to ammonium nitrate. Similarly, Queensland has legislation that provides a mechanism which, if implemented, would protect quantities of natural gas for domestic consumption. In addition, Australia has significantly increased its market share in LNG, particularly since the Gorgon project commenced exports of LNG in 2016 - <https://www.wsj.com/articles/chevron-ships-first-lng-from-gorgon-project-off-australia-1458527253>. Further opening of Australian market for natural gas suggests better Australian gas prices in future - <https://www.afr.com/companies/energy/no-let-up-on-lng-imports-despite-narrabri-approval-20201001-p560wm>.

GLENCORE

It is unlikely that dumping has occurred

The application for this inquiry estimates a dumping margin of 15.9% for exports from Russia.¹⁸ However, this is predicated on a constructed normal value of AUD511, which includes a surrogate gas cost that is not reflective of recent circumstances.¹⁹ Glencore disagrees with this construction and the contention that exports from Russia were dumped at 15.9%, or even that they were dumped at all.

Glencore has sourced its own cost data to check the Applicant's claims.

Cost component	USD/tonne
Fertiliser grade AN ²⁰	██████████
SG&A ²¹	██████████
Depreciation ²²	██████████
Additional bagging and transportation ²³	██████████
Profit ²⁴	██████████
Total	USD228

The Applicants state that during the inquiry period approximately 5,478 tonnes of the subject goods were imported from Russia.²⁵ For these imports the Applicants have applied an export price of AUD430, and this has been used in the dumping margin estimate.²⁶

Glencore believes that the Applicants have erred in using this export price. Glencore understands that the importation that did occur during the period was a single consignment imported ██████████
██████████
██████████.²⁷ Glencore has revised the Applicant's dumping margin estimate, based on the more reasonable and accurate normal value

¹⁸ Reduced by the ADC to 7%, in its initiation notice – see footnote 6.

¹⁹ Ibid.

²⁰ See Confidential Attachment 1 – Fertecon Datacut Russia AN Production Cost, page 2.

²¹ Sourced from Russian producer Acron's financial reports which show SG&A expenses of 8% of revenue. See <https://www.acron.ru/en/investors/financial-statements/?brand=1988&type=202&year=2019>

²² Sourced from Russian producer Acron's financial reports which show depreciation of around 10% of revenue. See Acron investor presentation at page11 - <https://www.acron.ru/en/investors/investor-presentation/>.

²³ TAN is transported in big bags, whereas the fertilizer cash cost has been provided for bulk product. US\$14/t must be added to account for the cost of big bags (instead of bulk) and the consequential higher freight costs to port.

²⁴ The sales price is expected to vary in the range of ██████████, depending on the grade. The midpoint has been assumed.

²⁵ Application, Attachment A page 6.

²⁶ Application, Attachment A page 8.

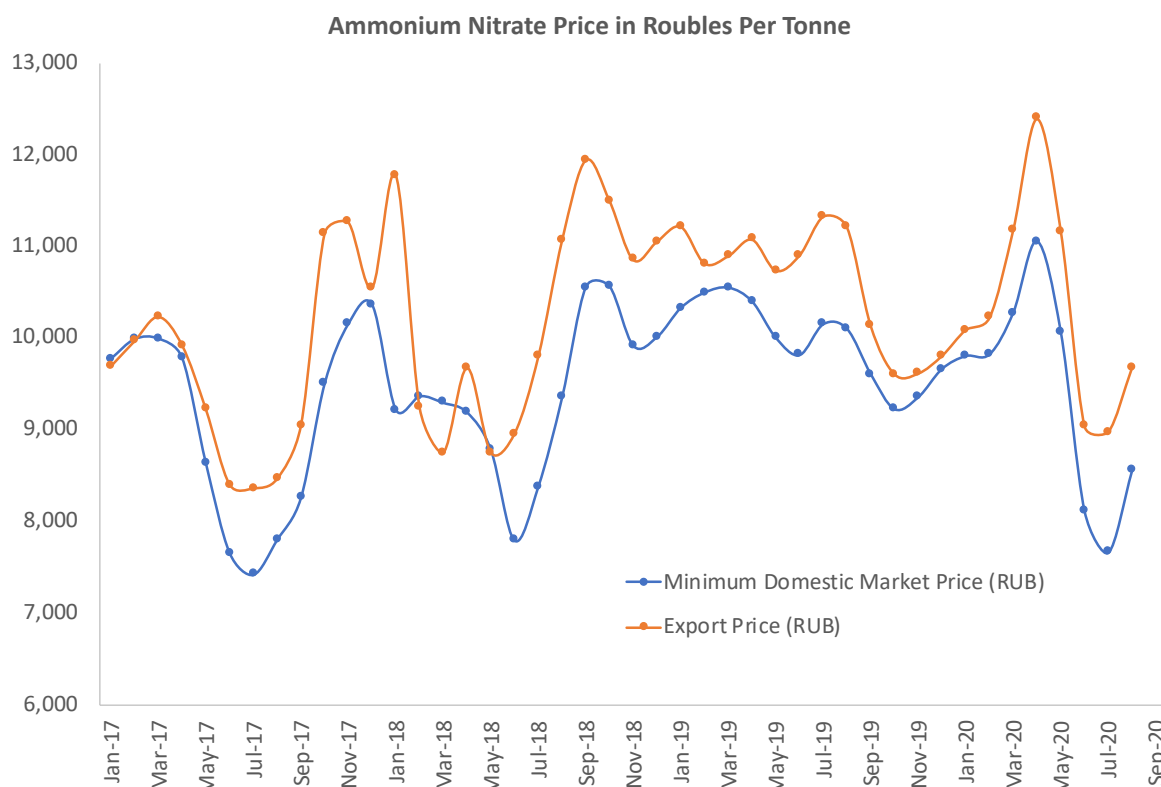
²⁷ Based on the Australian Reserve Bank average AUD to USD exchange rate for August 2019.

GLENCORE

of USD228 and the [REDACTED]. This gives an estimated dumping margin of [REDACTED].

Accordingly, Glencore considers that the imports from Russia were likely not dumped at all.

To further support this conclusion, Glencore has accessed additional data collected by the Russian Federal State Statistics Service (Rosstat),²⁸ which is summarised here and provided in detail in Confidential Attachment 2:



The data clearly shows that ammonium nitrate is sold at a lower price in Russia than that for which it is sold for export and therefore dumping cannot have occurred.

4 Factors militating against the continuation of measures

Measures have been in place in Australia against ammonium nitrate from Russia for nearly twenty years.²⁹ The measures have been continued on three subsequent occasions, the most recent having been in 2016.³⁰ Over that period, and especially recently, there have been substantive changes not only in the circumstances in Russia, and in the other aspects we have mentioned, but also in the ADC's own practices.

²⁸ Source: <https://www.fedstat.ru/indicator/57819>. Data provided is on an FCA basis at the production plant and has been translated into English.

²⁹ The original investigation (**Investigation 28**) was concluded with measures imposed in 2001 – Australian Customs Notice 2001/29.

³⁰ See Continuation 104, Continuation 168 and Continuation 312.

GLENCORE

Capacity utilisation levels are high

The application submitted by the Applicants for this inquiry is mistaken in its estimate of Russian ammonium nitrate production capacity. By way of background, Russian producers of ammonium nitrate are first and foremost producers of fertiliser. Technical ammonium nitrate (**TAN**), such as is used for blasting purposes, is considered to be a by-product of fertiliser production. Producers have a limited ability to flexibly alternate between fertiliser and TAN production due to the complexity and time required to adapt their production plants, the severe capital costs, and the ongoing long-term supply arrangements in place for fertiliser.

The application estimates Russian production capacity of 3.6 million tonnes of LDAN per year.³¹ In fact, Glencore understands the actual LDAN production capacity is as follows:

[REDACTED] ^{32, 33, 34, 35}

The application also claims that:

...the underutilised HDAN producers in the Russian Federation can shift production to LDAN supply on their integrated plant with relative ease to meet changes in demand³⁶

This is certainly not the case. Conversion of this kind requires significant capital investment and many months, and sometimes years, of planning. Glencore has attached a description of what is involved to convert an HDAN or FGAN ammonium nitrate plant to produce LDAN to this submission.³⁷ As an example of the complexity, cost and time required to convert facilities, Glencore points the Commission to the conversion of the Yazoo City ammonium nitrate plant in Mississippi in 2005, in which Orica USA Inc (an Orica affiliate) was deeply involved.

Ultimately, it is Glencore's understanding that Russian producers are operating profitably and at very high capacity utilisation levels. As corroborated by the Government of Russia:

Moreover, according to the data provided by the Russian Fertilizers Producers Association, the Russian ammonium nitrate industry works almost at full capacity. In particular, the capacity utilization rate of the Russian industry worked out at 95.7 % in 2016, 97.3 % in 2017, 91.2 % in 2018 and about 96.7 % in 2019.³⁸

Moreover, production is committed to large scale term contracts.

³¹ Application, Attachment A page 7.

³² [REDACTED]

³³ [REDACTED]

³⁴ [REDACTED]

³⁵ [REDACTED]

³⁶ Application, Attachment A page 8.

³⁷ See Confidential Attachment 3, which is based on first-hand experience of such a conversion project.

³⁸ Government of Russia submission at page 4 - <https://www.industry.gov.au/sites/default/files/adc/public-record/565-003-submission-foreign-government-government-of-the-russian-federation-regarding-initiation-of-continuation-inquiry.pdf>

GLENCORE

Based on the above, an ability on the part of Russian producers to casually direct supplies to Australia is not apparent. Furthermore, a decision to do so at dumped prices would offend commercial logic.

The Australian industry has a pattern of Russian imports

Looking backwards, the application documentation places some reliance on the significance of past Russian import volumes. For example, the Applicants argue that 15% of total imports in 2018/19 were from Russia.³⁹ The first thing we would say about this is that evidence of imports from Russia at a previous time are not informative as to the proposition of the probability of dumped imports in the future should the measures be allowed to expire. The premise of this “15%” statement is misleading. Glencore understands that the substantial part of the 2018/19 imports from Russia were actually made by Orica, from EuroChem. It is understood that Orica accounted for about 17,000 tonnes – more than 50% - of imports from Russia in 2018/19.

Glencore understands that Orica (or one of its international affiliates) entered into a global offtake contract with EuroChem [REDACTED]

Glencore suggests the ADC investigate this contract, together with the one in place with respect to the imports made in 2018/19, to understand the pricing mechanics with respect to Russian AN. The price structure for ammonium nitrate exports is pre-determined. If these contracts are in line with other similar export contracts of which Glencore is aware, they will demonstrate specific export prices for HDAN and LDAN shipped from Russia, with a premium added over the Baltic Ammonium Nitrate index (which references bulk fertiliser pricing). There is no arbitrary pricing for this product, but instead a specific pricing structure which is not discounted to reach more distant markets (where sea freight is higher). With pricing structured in this way, Australia becomes a difficult to access and therefore unattractive market for a Russian producer.

In addition, Glencore understands that [REDACTED]

What these observations portend is that any future Russian imports would be fairly priced; that their access to the Australian market would be controlled by one of the Applicants itself; and that the freight impediment continues to be a significant natural barrier to Russian imports.

Low likelihood of change to Russian export patterns in future

Australia is not a key market for Russian exports. As we have been at pains to point out, there is a very considerable distance between the two countries. Exports of ammonium nitrate always involve significant risk. When longer distances are involved, that distance and the sensitivity needed in transporting such a product causes freight costs to be even higher.⁴⁰

³⁹ Application, Attachment A page 6.

⁴⁰ Comparatively higher costs of exporting ammonium nitrate to Australia are caused by limited port availability for bulk importations of a product of this type and Australian Maritime Safety Authority insistence on hydraulic hatch covers for compliance with International Maritime Dangerous Goods Code section 7.6.2.8.4 (cargo space must be capable of being opened in an emergency). Glencore is informed that this is a unique interpretation of that section, which limits the number of vessels able to deliver ammonium nitrate to Australia, this driving up costs. Freight costs from Russia are estimated from [REDACTED] per MT (ex

GLENCORE

Where ammonium nitrate is produced for export sale, Russian producers do not typically price the product differently based on the destination market. Irrespective of whether the product is being sold to Australia, Africa or Latin America, the product price will be the same. It is the added and differing freight cost which provides the substantive differentiation between export markets. Considering this, we reiterate that Australia is considered to be an unattractive market due to the prohibitive freight cost. It is difficult and expensive to ship ammonium nitrate over such large distances. The Australian market presents a lower return proposition for Russian exporters, when compared with their domestic market, Africa or Latin America. Anecdotally, Glencore has been told by a Russian AN producer that their production is divided into supply for the domestic Russian market and export, where countries in the Americas, particularly Latin America, are most important. They have explained that consumption in Russia continues to grow, as does demand in Latin America and as such there are no available quantities of ammonium nitrate (of any grade) that could be easily redirected to Australia.⁴¹

In short, the Australian industry has built in protection by reason of freight costs. This is a significant factor to take into account. Why would profit-motivated companies, operating profitably in their existing markets and at high capacity, see the present need to sell less profitably to a far-away market such as Australia, with all the associated risks involved?

Glencore has reviewed Russian export data, which illustrates this distinction clearly. For HS code 310230,⁴² which applies to both fertiliser and TAN, the data shows that Russia exported:

- 3,638,000 tonnes between July 2018 to June 2019; and
- 3,670,000 tonnes between July 2019 to June 2020.

A breakdown of this data shows that for the July 2018 to June 2020 period exports of both fertiliser and TAN products were to:

Destination	Quantity percentage
Brazil	42%
Rest of Latin America	16%
CIS/countries with Russian land border	24%
Africa	11%
Australia	0.433%
Other	6.5%

Baltic Sea/ex Russian Far East) for large shipments that few importers would be able to manage to [REDACTED] per MT (ex Baltic Sea/ex Russian Far East) for smaller shipments, depending on the destination port. It should be noted that domestic transportation costs incurred in Russia to export from the Russian Far East are far greater than from the Baltic Sea, given the large distance of any manufacturing plant from the Far East ports.

⁴¹ The ADC is invited to contact us, should more detail with regard to this anecdotal information be considered useful to the inquiry.

⁴² See <https://en.ru-stat.com/>

GLENCORE

Glencore estimates that at least 80% of the exports are fertiliser grade product.

In addition, it should be noted that in the past two years exports to Australia have only been made by two Russian producers – EuroChem (which has the large offtake contract with Orica mentioned above) and Kemerovo (these imports were [REDACTED]).

Removal of measures in other countries

In recent years, proper observance of the WTO Anti-Dumping Agreement and changes in market circumstances have resulted in the removal of anti-dumping measures on ammonium nitrate from Russia in a number of jurisdictions.

Glencore observes:

- that the US revoked measures against Russian ammonium nitrate, effective 20 August 2016, following a “sunset review” (the US equivalent of a “continuation inquiry”);⁴³
- that the Ukraine annulled measures against Russian ammonium nitrate, effective 21 September 2020, following pronouncements of the WTO Appellate Body;⁴⁴ and
- that a WTO panel ruled against the cost adjustment methodologies practiced by the EU investigating authority in the determination of normal values for Russian ammonium nitrate exports in a report circulated on 24 July 2020.⁴⁵

Modalities of domestic competition more significant factors than imports

Glencore has witnessed strong and uneven price competition between Australian ammonium nitrate producers within the Australian market. This is attributable to additional domestic capacity for ammonium nitrate. Imports, which have such a small footprint in the market, have nothing to do with it. This over-capacity and domestic competition has recently intensified due to the ramp up in production of the new Yara Pilbara Nitrates (YPN) facility on the Burrup Peninsula (where Orica is known to have the marketing rights for the ammonium nitrate produced). The plant’s output continues to increase, and simultaneously increases the level of Australian production which has clearly had significant knock-on effects on the broader Australian market. This has complicated the pricing of ammonium nitrate in the Australian market.

Even with this price competition, the Australian industry has been increasing its profit margin. It is noted that input costs for YPN, CSBP and Orica Yarwun have decreased, while gas prices for QNP and Moranbah remain stable. Orica in NSW has had large increases in gas costs; however, Glencore knows that these costs have largely been passed through to the end customer.

Please refer to Confidential Attachment 4 where Glencore has summarised two recent tender processes and ongoing purchases, all of which demonstrate the effect of domestic competition

[REDACTED]

⁴³ International Trade Administration Notice 81 FR 53433, 20 August 2016.

⁴⁴ <https://www.poandpo.com/politics/ukraine-says-cancels-antidumping-duties-on-russias-ammonia/>. See also *Ukraine - Anti-Dumping Measures on Ammonium Nitrate* - https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds493_e.htm

⁴⁵ See *European Union - Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint)* - https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds494_e.htm.

5 No likelihood of material injury measures are intended to prevent

As well as being satisfied that there will be future dumping, the ADC must also be satisfied of the likelihood of the continuation or recurrence of the material injury that the measures are intended to prevent in order to recommend that the measures be continued. Glencore submits that based on the actual injury circumstances of the Australian industry there is no evidence or factual basis to be satisfied to this likelihood in the foreseeable future.

First, we note that the ADC has recently assessed injury, and related causation, to the Australian industry with respect to ammonium nitrate exported from China, Sweden and Thailand. This included assessment of injury in a “post investigation period” for the purposes of a reinvestigation undertaken by the ADC, as directed by the Anti-Dumping Review Panel (**ADRP**) in ADRP Review 107.

The ADC reinvestigation determined a level of injury to the Australian industry as follows:

- *profit forgone is 2.2 per cent of the Australian industry applicants’ aggregated profit in the investigation period (1 April 2017 to 31 March 2018), and 3.6 per cent of the Australian industry applicants’ aggregated profit in the 12 months following the investigation period (the post-investigation period, 1 April 2018 to 31 March 2019);*
- ...
- *based on the profit forgone in the investigation period and the post-investigation period, the Commissioner considers that the injury to the Australian industry caused by dumping is material⁴⁷*

The post investigation period of 1 April 2018 to 31 March 2019 does not directly overlap with the inquiry period for Continuation 565. However, the observations we are about to make are not dependent on any overlap. The basis for the injury assumption in that reinvestigation was the reduction of price offers for specific contracts awarded to Australian industry members. For so long as those contracts continue, and for so long as such injury as determined by the Commission would apply, the injury cannot be considered as injury attributable to imports from Russia. This must be isolated and excluded from any future injury considerations in this continuation inquiry.

Secondly, the Applicants provided their own commentary in the reinvestigation about the injury identified. In a meeting with the ADC Orica announced the following:

Yara Pilbara Nitrates Pty Ltd is continuing to experience production issues and therefore there is a supply shortage in the Pilbara region in Western Australia that is being alleviated by Orica and other suppliers. This has led to an observable increase in sales and production

⁴⁶ Glencore notes that Dyno Nobel is not one of the Applicants. Accordingly, it can be taken not to support the continuation of measures. Nonetheless - indeed, *because of the position it has adopted* - its situation should be investigated like that of the other industry members. YPN should also be investigated. Why would it establish a costly ammonium nitrate plant if it did not see the opportunity for profit?

⁴⁷ Investigation 473, ADC Reinvestigation Report at page 19 - https://www.industry.gov.au/sites/default/files/adrp/adrp_review_no.107_-_ammonium_nitrate_reinvestigation_report.pdf.

GLENCORE

*volumes, prices, revenue and therefore profit and profitability following the investigation period;*⁴⁸

Without YPN in the market, Orica and other suppliers had an “observable increase” in sales, profit and profitability. With YPN now moving to full production, it is logical that there will be an opposite effect, namely an “observable” decrease in sales, profit and profitability, for Orica and other domestic producers, based on the realisation of the added capacity that YPN brings to the Australian market. As explained, Glencore has witnessed this domestic price competition in its own tender processes.

These effects will be unrelated to any imports from Russia, and must be considered as a reason not to expect that Russian exports in the future, whether dumped or not, would either (a) arrive in Australia or (b) themselves cause material injury. If uncontracted prices (spot prices) or contracted prices (based on price formulae) decline, forcing down local prices, then the prospect that Russian producers would want to enter the Australian market at even lower prices, and with their freight disadvantage, would have to be somewhere between slim and nil.

Additionally, the Applicants collectively consider the ADC’s assessment of injury in the Investigation 472 reinvestigation to be conservative:

*CSBP, Orica and QNP assert that the profit forgone that has been attributed to the dumped exports from China, Sweden and Thailand quantified by the Commission is conservative. Orica and QNP further assert that the quantified profit forgone is understated as it does not take into consideration other examples (i.e. examples other than those outlined in section 9.2.1 of REP 473 that were used in the profit forgone calculations).*⁴⁹

Such injury, as it may apply in the future, is “locked in”, and cannot be attributed to any imports from Russia.

Thirdly, the mechanics of ammonium nitrate call for long term supply contracts that lock-in both supplier and purchaser in various forms of “take or pay” arrangements, as has been recognised by the ADC repeatedly in Investigation 473.

It is Glencore’s belief that the major members of the Australian market have now allocated large parts of their future production to end users under medium to long term arrangements. It was this flurry of activity in the market, aimed at securing contracts before YPN production got underway, that was the backdrop to the complaints against exporters and importers aired by the Australian industry in Investigation 473. Notwithstanding the official outcome of that investigation, Glencore maintains that the complaint of the Applicants was misguided and unmerited. Be that as it is, the ADC should seek information from the Applicants themselves to confirm the degree to which they have secured future sales, and whether the likelihood is that new business over the next few years will take the form of smaller contracts or occasional spot sales.

The circumstances that caused the Australian industry to seek protection from imports in the most recent investigation was in part due to the availability of large contracts that were being re-tendered in

⁴⁸ See *Australian Industry - Orica Australia Pty Ltd - File note - Meeting with representatives from Orica Australia Pty Ltd* - https://www.industry.gov.au/sites/default/files/adc/public-record/473_-_068_-_note_for_file_-_australian_industry_-_orica_australia_pty_ltd_-_note_for_file_-_meeting_with_representatives_from_orica_australia_pty_ltd.pdf.

⁴⁹ ADRP Review 107, ADC Reinvestigation Report at page 18.

GLENCORE

the POI of that investigation. Those contracts have now been awarded. It is expected therefore that there will be fewer opportunities for market entry and therefore limited room for imports from Russia.

On the export side, long term supply contracts also limit the ability of producers to develop other channels to market or to enter other markets, as they must ensure they retain sufficient capacity to meet the obligations they have already entered into. We reiterate the fact that Orica has the

[REDACTED]. The other Applicants have neither this flexibility nor availability. Again, therefore, any injury would emanate from competition between domestic competitors in a crowded market, and not from Russian exports, which are unlikely.

6 Conclusion and necessary outcome

Glencore respectfully submits that the information and the conclusions to be drawn from same as set out in this submission demonstrate the deficiencies in the Applicant's allegations. Our submission provides a more reliable understanding of the relative positions of the Australian and Russian ammonium nitrate industries, and about the way that prices, costs and market conditions have responded to the development of international economic law and to the new realities of international gas supply.

With these circumstances in mind, Glencore respectfully submits that the Minister cannot be satisfied as to the likelihood of continuation or recurrence of either dumping or the material injury that the measures are intended to prevent.

Therefore, we submit that the ADC is duty-bound to recommend to the Minister that the measures against ammonium nitrate from Russia should be allowed to expire.

Yours sincerely



Darren Oliver

Glencore Coal Assets Australia Pty Ltd, on behalf of all Glencore's Australian mining businesses