



Exporter Supplementary Questionnaire



EUROCHEM
MINERAL AND CHEMICAL COMPANY

JSC Novomoskovsky Azot Novomoskovsk, Tula Region, Russia

Case number: 565

Product: Ammonium nitrate

From: Russian Federation

Inquiry period: 1 July 2019 to 30 June 2020

Response due by: 3 November 2020

Email enquiries to: investigations2@adcommission.gov.au

Anti-Dumping Commission website: www.adcommission.gov.au

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DECLARATION

I believe that the information contained in this response is complete and correct.

Signature



Name

Igor Shmidt

Position

Head of Government Relations, Public Affairs & Market Access

Company

EuroChem Group AG

ABN

Not applicable

Date

03 November 2020

PUBLIC RECORD

TABLE OF CONTENTS

DECLARATION 2

BACKGROUND & GENERAL INFORMATION 4

Purpose of this questionnaire 4

Response to this questionnaire..... 4

If you decide to respond..... 4

Clarification..... 5

Future questions and verification..... 5

SECTION A MARKET SITUATION 6

 A-1 **WHETHER SALES ARE SUITABLE..... 7**

SECTION B PRODUCTION AND PRODUCTION COSTS 13

 B-1 **PRODUCTION OF THE GOODS..... 13**

PUBLIC RECORD

BACKGROUND & GENERAL INFORMATION

Purpose of this questionnaire

The purpose of this supplementary questionnaire is to assist the Commission to obtain further information it considers necessary to assess whether a “particular market situation” exists in the Russian Federation (Russia) domestic market and whether selling prices for ammonium nitrate in Russia are not suitable for determining normal values under subsection 269TAC(1) of the Customs Act.

Response to this questionnaire

Exporters do not have to complete this supplementary questionnaire. However, if the exporters do not respond, the Commission may be required to rely on information supplied by other parties.

If exporters choose to respond to this questionnaire, the response is due by **Tuesday, 3 November 2020**.

If you decide to respond

Should you choose to provide a response to this supplementary questionnaire, please note the following:

Confidential and non-confidential versions

You are required to lodge a “for official use only” and a “public record” version of your submission by the due date.

In submitting these versions, please ensure that each page of the information you provide is clearly marked either “**FOR OFFICIAL USE ONLY**” (for the confidential version) or “**PUBLIC RECORD**” (for the non-confidential version) in the header and footer.

All information provided to the Commission “for official use only” will be treated confidentially. The public record version of your submission will be placed on the public record, which all interested parties can access.

Your public record submission must contain sufficient detail to allow a reasonable understanding of the substance of the “for official use only” version. If, for some reason, you cannot produce a public record summary, contact the case manager (see contact details on Page 1 of this questionnaire).

Declaration

You are required to make a declaration that the information contained in the response is complete and correct. You must return the signed declaration with the questionnaire response.

Lodgement

Lodgement by email or SigBox is preferred. The email address for lodgement is shown on the front cover of this questionnaire. If you lodge by email, you are still required to provide a “for official use only” and “public record” version of your submission by the due date. If you wish to lodge your response by SigBox, please contact the case manager to make appropriate arrangements.

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Clarification

If you have any difficulties in completing the supplementary questionnaire, or require clarification on any questions asked, contact the Commission as soon as possible.

Future questions and verification

Please note that after receiving the response to this supplementary questionnaire, the Commission may seek additional information.

The Commission may also seek to examine relevant records and to verify the information provided. The Commission has temporarily suspended onsite verification due to the COVID-19 pandemic (refer to Anti-Dumping Notice No. 2020/29). However, the response to the questionnaire may still be subject to onsite verification should the suspension of onsite verifications be lifted. Alternatively, we may seek to verify information remotely through email correspondence, videoconferences and teleconferences. You will be contacted in advance to make any necessary arrangements.

A complete response, including all of the documentation requested, must be submitted to the Commission before a verification meeting will be considered.

If verification meetings are unreasonably delayed or cancelled, the assessment of a particular market situation may be based on the facts available to the Commission.

The purpose of the verification meeting will be to verify the information provided in your supplementary questionnaire response. It is not intended to be a second opportunity to provide new or additional information. Accordingly, it is important that your response be as complete and accurate as possible.

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SECTION A MARKET SITUATION

Section 269TAC(1) of the *Customs Act 1901* (Cth) (the Act) provides that, subject to this section, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

In addition, section 269TAC(2)(a)(ii) of the Act provides that, subject to this section, where the Minister is satisfied that because of the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1), the normal value of the goods exported to Australia cannot be ascertained under subsection (1).

The applicants' claim that a particular market situation exists with respect to the goods within the Russian Federation (Russia)¹.

As part of its inquiry, the Commission will consider if a market situation exists in the ammonium nitrate market in Russia during the inquiry period. The Commission will also investigate whether any market situation, if found to exist, influences a comparison between export prices and normal values. To undertake this assessment, the Commission requires further information about the respective markets. This is in addition to the information requested in the first questionnaire regarding the claimed market situation.

¹EPR document number 1

PUBLIC RECORD

A-1 Whether sales are suitable

If the Minister is satisfied a market situation exists during the inquiry period, the Minister must consider whether, because of that market situation, exporters' domestic sales of the goods are suitable for determining a price under section 269TAC(1) of the Act.

Article 2.2 of the WTO Anti-Dumping Agreement provides as follows:

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

NAK Azot is led to believe that the Australian investigating authority has implemented the concept of a "particular market situation" in Section 269TAC(2)(a)(ii) of the *Customs Act 1901*. Under that Section the Minister may resort to a cost construction, or a third country export price, as a relevant "normal value" for any particular exporter, instead of using that exporter's domestic selling prices as the normal value, where the Minister is satisfied that the sales in the exporter's domestic market are not suitable for use in determining a price for comparison with the export price.

In *Australia – Anti-Dumping Measures on A4 Copy Paper*,² the Panel expressed this view with respect to the meaning to be given to the term "particular market situation":

In our view, the market situation must be distinct, individual, single, specific but that does not necessarily make it unusual or out of the ordinary - i.e. exceptional.

As we understand it, question 1 asks us to assume that the Minister will find that there is something "distinct, individual, single, specific" with respect to the Russian domestic market for ammonium nitrate, and that we should then comment and provide evidence on the effect of that market situation on NAK Azot's domestic sales, and NAK Azot's export sales. If the particular market situation affects the sales differently, and that has the implication of not permitting a proper comparison of the respective sales for price determination purposes, then the suggestion is that the alternative methods for working out a relevant normal value would be considered by the Commission.

The "comparison" here refers back to Article 2.1, which states:

For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

Thus, the first methodology in the list of priorities for calculating a normal value is to have reference to prices in domestic sales. But, the framers of the Anti-Dumping

² WT/DS529/R, 4 December 2019.

PUBLIC RECORD

Agreement felt that there could be circumstances where there is something “particular” about the domestic market, and that such “particularity” could render the price-setting of the domestic sales incomparable with the price setting of the export sales. The standard of the incomparability is described by referring to the prevention of a proper comparison of prices (“*such [domestic] sales do not permit a proper comparison [with export sales]*”).

As you can appreciate, a discussion of how a market situation affects domestic prices is largely impossible if one does not know the basis of the assumed decision by the Minister that there is such a “market situation”. That said, NAK Azot fully understands its domestic market conditions, and does not imagine that it is Australian market conditions that are relevant to the inquiry. Rather, the focus is on the particular market situation and the effect or effects it has on the comparability of the sales. Article 2.2, in its reference to “particular market situation”, and Section 269TAC(2)(a)(ii), in its implementation of Article 2.2, do not entail a comparison of market conditions in two separate markets. It is the market that is the source of the sales – the exporter’s home market – that must have the relevantly different effect on the exporter’s home market sales and its export sales.

Thus, NAK Azot will use Russian market conditions as its frame of reference for responding to the Commission’s questions, and will ask itself:

- (a) whether there is anything about those conditions that is “*distinct, individual, single, specific*”; and, if there is,
- (b) whether that “*distinct, individual, single, specific*” circumstance affects domestic and export sales differently, such that the prices formed in those sales prevent (“*do not permit*”) a proper comparison for the purposes of Article 2.1 of the WTO Anti-Dumping Agreement.

In undertaking this exercise NAK Azot will be careful not to conflate *price comparison* with *market comparison*. Markets will always be different, whether marginally or significantly, because of raw material abundance, lack of raw materials, population, demographics, consumer tastes, seasonality, distance, finance availability, technology, and any one of a multitude of other factors. Comparative advantage is not a particular market situation.

Having explained the principle that it believes is relevant to the exercise, NAK Azot now provides the brief answers and commentary which follows, in order to assist the Commission in its inquiries.

1. In the event that the Minister is satisfied a market situation is found to exist during the inquiry period, please comment and provide any relevant evidence on:
 - (a) the effect of the market situation on exporters’ domestic prices in Russia (as relevant);

In Section H of NAK Azot’s Exporter Questionnaire response, NAK Azot replied in a careful and comprehensive manner to the questions asked by the Commission under the heading “Particular market situation”.

Those responses indicated that Russia has company registration and tax systems that are the same in their intent and structure to the systems of other countries around the world. They also testified to the fact that NAK Azot and its related companies are private entities that are not directed in their operations or decision-making by the Russian Government. NAK Azot acquired the land and manufacturing

PUBLIC RECORD

facilities at fair valuation, and does not have to maintain or renew a government licence simply to operate. NAK Azot is not financed by the Russian Government, instead it has private and internal sources of finance.

With respect to the ammonium nitrate industry and market, NAK Azot's EQ response indicated that the Russian Government does not intervene in the industry except to set safety and product specification standards. There is no government agency that directs or interferes with the free commercial decision-making of NAK Azot.

The EQ response emphasised that prices were not directed or set by any government agency, and that instead they were formed and discovered by the forces of supply and demand.

Regarding NAK Azot's production activities, the EQ response testifies to the fact that utility services are sourced on market terms. Gas, which is in plentiful supply in Russia, is sourced [CONFIDENTIAL TEXT DELETED – PRODUCERS AND SUPPLIERS]. The Exporter Questionnaire response points out that Gazprom produced/supplied natural gas is priced in accordance with a tariff schedule issued by the Russian Anti-Monopoly Service, and that the prices of gas paid by NAK Azot [CONFIDENTIAL TEXT DELETED – PRICE OBSERVATIONS].

The competitive situation in the Russian market was fully described in Section I of the Exporter Questionnaire. NAK Azot reminded that there are [CONFIDENTIAL TEXT DELETED – NUMBER] ammonium nitrate production facilities in Russia, belonging to [CONFIDENTIAL TEXT DELETED – NUMBER] separate and unaffiliated groups/holding companies. As well as substantial supply options, the demand side is also vibrant. Russia is a major agricultural and industrial power. Ammonium nitrate is an important product for fertilizer and explosive usages.

It is difficult to discern anything about the description of NAK Azot, the Russian industry more widely, or how the market works, that would qualify the market as being "*distinct, individual, single, specific*". Therefore, we do not agree with the view that there is a "particular market situation" in the Russian ammonium nitrate market.

A relevant statistical difference is that Russia has huge reserves of natural gas. However it is not the overall reserves of natural gas that any country might have that could mark it as being "*distinct, individual, single, specific*". Any country with natural gas reserves will use the gas it presently has for energy and production purposes, to the extent that it can. The exploitation of the gas has more to do with the infrastructure that is dedicated to its extraction and distribution. All countries with ammonium nitrate production will have extraction facilities and distribution assets in place. Some countries' infrastructure may be "better" than others. That said, we still do not see how one country's infrastructure can be "*distinct, individual, single, specific*" in circumstances where other ammonium nitrate producing countries must of necessity have made their own investments, and have their own infrastructure and capabilities in place, for the same purposes.

NAK Azot is of course critically aware of the trade "criticism" levelled at Russian exporters of ammonium nitrate, to the effect that their gas costs are in some way preferential – lower – than the gas costs of the ammonium nitrate producers of other countries. If that is claimed to be the "*distinct, individual, single, specific*" factor that is creative of a particular market situation in this case, then we would most strongly disagree.

First, Russian gas costs are not "preferential" in any economic way, shape or form. In this regard we refer the Commission to *Attachment A - The Cost of Russian Gas – A Benchmark Study on Russian Industrial Gas Prices* [CONFIDENTIAL

PUBLIC RECORD

ATTACHMENT] (“the Brattle Report”) [NON-CONFIDENTIAL VERSION PROVIDED]. There are two findings of this report that are fundamentally important in responding to the “criticisms” to which we have referred. The findings are these:

- that gas is competitively and profitably priced in Russia;
- that where gas prices are sold according to a government tariff, the prices are higher than the competitive market price and are also profitable for the supplier subject to the tariff.

With respect to the proposition that gas is priced in Russia in a competitive market situation and under competitive market principles, we refer to this conclusion from the Executive Summary of the Brattle Report:

While the state-owned company Gazprom still holds a pipeline export monopoly, it has been facing increased competition in the domestic market from independent gas suppliers (IGS), of which the two largest are Novatek and Rosneft. By 2019, the Gazprom Group’s share of the domestic Russian market had fallen just below 50%. The market share of the IGS outside of the residential segment, which is almost entirely supplied by Gazprom Group, is even higher – potentially over 60%.

With respect to the proposition that tariff-based gas prices are higher than other prices in the market, we refer to this additional extract in the Executive Summary:

5. Gazprom’s sales prices are regulated by the government but those of the IGS are not. In fact, Gazprom’s average sales prices have consistently been higher than those of Novatek and Rosneft. This is also the case for the gas bought by EuroChem: the price it paid to Gazprom has been around [CONFIDENTIAL TEXT DELETED – NUMBER]% higher than the price that it paid IGS. For this reason, Gazprom has been losing market share in the industrial segment and asked the regulator to be allowed to apply a discount to be able to compete with Novatek and Rosneft.

6. As we discuss below, the gas prices paid by EuroChem are sufficient to cover the costs of Novatek, who we take to be representative of the IGS more generally, and enable it to earn a reasonable return. Accordingly, it is clear that the IGS are exerting some competitive pressure on Gazprom with respect to gas prices for phosphate plants in Russia and that the prices they receive from such plants are at market levels in the sense that they enable IGS to cover their costs and make a reasonable return.

Further with respect to the proposition that gas prices are profitable, even for the highest priced supplier:

28. Gazprom has asked the regulator to be allowed to offer gas at a discount to industrial consumers, suggesting that Gazprom would be able profitably to compete at the prices set by Novatek and Rosneft. Lacking the ability to offer discounts, during 2019 Gazprom made determined efforts to win back lost consumers by offering them more attractive gas payment terms. Both these facts suggest that the IGS are exerting competitive pressure on Gazprom.

...

73. We conclude that the prices paid by EuroChem enable Gazprom to cover its minimum all-in delivered costs; see Table 8. The prices they pay exceed the minimum costs that Gazprom incurs in supplying them by at least [CONFIDENTIAL TEXT DELETED – NUMBER]% (North-West).

PUBLIC RECORD

74. For all bar one plant (North West), the prices the companies pay to Gazprom also exceed its maximum all-in delivered costs by at least [CONFIDENTIAL TEXT DELETED – NUMBER]% (NAK).

We recommend the findings of the Brattle Report to the Commission. The report cuts through the protectionist-inspired theory that Russian gas prices are creative of a “particular market situation” in Russia and/or are “artificially low”. There is nothing about the prices to suggest that non-market based advantages are provided to ammonium nitrate producers in Russia. Market developments in Russia and the evidence of comparative pricing in European markets proves this to be so. The Russian State does not *subsidise* gas production. Rather it has enabled a market framework to emerge which has *commercialised* gas production and sale.

Secondly, assuming *arguendo* that the Commission is entitled to consider that a particular market situation might exist in the Russian market, having something to do with gas prices, then we fail to see how that situation could affect the *comparison* of the domestic and export sales of the exporters concerned. That is because the “situation” does not impact on the decisions made by NAK Azot with respect to domestic pricing any differently to the decisions it makes with respect to export pricing. The competitive cost of gas in Russia is not a differentiating factor in the respective price determinations concerned.

- (b) the effect of the market situation on exporters’ export prices;

We refer the Commission to NAK Azot’s responses to the immediately prior question. NAK Azot’s gas cost is no different depending on whether the ammonium nitrate producer intends to sell the ammonium nitrate it produces on the domestic market or on the export market.

- (c) whether the effect of the market situation is such that exporters’ domestic prices and export prices cannot be properly compared.

We refer the Commission to NAK Azot’s responses to the immediately prior questions.

In summary, NAK Azot does not agree that there is a particular market situation (under the ADA) or any “unsuitability” of domestic sales (under Australian law). Thus, the question of whether NAK Azot’s domestic and export prices can be properly compared does not arise. If the Commission considers that the question is relevant, then NAK Azot submits:

- if the situation relates to gas prices in Russia – that gas prices do not affect the determination of domestic prices by NAK Azot any differently to the determination of its export prices;
- if the situation is said to be caused by something other than gas prices, or by gas prices and other factors – that the factors first be articulated such that NAK Azot has the opportunity to comment.

2. Please provide any further information and evidence you may wish to submit.

NAK Azot appreciates the opportunity to comment on these matters. That said, there the questions asked are attended by significant ambiguity, because the factors that may be relevant to the Commission are not articulated.

PUBLIC RECORD

NAK Azot hopes that the effort it has put into providing these responses, and the empirical evidence it has obtained in support of these responses, is both helpful and instructive for the Commission's purposes.

PUBLIC RECORD

SECTION B PRODUCTION AND PRODUCTION COSTS

In responding to the questions in section B, please respond to these questions only in relation to the inquiry period.

B-1 Production of the goods

1. Describe how your company determines its volume of production for the goods, product mix of production and the factors that contribute to these decisions. How frequently are production volumes determined? How frequently is the product mix determined? Provide copies of internal documents which support your claims in response to this question.

The volume of production for the goods is determined by the technological regulations of production units and designed capacity.

The process of planning of production for the goods has several stages.

The production department of the plant prepares the production forecast for every month and for a year on the basis of:

- committed contract volumes and estimated demand;
- technological regulations and designed capacity of production equipment;
- packaging equipment capacity (bags, big bags);
- schedule of shutdown for repairs.

[CONFIDENTIAL TEXT DELETED – INTERNAL PROCEDURES].

NAK Azot produces high density ammonium nitrate (“HDAN”) and low density ammonium nitrate (“LDAN”). The assortment of the products is determined in accordance with the Technical Specification and Technological Regulations and can't be changed. The assortment of the products is specified due production equipment. Shipment volumes in bags, big bags or in bulk [CONFIDENTIAL TEXT DELETED – INTERNAL PROCEDURES].

An example production program is attached in *Exhibit B-1-1_Production Program* [CONFIDENTIAL EXHIBIT].

2. What lead times are typically needed to adjust volumes of production for the goods? Provide copies of internal documents which support your claims in response to this question.

If it necessary to deviate from plan production it takes [CONFIDENTIAL TEXT DELETED – NUMBER/TIME] to adjust the daily load of the production. It is not clear which internal documents can be provided in support of this however the plant can be quite flexible in response to market signals.

3. Do you have warehousing facilities for the goods? If no, what do you do with excess inventory? If yes:
 - (a) What is the volume capacity of these facilities?

PUBLIC RECORD

The ammonium nitrate is used to produce and load to railway wagons or trucks immediately after the production without leaving for storage.

But for emergency cases the plant has some warehouse capacity.

Branch (shop [CONFIDENTIAL TEXT DELETED – NUMBER]) of workshop of mineral fertilizers and acids No. 1 has a warehouse capacity for storing ammonium nitrate packed in 50 kg polypropylene bags of [CONFIDENTIAL TEXT DELETED – NUMBER] MT (max capacity).

The ammonium nitrate branch (shop [CONFIDENTIAL TEXT DELETED – NUMBER]) of complex fertilizers workshop has a warehouse capacity for storing ammonium nitrate packaged in containers of [CONFIDENTIAL TEXT DELETED – NUMBER] MT (max capacity).

Ammonium nitrate can be stored in containers at open areas for short time storage. The maximum storage volume at short time storage sites is:

- for Shop [CONFIDENTIAL TEXT DELETED – NUMBER] – not more than [CONFIDENTIAL TEXT DELETED – NUMBER] MT; and
- for Shop [CONFIDENTIAL TEXT DELETED – NUMBER] – not more than [CONFIDENTIAL TEXT DELETED – NUMBER] MT.

This storage can be used in emergency cases if there are troubles with railway wagons. Usually the storage is needed while uploading to railway wagons.

(b) What was the monthly amount of inventory maintained during the review period?

Warehouse stocks, tonnes/month – Shop [CONFIDENTIAL TEXT DELETED – NUMBER]

Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19
[CONFIDENTIAL TEXT DELETED – NUMBERS]					
Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20
[CONFIDENTIAL TEXT DELETED – NUMBER]					

Warehouse stocks, tonnes/month – Shop [CONFIDENTIAL TEXT DELETED – NUMBER]

Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19
[CONFIDENTIAL TEXT DELETED – NUMBER]					
Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20
[CONFIDENTIAL TEXT DELETED – NUMBER]					

(c) What is the average period of time that inventory is retained (describe how this is calculated)?

The average storage period does not exceed [CONFIDENTIAL TEXT DELETED – NUMBER] days.

PUBLIC RECORD

Provide copies of internal documents which support your claims in response to this question.

Please refer to *Exhibit B-1-3_Example Warehousing plan* [CONFIDENTIAL EXHIBIT].

4. Have there been any changes to the type of capital or technology utilised by your company in the manufacturing of the goods in the last five years? If yes, provide details.

There have been no significant changes in the type of capital or technology utilised by NAK Azot in the production of ammonium nitrate in the past five years.

5. For each plant capable of producing inputs that could be utilised to make the goods, provide the date that production facility came into operation and the production capacity of the plant over the past five years. The production capacity should be based on an actual production capacity, not a budgeted production capacity. Provide copies of internal documents which support your claims in response to this question.

For the production of ammonium nitrate, the raw materials are ammonia and nitric acid.

Ammonia is produced in Ammonia-[CONFIDENTIAL TEXT DELETED – NUMBER] workshops, which were commissioned as follows:

- [CONFIDENTIAL TEXT DELETED – COMMISSIONING DATES]

Nitric acid is produced in the Workshop for the production of nitric acid branch of weak nitric acid and workshop of mineral fertilizers and acids No. 1, which were commissioned as follows:

- [CONFIDENTIAL TEXT DELETED – COMMISSIONING DATES]

The actual capacities, in MT pa, were as follows:

Year	[CONFIDENTIAL TEXT DELETED – PRODUCTION UNITS]
2016	[CONFIDENTIAL TEXT DELETED – NUMBERS]
2017	
2018	
2019	
2020	

Please refer to *Exhibit B-1-5_Technical Specification_Ammonia_Nitric Acid* [CONFIDENTIAL EXHIBIT].

6. Confirm whether management reports are prepared on production costs. If yes:
(a) specify how often these cost reports are prepared;

Management reports are prepared on production costs but not limited to same. Production costs reports are referred to as “Calculation (form 16) for semi-finished items” and are prepared monthly.

PUBLIC RECORD

- (b) describe the level of detail in those reports and whether they enable the establishment of costs of producing the goods; and

These reports include variable and fixed costs of production which enable the establishment of costs of producing the goods.

- (c) specify to whom within the company these reports are provided; and

[CONFIDENTIAL TEXT DELETED – INTERNAL PROCEDURES].

- (d) provide copies of these reports for each month of the inquiry period.

Reports (with a sample translation) for each month of the inquiry period are attached in *Exhibit B 6-1-6 Production calculation* [CONFIDENTIAL EXHIBIT].