

PUBLIC RECORD

1 March 2021

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 (collectively **Glencore**) have reviewed the submission made on behalf of the Australian industry placed on the public record on 19 February 2021 (**the Industry Submission**), responding to Glencore's submission of 5 February 2021. Glencore wishes to make some additional comments in response to the Industry Submission.

We note again that the Industry Submission conflates *solid fertilisers with an ammonium nitrate content exceeding 80 % by weight* with explosive grade ammonium nitrate. Doing so is inaccurate for the reasons Glencore explained in its 5 February submission. Put simply, the lower the ammonium nitrate content, the greater the level of impurities; the greater the level of impurities, the less suitable it is for the production of emulsion. To the extent that the Australian industry considers otherwise, we invite them to:

1. advise of instances where they have used fertiliser grade AN (and specifically fertiliser grade rather than HDAN manufactured for emulsion production) to produce emulsion and the success of that approach; and
2. explain, if fertiliser grade ammonium nitrate is such a threat as they claim, why it is not used more widely around the world to produce emulsions given that anti-dumping tariffs do not impact the sources of raw materials for most countries.

We further note that the distinction between industrial grade HDAN and agricultural grade HDAN is clearly evident from the information on the public record, which shows that there are separate grades for what is referred to be "industrial" HDAN and what is referred to be "agricultural" HDAN. Significantly, industrial HDAN requires an ammonium nitrate content of at least 98%, whereas no standard is specified for agricultural grades of any quality.¹

¹ Page 33 of Attachment C-2 to the JSC Novomoskovsky Azot Exporter Questionnaire.

Noting once again that EU measures focus on certain types of fertiliser containing ammonium nitrate² and that Australia does not typically allow for the use of such fertiliser,³ it seems clear that the findings and conclusions in EU Regulation 2020/2100 are in no way informative to the situation in Australia and should not influence the Commissioner's consideration under s 269ZHF(2) of the *Customs Act 1901*.

The Industry Submission also discusses "import trends", citing the following:

The Industry application demonstrated that in 2018/18 and 2018/19 imports from Russia were 21,756 tonnes and 30,691 tonnes respectively, accounting for approximately 16 per cent and 15 per cent of total imports in each twelve-month period.

Firstly, this is done with the purpose of arguing that Australia is a "key market" for Russian exports of ammonium nitrate. However, these figures do not support that argument, and are divorced from broader context. The relevant context is that demand in the Australian market is equivalent to some 2.3 million tonnes of ammonium nitrate. The relevant context is the unassailable position of the Australian industry, which manufactures at least 94% of the ammonium nitrate sold in the Australian market. The relevant context is that the remaining 6% of the Australian market, which is supplied by non-Australian originating ammonium nitrate, is significantly imported by, or for the ultimate benefit of, members of the Australian industry. The relevant context is that imports to Australia from all sources have stayed relatively stable over a five year period while the Australian market itself has grown, indicating that even those sources not subject to measures do not have a significant stake in the market. The relevant context is that the Australian industry is protected by both geography and laws that actively limit where and what volume of ammonium nitrate can be imported into Australia in any given period. This context should be enough to disabuse anyone of the belief that Australia is a 'key market' for Russian producers.

² Again, the focus of these measures on fertiliser is clear if regard is had to their history. The original measures in EU Regulation No 2022/95 related to *Ammonium nitrate, which is a fertiliser produced in prill or granular form, containing between 33 and 35% nitrogen plant nutrient*, as per paragraph 13 of that Regulation. This was amended in 2005 to the description that continues to be used in EU Regulation 2020/2100, however, in so doing, the Regulation noted as follows at paragraph 37:

Finally, it is concluded that the description of the product concerned given in the operative part of the original Regulations needs to be clarified: the wording 'ammonium nitrate' should be replaced by 'solid fertilisers with an ammonium nitrate content exceeding 80 % by weight', to acknowledge that several fertilisers have an AN content exceeding 80 % by weight, and have an N content expressed as nitric nitrogen and ammoniacal nitrogen exceeding 28 % by weight, and to avoid confusion between the product concerned and its major content (AN). [Emphasis added].

Explosive grade AN may be caught in these measures by virtue of the broad description of the goods under consideration, but this is currently subject to an appeal to the WTO's Appellate Body (see WT/DS494/8, paragraph 41). In any regard, explosive grade ammonium nitrate, whether HDAN or LDAN is not the focus of these measures, nor do the sales practices around such product inform or drive the conclusions in EU Regulation 2020/2100.

³ As most recently noted at footnote 11 of the CSBP Verification Report.

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Secondly, the time periods mentioned in the discussion of “import trends” appear to have been carefully selected by the Australian Industry to emphasise a point rather than to produce a true picture of import activity. Our analysis of the import statistics reveals two sets of figures to be considered:

Imported Quantity (metric tonnes)			Imported Quantity (metric tonnes)		
Period	Actual	Actual less estimated Australian industry imports	Period	Actual	Actual less estimated Australian industry imports
2017	18,012	18,012	2017/18	23,429	23,429
2018	19,940	11,342	2018/19	30,640	13,386
2019	26,629	17,973	2019/20	5,462	5,462
2020	0	0	2020/21*	0	0

*20/21 data only available from Jul 20 to Dec 20

It is quite clear that with full context, the Australian market is **not** a large, growing market that is attractive to Russian AN producers and exporters, as the Australian industry has tried to portray it to be. This fact is further emphasised when Australian AN imports from Russia are taken in the context of total Russian AN production capacity, which the Australian industry estimates to be 3.6 million tonnes per year of technical ammonium nitrate⁴ and which the EC defined as 10.5 million tonnes per year for all grades of ammonium nitrate.⁵ In no individual year has the quantity exported to Australia (including the imports of the Australian industry themselves) exceeded 0.9% of total estimated technical AN production capacity or less than 0.3% of total Russian AN production capacity.

Furthermore, the Australian industry contradicts itself when, on one hand, they imply the Commission should accept the use of fertiliser grade ammonium nitrate prices be used in the analysis of export prices from Russia⁶ whilst, on the other hand, they observe that different grades of ammonium nitrate attract different prices⁷, a fact we are sure the Commission will have been able to establish during this process [REDACTED].

Glencore note that the Industry Submission points to the Australian industry application, the supplementary questionnaires completed by the Australian industry and its submission dated 19

⁴ Application, Attachment A page 7.

⁵ Refer to paragraph 105 of EU Regulation No. 2020/2100 published on 15 December 2020

⁶ Refer to paragraphs 4 and 6 of section III of the Industry Submission

⁷ Refer to section 9.2 of the CSBP Verification Report: In CSBP’s view, there is a greater return in some markets on sales of low density solid [ammonium nitrate]

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January 2021 as outlining its reasons as to why these measures should continue. These documents are preoccupied with previous findings of a particular market situation in Russia and largely restate old findings made by the Commission. They are not compelling. A finding that there is a particular market situation in no way makes dumping more likely to continue or recur, it simply changes the normal value methodology. Similarly, the older findings made by the Commission should not colour or influence the Commissioner's consideration in the present inquiry. We do not believe any of these documents put forward a compelling case that either dumping or material injury is likely to recur as a result of the expiration of the measures.

The Australian industry dominates the Australian market by any qualitative or quantitative measure. The only source of competition is from imports, which are a fraction of that market. Anti-dumping measures are not intended to protect the Australian industry from the spectre of competition and nor should they be used to enshrine historic profit margins. Glencore believes the continuation of these measures on the basis of the specious, ultimately re-trodden arguments put forward by the Australian industry would be harmful to Australia's reputation as a modern and open economy and would call into question the contestability of the Australian ammonium nitrate market by any non-Australian producer.

Yours sincerely



Darren Oliver

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