

# GLENCORE

## PUBLIC RECORD

25 March 2021

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

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Dear Director

## Glencore response to Statement of Essential Facts 565

Glencore Coal Assets Australia and Mount Isa Mines (collectively **Glencore**) supports the Anti-Dumping Commission's proposed recommendation that the measures imposed on exports of ammonium nitrate from Russia be allowed to expire as of 24 May 2021.

Glencore considers that the findings in SEF 575 support the expiry of the measures in an unambiguous and rational manner. In particular, we note the following findings of the Commission:

- The Russian ammonium nitrate industry faces capacity constraints and is focussed on the agricultural sector.<sup>1</sup>
- It is unlikely that Russian producers would convert their plants to produce LDAN for export to Australia.<sup>2</sup>
- To the extent that those producers may produce explosive grade HDAN such product would not compete with the majority of the Australian industry's sales.<sup>3</sup>
- Even if exports from Russia to Australia did occur, they would most likely be for spot sales, which represent less than 5% of the volume sold by the Australian ammonium nitrate industry.<sup>4</sup>

We further note the Commission's findings that the Australian industry is an active importer of ammonium nitrate, having sourced such product from Chile, China, Indonesia, Lithuania and Vietnam, in addition to Russia.<sup>5</sup> Added to this is the finding that the Australian industry was the

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<sup>1</sup> SEF 565 page 45 – 46.

<sup>2</sup> SEF 565 page 46.

<sup>3</sup> SEF 565 page 47.

<sup>4</sup> SEF 565 page 50.

<sup>5</sup> SEF 565 page 48.

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largest importer of Russian ammonium nitrate in 2019.<sup>6</sup> While it is not directly stated in the SEF, the Commission will no doubt have the data to confirm that the Australian industry is responsible for a significant volume of imported ammonium nitrate. With this in mind, we think it is incongruous that the Australian industry continues to advocate for anti-dumping measures to limit particular imports, when the SEF recognises that they are still making significant profits and command a domineering market share.

Ultimately, it appears to us that the Australian industry is attempting to use the anti-dumping mechanism to restrict any competition within the Australian explosives market, pushing up the already high prices for its domestically produced product whilst at the same time importing ammonium nitrate itself. But of course, the anti-dumping laws are not designed to prevent imports generally, nor are they intended to force customers to purchase from the Australian industry.<sup>7</sup>

The fact that imports maintained a stable market share over the injury analysis period shows that imports are absolutely necessary to the Australian market. This is particularly so given Australian industry capacity does not meet growing supply requirements.<sup>8</sup> We ask that the Commission bear this in mind, along with the Australian' industry's long documented history of importing ammonium nitrate itself, should the Australian industry submit future applications for anti-dumping measures.

While Glencore agrees with the ultimate conclusion in the SEF – that the measures should expire - we wish to provide some comments on two aspects of the analysis undertaken by the Commission. Specifically, Glencore is concerned about:

1. certain aspects of the particular market situation finding; and
2. the characterisation and analysis in the SEF of different ammonium nitrate products.

Glencore raises these now to avoid them becoming systemic issues given the likelihood that the Australian industry will make further applications to the Commission in the future seeking imposition of anti-dumping duties for ammonium nitrate, with the apparent objective of restricting competition in the supply of AN.

We make these comments for the purpose of assisting the Commission in its assessment of those future applications.

## **The particular market situation finding**

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<sup>6</sup> *Ibid.*

<sup>7</sup> Further, sales of ammonium nitrate from China, Sweden and Thailand were not found to have injured the Australian industry, but rather, were considered by the Australian industry itself in setting its own prices, a process which was said to be "injury caused by dumping". Firstly, Glencore considers this be an impermissible distortion of the causation requirement and would counsel the Commission from adopting similar logic in the future. Secondly, it would be odd if the Australian industry were to gain a windfall in terms of market share by replacing sales that there was no evidence the Australian industry had actually lost to the subject imports.

<sup>8</sup> SEF 565 page 28.

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While we appreciate the ultimate outcome of the particular market situation finding had no impact on the margin determinations, we have difficulty with the fact that a PMS was considered in the first place.

We note:

- (a) The idea of the PMS is premised on what the SEF considers to be the effect of Russian Government policy on the market for gas. In particular, that gas prices offered by Gazprom within Russia are lower than those offered outside of Russia.<sup>9</sup>
- (b) It is based on the premise (which we do not consider to have been supported by any evidence) that “lower” gas prices will somehow affect the Russian market for ammonium nitrate. There is no consideration of this market at all.
- (c) Notwithstanding the above conclusion, the price of gas actually verified by the Commission is comparable to the competitive benchmark price adopted by the Commission.

We do not understand the Commission’s conclusion regarding gas prices in Russia being “artificially low”. This conclusion is based on a comparison between the gross profit achieved on gas sold in Russia with that achieved on sales outside of Russia.<sup>10</sup> As the Commission notes, Gazprom has an export monopoly. Monopoly prices are, by their nature, non-competitive and so tend to be higher than would be achieved in a purely competitive market. Citing this price discrepancy as evidence that domestic prices are not reflective of a “competitive market price” does not justify the conclusions that were reached, particularly when there is actually competition in the Russian Gas market.<sup>11</sup>

Further, we disagree with the assumption that any actual or assumed “low” prices in the domestic market for gas would automatically lead to low prices in the domestic market for ammonium nitrate. There has been no suggestion or evidence that the Russian ammonium nitrate market is anything but competitive and nor that gas costs impact the price of ammonium nitrate sales. Prices are derived from the interplay between supply and demand. The reasoning presented in the SEF does not seem to take into account whether the exporters had regard to Gazprom gas prices at all in setting their ammonium nitrate price. In any regard, costs represent the minimum at which it is profitable for a manufacturer to sell (for a product like ammonium nitrate, this minimum is known as the floor price), but in no way limit the profit that can be achieved in a given market.

Section 269TAC(2)(a)(ii) clearly relates to the market for like goods, not some upstream market. Critically, we do not believe that the material in Appendix B of the SEF establishes that there is any situation in the market for like goods such that sales in that market are not suitable for use in determining a price.

## **Different types of ammonium nitrate**

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<sup>9</sup> SEF 565 page 77.

<sup>10</sup> SEF 565 page 78.

<sup>11</sup> SEF 565 page 72.

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We note that the Commission addresses Glencore's submissions of 5 February 2021 and 1 March 2021 regarding the goods at s 7.10.3 of the SEF. In anticipation of this issue arising again in the future, we think it is important to reiterate the following points for future reference by the Commission.

Firstly, it is not accurate to characterise the Commission's previous findings as one that HDAN and LDAN are "substitutable goods". The Commission's previous findings are:

- Australian produced LDAN was substitutable with imported LDAN;<sup>12</sup> and
- Australian produced ANSOL is directly substitutable for imported HDAN, albeit only if customers have access to a solution tank; and<sup>13</sup>
- In certain, undefined circumstances, LDAN can be used to produce emulsion explosives.<sup>14</sup>

The substitutability of HDAN and ANSOL is limited to circumstances where a customer has access to a solution tank and, as noted in our previous submission, an emulsion plant. This is a highly costly investment. It is not open to all customers to merely pick and choose between ANSOL and HDAN as they desire.

The substitutability between HDAN and LDAN is also limited. LDAN can be used to produce emulsion, but that involves the removal of impurities and the use of robust (and costly) emulsifiers to ensure what impurities remain do not detract from the function of the emulsion. Again, it is not the case that a purchaser will simply pick between LDAN and HDAN on a whim – the substitutability is limited.<sup>15</sup>

Simply stating that HDAN, LDAN and ANSOL are "substitutable" is not accurate in terms of the technical differences between those products, and is problematic for the analysis to be undertaken by the Commission. Given the majority of Australian industry sales were of LDAN, overstating the degree to which HDAN and LDAN are substitutable may exaggerate the risk of any future injury. We note that, notwithstanding this, the Commission's view is that it is unlikely that any future imports would materially injure the Australian industry.

Further, as we have previously indicated, it is inaccurate to conflate HDAN with fertiliser grade ammonium nitrate (**FGAN**). For the reasons specified in Glencore's earlier submissions, FGAN is not suitable for use by the explosive industry and is sold at a lower price than is explosive grade ammonium nitrate.<sup>16</sup> The reason why this is important is that the Commission has used TDI data to

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<sup>12</sup> Report 473 Page 16.

<sup>13</sup> *Ibid.*

<sup>14</sup> Report 473, page 18.

<sup>15</sup> Glencore understands that [REDACTED] So, this ability is hardly applicable to the substitutability of imports or exports of different grades of Russian AN.

<sup>16</sup> To reiterate what we have said previously – FGAN from Russian includes anti-caking agents that are not compatible with the production of emulsion.

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inform much of the price analysis in the SEF. In particular, the estimation of the Russian landed price for the purpose of determining whether exports are likely to be dumped.<sup>17</sup>

As the SEF notes, the TDI data does not differentiate between HDAN, LDAN or FGAN, and that the inclusion of FGAN in this data may distort the price undercutting analysis.<sup>18</sup> We agree. This is likely.<sup>19</sup>

The price undercutting analysis compares the estimated landed price of ammonium nitrate from Russia with that from countries that actually exported ammonium nitrate to Australia. The Commission is aware that there is little to no appetite in Australia for the use of ammonium nitrate fertiliser, so these exports are likely all explosive grades. The TDI information would not be, however. We have previously advised that approximately 72% of ammonium nitrate exported from Russia was of fertiliser. Given fertiliser represents the majority of the goods exported, it is likely also the majority of the sales reported in the TDI data. We believe the inclusion of lower-priced fertiliser substantially drives the outcome of the price undercutting analysis.

Given that the undercutting analysis does not distinguish between the different grades of ammonium nitrate, we are concerned that it may create confusion for the purposes of s 269ZHF(2).<sup>20</sup> The Australian industry has not provided any evidence to support the concept that Russian AN exported to Australia would undercut AN from other sources. Respectfully, we do not believe that it is the role of the Commission to find reasons to be satisfied that the measures should continue.

## Conclusion

We welcome and support the Commission's proposed decision to recommend the discontinuation of the measures as they relate to ammonium nitrate from Russia. The comments in this submission are not meant to detract from the overall merit of the analysis included in the SEF, but rather are offered with the intent of ensuring the Commissioner is fully apprised of all relevant information in anticipation of future applications being made.

Yours sincerely



**Darren Oliver**

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

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<sup>17</sup> SEF 565 page 50.

<sup>18</sup> SEF 565 page 51.

<sup>19</sup> In particular, [REDACTED] Each of these factors would contribute to a lower price than would be expected in Australia.

<sup>20</sup> [REDACTED]