PUBLIC RECORD

Australian Government
Department of Industry, Science, Energy and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 – PART XVB

REPORT NO. 565

INQUIRY INTO THE CONTINUATION OF ANTI-DUMPING MEASURES APPLYING TO AMMONIUM NITRATE EXPORTED FROM THE RUSSIAN FEDERATION EITHER DIRECTLY OR VIA ESTONIA

19 April 2021

CONTENTS

ABBREVIATIONS

$	Australian dollar
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
ACER	Agency for Cooperation of Energy Regulators
the Act	*Customs Act 1901* (Cth)
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AN	Ammonium Nitrate
ANFO	Ammonium Nitrate mixed with Fuel Oil
ANsol	Ammonium Nitrate Solution
the applicants	CSBP Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd, as joint applicants
the ARAFM	All-Russian Association of Fertiliser Manufacturers
ASCM	Agreement on Subsidies and Countervailing Measures
CAGR	Compounded Annual Growth Rate
China	People's Republic of China
the Commissioner	the Commissioner of the Anti-Dumping Commission
CSBP	CSBP Limited
CTMS	cost to make and sell
the Direction	*Customs (Extensions of Time and Non-cooperation) Direction 2015* (Cth)
DISER	Department of Industry, Science, Energy and Resources
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975* (Cth)
Dyno Nobel	Dyno Nobel Asia Pacific Pty Ltd
DS 529	WTO Panel Report *Australia – Anti-Dumping Measures on A4 Copy Paper*
EC	European Commission
EC Russia Working Document	European Commission's *Staff Working Document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations.*
EPR	Electronic Public Record
EU	European Union
EuroChem Group	Collective reference to EuroChem Group, including JSC Novomoskovsky Azot and JSC Nevinnomyssky Azot.
EuroChem – Brattle Report	*'The Cost of Russian Gas, A Benchmark Study on Russian Industrial Gas Prices'* prepared by The Brattle Group and provided by EuroChem Group.
FGAN	fertiliser grade ammonium nitrate
FOB	Free on Board
FSU	Former Soviet Union
FY	Financial Year
Gazprom	OAO Gazprom
Glencore	Glencore Coal Assets Australia Pty Ltd and Mount Isa Mines
the goods	Ammonium Nitrate
GOR	Government of Russia
GOR Questionnaire	Questionnaire sent to the Government of Russia when inquiry initiated

HDAN	High Density Ammonium Nitrate
IDD	Interim dumping duty
IGS	independent gas suppliers
the inquiry period	1 July 2019 to 30 June 2020
LDAN	Low Density Ammonium Nitrate
the Manual	*Dumping and Subsidy Manual*
MCC	Model Control Code
mcm	Thousands of cubic meters
MED	Ministry of Economic Development of the Government of Russia
Merchant report	*Ammonium Nitrate Russia Market 2021* by Merchant Research and Consulting
the Minister	Minister for Industry, Science and Technology
MMBtu	Metric Million British thermal units
MT	Metric Tonne
NAK Azot	JSC Novomoskovsky Azot
Nevinka	JSC Nevinnomyssky Azot
NCG	NetConnect Germany
NIP	Non-Injurious Price
Notice	Dumping duty notice
Novatek	PAO Novatek
NSA	Nitro Sibir Australia Pty Ltd
NSW	New South Wales
OCOT	Ordinary course of trade
OIES	Oxford Institute of Energy Studies
Orica Australia	Orica Australia Pty Ltd
QNP	Queensland Nitrates Pty Ltd
RAFP	Russian Association of Fertilizer Producers
REP 312	*Anti-Dumping Commission Report No. 312*
REP 473	*Anti-Dumping Commission Report No. 473*
R&D	Research and Development
REQ	response to the exporter questionnaire
ROI	return on investment
RUB	Russian Ruble
Russia	The Russian Federation
SEF	Statement of Essential Facts
SEF 565	Statement of Essential Facts No. 565
SPIMEX	Saint-Petersburg International Mercantile Exchange
TAN	technical ammonium nitrate
TDI	TradeData International Pty Ltd
Thailand	Kingdom of Thailand
UGSS	Unified Gas Supply System
USP	Unsuppressed Selling Price
VAT	Value Added Tax
WA	Western Australia

WTO	World Trade Organization
Yara Pilbara Nitrates	Yara Pilbara Nitrates Pty Ltd

1 SUMMARY AND RECOMMENDATION

1.1 Introduction

This report concerns an inquiry into whether the continuation of the anti-dumping measures, in the form of a dumping duty notice (the notice), applying to ammonium nitrate (the goods) exported to Australia from the Russian Federation (Russia)[1] is justified.[2]

The anti-dumping measures are due to expire on 24 May 2021.

This inquiry was initiated on 20 August 2020, following the Commissioner of the Anti-Dumping Commission's (the Commissioner) consideration of the application lodged by CSBP Limited (CSBP), Orica Australia Pty Ltd (Orica Australia) and Queensland Nitrates Pty Ltd (QNP) seeking the continuation of the anti-dumping measures. The Commissioner established an inquiry period of 1 July 2019 to 30 June 2020 (the inquiry period) for this continuation inquiry.

This report sets out the findings and conclusions on which the Commissioner has based his recommendations to the Minister for Industry, Science and Technology (the Minister).

1.2 Legislative framework

Division 6A of Part XVB of the *Customs Act 1901* (the Act)[3] sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.

Section 269ZHE(1) requires the Commissioner to publish a statement of essential facts (SEF) on which he proposes to base his recommendations to the Minister concerning the continuation of the measures. Section 269ZHE(2) requires the Commissioner, in formulating the SEF, to have regard to the application and any submissions received within 37 days of the initiation of the inquiry. The Commissioner may also have regard to any other matters he considers relevant.

Under section 269ZHF(4), the Commissioner is not obliged to have regard to any submissions made in response to the SEF that are received by the Commissioner after the end of the 20 day period referred to in section 269ZHF(3)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of this report to the Minister.

Section 269ZHF(1) requires the Commissioner, after conducting an inquiry, to give the Minister a report which recommends that the relevant notice:

- remain unaltered;
- cease to apply to a particular exporter or to a particular kind of goods;
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained; or
- expire on the specified expiry day.

Pursuant to section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures, unless the

[1] The anti-dumping measures currently apply to all exporters for all goods exported directly from Russia or via Estonia.

[2] Under section 269TM, dumping duty notices expire five years after the date on which they were published, unless they are revoked earlier.

[3] All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

1.3 Statement of Essential Facts

The Commissioner published Statement of Essential Facts No. 565 (SEF 565) on 5 March 2021.[4] SEF 565 set out the findings of the Commissioner and the recommendations he proposed to make to the Minister based on the information before him at that time.

1.4 Findings

For the reasons set out in this report, the Commissioner is not satisfied that the expiration of the anti-dumping measures in respect of exports of ammonium nitrate from Russia would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

In preparing this report the Commissioner had regard to:

- the application for continuation of the anti-dumping measures;
- submissions relating generally to the continuation of the measures to which the Commissioner has had regard to for the purpose of formulating SEF 565;
- SEF 565;
- submissions made in response to SEF 565; and
- any other matter that the Commissioner considered relevant to the inquiry.

1.5 Recommendation

Based on the above finding, the Commissioner recommends to the Minister that the dumping notice in respect of ammonium nitrate exported to Australia from Russia expire on the specified expiry day (being 24 May 2021).

[4] Electronic Pubic Record (EPR) 565, document number 32. The EPR can be accessed at www.adcommission.gov.au.

2 BACKGROUND

2.1 Initiation

In accordance with section 269ZHB(1), the Commissioner published a notice on 28 May 2020[5] on the Commission's website inviting the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures (section 269ZHB(1)(b)(i)); or
- persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures (section 269ZHB(1)(b)(ii)).

On 27 July 2020, an application for the continuation of the anti-dumping measures was received from CSBP, Orica Australia and QNP. A non-confidential version of the application is available on the Commission's public record.[6]

As set out in Anti-Dumping Notice (ADN) No. 2020/93, the Commissioner was satisfied that the application complied with section 269ZHC and, in accordance with section 269ZHD(2)(b), there appeared to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.[7]

The Commissioner therefore decided not to reject the application and initiated the present inquiry on 20 August 2020.

2.2 Current anti-dumping measures

The anti-dumping measures subject to this continuation inquiry were initially imposed by public notice on 24 May 2001. The then Minister for Justice and Customs accepted the recommendations in *Trade Measures Report No. 28* and published a dumping duty notice in relation to ammonium nitrate exported to Australia from Russia. Notification of the then Minister's decision was given in Australian Customs Dumping Notice No. 2001/29. Since the initial imposition of measures, the measures have been continued for a further five years on three occasions, being a further:

- five years from 24 May 2006, as a result of the then Minister for Justice and Customs accepting the findings and recommendations in *Trade Measures Branch Report 104*;[8]
- five years from 24 May 2011, as a result of the then Minister for Home Affairs accepting the findings and recommendations in *Trade Measures Branch Report 168*;[9] and

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[5] ADN No. 2020/052 refers. A copy is available at https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/anti-dumping-commission-notices.

[6] EPR 565, document number 1.

[7] EPR 565, document number 2.

[8] This was undertaken in conjunction with a review of the relevant anti-dumping measures (as outlined in *Trade Measures Report No. 105*).

[9] This was undertaken in conjunction with a review of the relevant anti-dumping measures (as outlined in *Trade Measures Report No. 169*).

- five years from 24 May 2016, as a result of the then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science accepting the findings and recommendations in *Anti-Dumping Commission Report No. 312* (REP 312). This inquiry also incorporated a review of the relevant anti-dumping measures, and assessed whether the variable factors relevant to the taking of measures had changed.

As a result of REP 312, interim dumping duty is currently calculated based on the floor price duty method. Further details on the existing measures are available on the Dumping Commodity Register (DCR) on the Commission's website.[10]

In addition to the abovementioned investigation and continuation inquiries, the following cases have been completed in relation to the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia.

Year	Report Number	Case description
2002	Report 61	On 16 April 2002, Customs and Border Protection initiated an accelerated review of the measures applying to ammonium nitrate following an application by an exporter. As a result of the review the measures were varied. Notification of the revised measures was published on 27 September 2002 after the relevant Minister accepted the recommendations of Trade Measures Report No. 61 (REP 61).
2010	Report 169	On 21 September 2010, the Australian industry lodged an application for a review of measures. Following the consideration of this application, a review was initiated on 7 October 2010 and was run concurrently with Continuation Inquiry 168 (see above). The relevant Minister accepted the recommendations in Report 169 and varied the measures as they applied to exporters.
2018	Report EX0066	On 14 May 2018, importer Nitro Sibir Australia Pty Ltd lodged an application seeking exemptions pursuant to section 8(7)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) (the Dumping Duty Act). The goods subject of the application were high density ammonium nitrate (HDAN). The relevant Minister accepted the Commissioner's recommendation and decided not to grant the exemption, pursuant to section 8(7) of the Dumping Duty Act.

Table 1: Other cases relating to ammonium nitrate exported to Australia from Russia

In addition to the measures that are the subject of this continuation inquiry, anti-dumping measures on ammonium nitrate exported to Australia from the People's Republic of China (China), Sweden and the Kingdom of Thailand (Thailand) have applied since 4 June 2019.

Further details on prior cases and the existing measures are available on the Commission's website.[11]

2.3 Conduct of the inquiry

2.3.1 Period of inquiry

The period of inquiry established for this continuation inquiry was 1 July 2019 to 30 June 2020 (inquiry period).

[10] See https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/anti-dumping-commission-measures.

[11] Reports relating to ammonium nitrate cases prior to 2012 are not maintained on the electronic public record. Please contact the Commission should you require a copy of these earlier reports.

For the purposes of examining the performance of the Australian industry and the Australian market, the Commission has examined the period after 1 July 2015.

2.3.2 Public record

The public record contains non-confidential submissions made by interested parties and other publicly available documents. An electronic public record (EPR) is available for interested parties to access the public record for this inquiry. The public record can be accessed at www.adcommission.gov.au.

2.3.3 Participation in the inquiry – Submissions received

The Commission received the following submissions prior to publishing the SEF. Non-confidential versions of these submissions are available on EPR 565.

Interested party	Date published on EPR	EPR document no.
Government of Russia (GOR)	29 September 2020	3
Glencore Coal Assets Australia Pty Ltd and Mount Isa Mines (Glencore)	8 October 2020	5
CSBP, Orica Australia and QNP, as joint applicants	21 January 2021	17
GOR	8 February 2021	18
Glencore	8 February 2021	20
JSC Novomoskovsky Azot and JSC Nevinnomyssky Azot (collectively referred to as the EuroChem Group)	9 February 2021	21
EuroChem Group	11 February 2021	23
CSBP, Orica Australia and QNP, as joint applicants	19 February 2021	25
CSBP, Orica Australia and QNP, as joint applicants	19 February 2021	26
CSBP, Orica Australia and QNP, as joint applicants	19 February 2021	27
EuroChem Group	1 March 2021	29
Glencore	1 March 2021	30

Table 2: Submissions received from interested parties prior to publication of SEF

In formulating SEF 565 the Commissioner did not have regard to a submission received from Glencore[12] and a confidential submission received in relation to a matter specified in Chapter 7 of this report.[13]

The Commissioner did not have regard to these submissions because, in the Commissioner's opinion, to do so would have delayed the timely placement of SEF 565 on the public record.[14] The Commissioner has had regard to these submissions in the preparation of this report.

The following submissions were received after the publication of the SEF. Non-confidential versions of these submissions are available on EPR 565.

[12] EPR 565, document number 30.

[13] Details of this are specified in section Chapter 7 of this report.

[14] See section 269ZHE(3).

Interested party	Date published on EPR	EPR document no.
GOR	25 March 2021	35[15]
Glencore	26 March 2021	36
Dyno Nobel Asia Pacific Pty Ltd (Dyno Nobel)	26 March 2021	37
QNP	26 March 2021	38
Orica Australia	26 March 2021	39
CSBP	26 March 2021	40
EuroChem Group	26 March 2021	41
Orica Australia	30 March 2021	42
Orica Australia	30 March 2021	43
EuroChem Group	1 April 2021	45
Orica Australia	6 April 2021	46
Glencore	7 April 2021	47
Glencore	8 April 2021	48

Table 3: Submissions received from interested parties subsequent to publication of SEF

The Commission has had regard to these submissions in the preparation of this report.

Glencore submitted that there was no way for other parties to have any form of scrutiny or comment over Orica Australia's submissions received by the Commission on 30 March 2021.[16] Glencore requested that the Commission ensure the principles of procedural fairness were adhered to and, if this was not possible, the Commission should disregard the late submissions as it is entitled to do so under sections 269ZHF(4) and 269ZJ(5) or (6) of the Act.

Glencore also submitted that the unidentified parties to the contracts would be in a special position to correct, clarify or confirm the representations Orica Australia has made confidentially. At an absolute minimum, Glencore stated the Commission should seek comment from the counterparties to the contract and without this the Commission could not form a view that the information provided by Orica Australia was correct.

The Commissioner must have regard to any submission made in response to the SEF that is received by him within 20 days after placing the SEF on the public record.[17] The Commissioner is not obliged to have regard to any submission in response to the SEF after this period if to do so would, in the Commissioner's opinion, prevent the timely preparation of the final report to the Minister.[18] The Commissioner may also disregard information for which a public summary was not provided unless it was demonstrated the information was correct.[19]

The Commission notes that the content and purpose of the submissions made by Orica Australia on 30 March 2021 was to substantiate earlier submissions that Orica Australia

[15] The Commission sought and obtained further information from the GOR regarding confidential data summarised in their submission.

[16] EPR 565, document number 47.

[17] Section 269ZHF(3)(a)(iv).

[18] Section 269ZHF(4).

[19] See sections 269ZJ(5) and (6).

had made within 20 days of placing the SEF on the public record. Accordingly, the Commissioner was not of the opinion that to have regard to Orica Australia's submissions would prevent the timely preparation of the report to the Minister. As a result, the Commissioner had regard to those submissions.

The Commission also acknowledges Glencore's submission with respect to seeking correction, clarification or confirmation from the counterparties to the relevant contracts. The Commission notes that having regard to Orica Australia's further submissions has not resulted in an adverse outcome for the counterparties of the relevant contracts.

The Commission also considers that procedural fairness was not denied to interested parties because Orica Australia's submissions did not seek to introduce novel arguments and no adverse outcome has resulted for the counterparties to the relevant contracts.

2.3.4 Participation in the inquiry – Application, questionnaire responses and verification of information provided

2.3.4.1 Australian industry

The three applicants (the applicants) provided relevant data in their application for the continuation inquiry.[20]

The Commissioner wrote to other known Australian industry members, Dyno Nobel Asia Pacific Pty Ltd (Dyno Nobel) and Yara Pilbara Nitrates Pty Ltd (Yara Pilbara Nitrates), after the initiation of the inquiry and invited them to complete questionnaires. No questionnaire responses were received from either Dyno Nobel or Yara Pilbara Nitrates.

The applicants were invited to complete a supplementary questionnaire. All three applicants provided a response to the supplementary questionnaire. Copies of the public record versions of these supplementary questionnaire responses are available on the public record for this inquiry.[21]

The Commission completed remote verification of the application data and supplementary questionnaire responses provided by Orica Australia and CSBP. Copies of the verification reports are on the public record.[22]

2.3.4.2 Exporters

For the purpose of this inquiry, the Commission identified suppliers of ammonium nitrate to Australia from Russia during the inquiry period as reported in the Australian Border Force (ABF) import database. These suppliers were invited to complete an exporter questionnaire. The Commission also placed a copy of the exporter questionnaire on its website for completion by other suppliers.

The exporters who exported to Australia during the inquiry period and the traders associated with those exports did not provide a response to the exporter questionnaire.

Russian producers JSC Novomoskovsky Azot (NAK Azot) and JSC Nevinnomyssky Azot (Nevinka), who are part of the EuroChem Group of companies, provided responses to the

[20] Subsequent to the initiation of the inquiry, the Commission requested the applicants to provide further data that was relevant to the inquiry period established by the Commission.

[21] EPR 565, document numbers 11, 12 and 13.

[22] EPR 565, document numbers 28 and 31.

exporter questionnaire. Both producers were subsequently invited and completed a response to a supplementary questionnaire.

NAK Azot and Nevinka were provided with extensions of time to provide responses to the exporter questionnaire and the supplementary questionnaire.[23] Copies of the non-confidential versions of NAK Azot and Nevinka's responses to the questionnaires are available on the public record.[24]

The responses to the exporter questionnaire provided by NAK Azot was verified remotely and the responses provided by Nevinka was partially verified and, where not verified, benchmarked against the verified data of NAK Azot.

2.3.4.3 **Importers**

The Commission identified relevant ammonium nitrate imported to Australia from Russia during the inquiry period as reported in the ABF import database. The importer of this ammonium nitrate Nitro Sibir Australia Pty Ltd (NSA), was invited to complete an importer questionnaire. NSA subsequently completed the importer questionnaire and relevant attachments.

The Commission completed a remote verification of NSA's response to the importer questionnaires. A copy of NSA verification report is available on the EPR.[25]

2.3.4.4 **Government of Russia**

The GOR was invited to complete a government questionnaire (GOR questionnaire).

In its first submission, the GOR advised that it did not understand the relevancy of the GOR questionnaire to the inquiry.[26] The GOR considered that most of the information requested in the questionnaire concerned issues that were beyond the control of the exporting producers, and therefore could not be attributed to their pricing behaviour. The GOR also noted that some of the questions in the questionnaire requested information on GOR financial assistance to the ammonium nitrate industry, whether direct or indirect. The GOR considered that these questions, whilst possibly being appropriate in a countervailing investigation, were not appropriate in the review of anti-dumping measures. The GOR noted that Article 32.1 of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM) specified that no specific action against a subsidy of another WTO Member could be taken except in accordance with the provisions of GATT 1994, as interpreted by the Agreement.

The Commission respectfully disagrees with the GOR's assessment of the GOR questionnaire. The Commission considers that the questions in the GOR questionnaire were relevant to this inquiry, in particular, the Commission's questions relating to whether a particular market situation exists in the Russian market for ammonium nitrate. In an anti-dumping investigation, the investigating authority may consider governmental action in the context of the fact-specific examination of whether a set of circumstances constitutes a particular market situation. The WTO Panel in *Australia – Anti-dumping measures on A4*

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[23] EPR 565, document numbers 4 and 8.

[24] EPR 565, document numbers 6, 7, 9 and 10.

[25] EPR 565, document number 19.

[26] EPR 565, document number 3, pages 2 to 3.

Copy Paper[27] expressly rejected Indonesia's argument that "the particular market situation" referenced in Article 2.2 of the Anti-Dumping Agreement necessarily excludes any situation that arises from governmental action.[28]

The Commission also invited the GOR to complete a supplementary GOR questionnaire addressing separate issues to those in the first GOR questionnaire. The GOR did not provide a response to either the first GOR questionnaire or the supplementary GOR questionnaire. The GOR has otherwise provided submissions to this inquiry, as outlined in Tables 2 and 3, above.

2.3.5 Information obtained from other parties or sources

For the purpose of this review, the Commission also obtained information from sources other than the interested parties. Where another information source has been considered, the information source is referenced in the relevant section of this report.

2.3.6 Meeting of interested parties

Pursuant to a request of the GOR, the Commission held a meeting for interested parties on 3 February 2021.[29]

Interested party attendees at the meeting are listed below.

Interested party
GOR
Orica Australia
EuroChem Group
Glencore

Table 4: Interested parties who attended meeting

As specified in the notice of the public meeting, following oral submissions at the meeting, interested parties were required to subsequently put these submissions in writing to the Commission within seven days of the meeting for inclusion on the public record, in order for the Commission to have regard to the information in formulating SEF 565.[30]

Interested parties were also requested to provide submissions in response to the written submissions made within seven days of the meeting, within 14 days of the meeting.[31]

Submissions and submissions in response received in relation to the meeting of interested parties are listed below.

Interested party	Date published on EPR	EPR document no.
GOR	8 February 2021	18
EuroChem Group	9 February 2021	21
CSBP, Orica Australia and QNP, as joint applicants	19 February 2021	25
CSBP, Orica Australia and QNP, as joint applicants	19 February 2021	26

[27] See https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/529R.pdf&Open=True.

[28] See paras. 7.50 and 7.56, and section 7.2.3.6 of this report.

[29] EPR 565, document number 3, page 6.

[30] See ADN 2021/006, EPR 565, document number 16.

[31] Ibid.

CSBP, Orica Australia and QNP, as joint applicants	19 February 2021	27

Table 5: Submissions received in relation to the interested party meeting

Non-confidential versions of these submissions are available on EPR 565.

2.3.7 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an inquiry, or such longer period as is allowed under section 269ZHI(3), place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.

The initiation notice advised that the SEF would be placed on the public record by 9 December 2020. However, as advised in:

- ADN No. 2020/145, [32] the Commissioner approved an extension of time for the publication of the SEF until 26 February 2021 and the final report until 16 April 2021; and
- ADN No. 2021/022, [33] the Commissioner approved a further extension of time for the publication of the SEF until 5 March 2021 and the final report until 19 April 2021.

SEF 565 was placed on the public record on 5 March 2021.[34]

2.3.8 Form of measures

Consideration of the form of measures was undertaken in SEF 565 in the event that the Commissioner recommended to the Minister that the measures continue.

Submissions were received from CSBP, Orica Australia, Dyno Nobel and QNP opposing the Commissioner's preliminary assessment that the ad valorem method should be used in the event that the measures were continued.[35]

On the basis that the Commissioner is recommending to the Minister that the dumping notice expire, the Commissioner is not making a recommendation to the Minister with respect to the form of measures, pursuant to the Dumping Duty Act, in this report. Accordingly, the Commissioner has not had regard to the aspects of submissions received in response SEF 565 which relate to the form of measures.

2.3.9 Report

The Commissioner must, within 155 days after the initiation of an inquiry, or such longer period as is allowed under section 269ZHI(3), give the Minister a report recommending that the relevant notice:

- remain unaltered;
- cease to apply to a particular exporter or to a particular kind of goods;
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained; or

[32] See ADN No. 2020/145, EPR 565, document number 15.

[33] See ADN No. 2021/022, EPR 565, document number 24.

[34] EPR 565, document number 32.

[35] EPR 565, document numbers 37, 38, 39, and 40.

- expire on the specified expiry day.

The initiation notice advised that the report would be provided to the Minister on 22 January 2021. As advised in ADN No's. 2020/145 and ADN No. 2021/022, the period for providing the report was initially extended until 16 April 2021 and subsequently extended until 19 April 2021.

This report was provided to the Minister on 19 April 2021.

3 THE GOODS AND LIKE GOODS AND THE AUSTRALIAN INDUSTRY

3.1 Finding

The Commissioner considers that the Australian industry, which comprises five entities, manufactures ammonium nitrate that are like goods to the goods under consideration in this inquiry.

3.2 Legislative framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or recurrence of, dumping or subsidisation, the Commissioner firstly determines whether the goods produced by the Australian industry are "like" to the imported goods. Section 269T(1) defines like goods as:

> *…goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

The definition of like goods is relevant in the context of this inquiry in determining the normal value of goods exported to Australia, the non-injurious price (NIP) and the Australian industry. The Commission's framework for assessing like goods is outlined in chapter 2 of the *Dumping and Subsidy Manual November 2018* (the Manual).[36]

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

i. Physical likeness;
ii. Commercial likeness;
iii. Functional likeness; and
iv. Production likeness.

The Commissioner must also consider whether the "like" goods are in fact produced in Australia. Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under section 269T(3), in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia. The following therefore establishes the scope of the Commission's inquiry.

3.3 The goods

3.3.1 The goods description

The goods the subject of anti-dumping measures, and therefore this inquiry, are:

> *'[a]mmonium nitrate, prilled, granular or in other solid form, with or without additives or coatings, in packages exceeding 10 kg'.*

The goods include low and high density ammonium nitrate. Low density ammonium nitrate

[36] Available on the Commission's website at www.industry.gov.au/data-and-publications/dumping-and-subsidy-manual.

is generally in solid prilled form and is typically used in the manufacture of explosives. Solid high density ammonium nitrate is generally used in the agricultural sector as a fertiliser overseas.

3.3.2 Tariff classification

Ammonium nitrate, whether or not in aqueous solution, is generally classified within sub-heading 3102.30.00, statistical code 05 of Schedule 3 to the *Customs Tariff Act 1995*.

This tariff classification and statistical code may include goods that are both subject and not subject to this inquiry. The listing of this tariff classification and statistical code is for reference only, and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods that are the subject of this inquiry.

Other than dumping duties, there are currently no other customs duties applying to ammonium nitrate imported into Australia from any country. Dumping duties apply to ammonium nitrate imported into Australia from the following countries:

- Russia (either directly or via Estonia) in the form of a floor price; and
- Sweden, Thailand and China in the form of an ad valorem rate.

Further information in relation to the current anti-dumping measures can be found on the Commission's dumping commodity register for ammonium nitrate.[37]

3.4 Model Control Code

The Commission undertakes model matching using a Model Control Code (MCC) structure to identify key characteristics that will be used to match models of the goods exported to Australia and like goods sold domestically in the country of export. The Commission may also have regard to the MCC structure in its assessment of material injury to the Australian industry, such as for an undercutting analysis. The Commission implemented the use of MCC structures on 9 August 2018, which was after the completion of the last continuation inquiry. Further information on the Commission's approach to using MCC structures is contained in ADN 2018/128.[38]

ADN No. 2020/093 published on initiation of this inquiry proposed the following MCC structure.

Category	Sub-category		Sales data	Cost data
Density	**H**	High	Mandatory	Mandatory
	L	Low		
Form	**P**	Prilled	Mandatory	Optional
	G	Granular		
	O	Other solid form		

Table 6: MCC structure

Upon initiation of this inquiry the Commission invited interested parties to provide submissions prior to 28 September 2020 in regard to the proposed MCC structure.

[37] The dumping commodity register can be accessed at www.adcommission.gov.au.

[38] A copy of ADN 2018/128 is available at https://www.adcommission.gov.au/sites/default/files/adc/public-record/2018_128.pdf.

No submissions were received in relation to the Commission's proposed MCC structure.

As consequence, the Commission has adopted the MCC structure proposed at initiation, as specified in Table 6 above, for the purposes of this inquiry.

3.5 Like goods

This section sets out the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods under consideration and are therefore 'like goods'.

For the purposes of the findings below, the Commission has relied on information provided during the conduct of this inquiry, prior investigations, continuation inquiries and exemption inquiries relevant to measures applying to ammonium nitrate.[39]

In their application, the applicants claimed that:

> *Ammonium nitrate is broadly classified into two grades – low density and high density. Low density ammonium nitrate ("LDAN") is generally of solid prilled form and is typically used in the manufacture of explosives. It may be blended with fuel oil to make one of the most commonly used explosives in Australia. LDAN is predominantly used in the production of bulk explosives, including ANFO (porous prilled ammonium nitrate mixed with fuel oil), heavy ANFO (a mixture of porous prilled ammonium nitrate, ammonium nitrate emulsion and fuel oil) and emulsion-based explosives (a mixture of porous prilled ammonium nitrate and ammonium nitrate emulsion). Locally produced LDAN is substitutable with imported LDAN given that the goods and like goods are sold to the same customers, predominantly commercial explosives and associated blasting services providers.*
>
> *High density solid ammonium nitrate ("HDAN") is generally in granular form (it also can be in prill form) and is typically used as a fertiliser. High density ammonium nitrate can also be used in the manufacture of explosives (particularly emulsion-based explosives). HDAN and ammonium nitrate solution produced by the Australian industry are directly substitutable with imported HDAN, given that HDAN and ammonium nitrate solution is sold to the same customers for the purposes of producing ammonium nitrate emulsion. In Report No. 473, the Anti-Dumping Commission ("the Commission") reaffirmed that the local producer Orica Australia Pty Ltd ("Orica Australia") produces a solid type of ammonium nitrate that is directly substitutable with imported HDAN.*

Referring to the findings in REP 312, the applicants referenced the Commission's prior findings of like goods and advised that there had been no recent changes concerning the subject goods that would alter or impact prior findings.

3.5.1 Physical likeness

The Commission finds that the goods exported to Australia from Russia, whilst not necessarily identical, are physically similar to the ammonium nitrate produced by the Australian industry.

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[39] Relevant matters relate to matters conducted subsequent and including the most recent prior continuation inquiry. See Investigation 473, REP 312 and Exemption EX0066.

The Commission finds that the key characteristics (as outlined in the MCC) of the ammonium nitrate imported from Russia closely resembles or are identical to the characteristics of the ammonium nitrate produced and sold by Australian industry.

In the original investigation the Australian Customs and Border Protection Service (ACBPS) determined that:[40]

> *[L]ow density, high density ammonium nitrate and ammonium nitrate solution are sub-sets of the product group of ammonium nitrate… all types of ammonium nitrate, irrespective of whether in solid or solution state, prilled or granular form, low density or high density, are like goods.*

In the original investigation it was found that certain densities, states or forms of ammonium nitrate are technically more suited to the manufacture of different explosives but that the essential characteristics of different ammonium nitrate products are not changed by the variations in density, state or form.

In reaching this conclusion, ACBPS found that although Australian produced LDAN, HDAN and ammonium nitrate solution (ANsol) were not identical to the goods, they possessed physical characteristics closely resembling them. It was also found that:

- Australian produced LDAN was substitutable with imported LDAN;
- Australian produced HDAN and ANsol could be substitutable with imported HDAN;
- in certain circumstances, high and low density ammonium nitrate could be substituted for each other; and
- emulsion explosives made from both ANsol and HDAN compete with each other.

In the continuation inquiry and review of measures in 2005, ACBPS revisited the issue of like goods.[41] In Trade Measures Report No. 104 and 105 (REP 104 and 105) it was found that ammonium nitrate produced by the Australian industry were like goods to ammonium nitrate exported to Australia from Russia, irrespective of whether it was in solid or solution state, prilled or granular form, low density or high density. Similar conclusions have been reached in Continuation Inquiry 168, Review 169, REP 312 and Exemption EX0066. Investigation 473, whilst not relating to Russian exports, made similar findings.

During the verification of NSA's importer questionnaire response, NSA advised that it considered LDAN and HDAN not to be like goods and that the Australian industry did not currently produce HDAN. It is noted that exemption inquiry EX0066 previously examined NSA's claims in this regard. Exemption inquiry EX0066 was initiated subsequent to an application by NSA requesting an exemption from dumping duty in relation to imports of HDAN from Russia. In EX0066 the Commission found that, while HDAN, LDAN (and ANsol) are not identical, they have characteristics closely resembling each other. NSA's request for an exemption for HDAN imports from Russia was not granted by the Minister after accepting the Commissioner's recommendations in Report EX0066.

The Commission has again examined this issue in this continuation inquiry, including submissions received in response to SEF 565[42], and remains satisfied that the goods

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[40] Trade Measures Branch Report 28 (REP 28).

[41] See Trade Measures Report No. 104 and 105 (REP 104 and 105) and REP 168 and 169.

[42] See section 3.7 of this report.

exported to Australia from Russia, whilst not necessarily identical, are physically alike to the ammonium nitrate produced by the Australian industry.

3.5.2 Commercial likeness

The Commission has found that the goods are commercially similar as they compete in the same market segment, mainly for use as explosives in the mining and quarrying industry. Chapter 4 of this report includes the Commission's assessment of the Australian market for ammonium nitrate.

There is direct head-to-head competition between imported goods and the goods produced by the Australian industry. The Commission has found evidence of customers in the inquiry analysis period and before sourcing ammonium nitrate from Australian industry and from Russian imports.

Based on this, the Commission considers the locally produced goods to be commercially like to the goods under consideration.

3.5.3 Functional likeness

The Commission considers that the locally produced goods and the goods under consideration perform the same function and are used in the same end-use applications.

The Commission finds that in Australia ammonium nitrate is predominately used to manufacture explosives that are used in the mining, quarrying and, to a lesser extent, in the civil construction industry. The Commission observed that Australian industry sales and the importers of ammonium nitrate were either involved in the manufacture of explosives and/or providing associated blasting services. The Commission has also found evidence of the Australian industry having on occasion sourced ammonium nitrate from Russia.

Whilst it is noted that differing grades and types of ammonium nitrate may be suited to producing explosives with differing technical specifications, the Commission considers that they perform similar function and are used in similar end-use applications.

3.5.4 Production likeness

The Commission finds that the goods exported to Australia from Russia are produced in essentially the same way as the ammonium nitrate produced by the Australian industry.

The Commission considers that the locally produced goods and the goods the subject of the inquiry are produced using a substantially similar production process (i.e. a similar chemical reaction processes) and using similar raw material inputs to the imported goods.

3.5.5 Conclusion – Like goods

The Commissioner is satisfied that the domestically produced goods are 'like goods' as defined in section 269T(1) to the goods under consideration.

3.6 Australian industry

The applicants in their joint application identified that the Australian industry was comprised of:

- CSBP;
- Dyno Nobel;
- Orica Australia;
- QNP; and

- Yara Pilbara Nitrates.

During this inquiry, due to the travel restrictions imposed because of COVID-19, the Commission did not complete onsite verifications of the Australian industry members. However, based on the information provided by CSBP and Orica Australia during remote verification of their data, the Commission is satisfied that both continue to wholly manufacture ammonium nitrate in Australia. The Commission also notes that the production processes at Orica Australia and CSBP relevant to ammonium nitrate were observed in prior inquiries and investigations.

The Commission's review of publically available information confirms that the five above mentioned entities manufacture ammonium nitrate in Australia and have plants in Australia to manufacture ammonium nitrate. Confidential information provided to the Commission indicates that one Australian industry member commenced producing ammonium nitrate in commercial quantities during the inquiry period.

3.7 Submissions received in response to SEF 565 in regard to the goods and like goods and the Australian industry

Glencore submitted that it was not accurate to characterise HDAN, LDAN and ANsol as being substitutable goods.[43] Glencore stated that:

- claims of substitutability were not accurate in terms of the technical differences between these products;
- substitutability between HDAN and LDAN was limited; and
- it was inaccurate to conflate HDAN with fertiliser grade ammonium nitrate (FGAN).

Whilst differing grades and types of ammonium nitrate may be suited to producing explosives with differing technical specifications or to producing fertilisers or medical products[44], the Commission considers that imported and domestically produced ammonium nitrate all broadly perform the same range of functions and, subject to technical requirements, are used in the same end-use applications. Glencore's submission in regard to substitutability is also discussed in chapter 7 of this report.

3.8 Conclusion – Australian industry

The Commission has found that the locally produced goods closely resemble the goods subject to measures and are like goods, given that:

- the physical characteristics of the locally produced goods, whilst not necessarily identical, are physically similar to the imported goods;
- the imported and locally produced goods are commercially alike as they compete in the same market segments;
- the imported and locally produced goods are functionally alike as they perform the same function and are used in the same end-use applications; and
- the imported and locally produced goods are manufactured using a substantially similar production process and use similar raw material inputs to the imported goods.

[43] EPR 565, document number 36.

[44] See discussion in chapter 4 of this report on the Australian market structure.

Based on the information obtained during this inquiry, previous inquiries and publically available information, the Commissioner is satisfied that:

- the like goods are wholly manufactured in Australia;[45] and
- there is an Australian industry which produces like goods in Australia.[46]

[45] Section 269T(2) refers.

[46] Section 269T(4) refers.

4 THE AUSTRALIAN MARKET

4.1 Finding

The Commissioner has found that the Australian market for ammonium nitrate is supplied by Australian industry and imports from a number of countries, including Russia. In addition to Russia, imports are also supplied by other countries, either currently subject to measures or not subject to measures.[47]

The Commissioner estimates that the size of the Australian market during the inquiry period was approximately 2.64 million metric tonnes.

4.2 Approach to analysis

The period from 1 July 2015 has been examined for the purposes of analysing trends in the Australian market for ammonium nitrate and for making observations with respect to the economic condition of the Australian industry.

In relation to establishing the size of the Australian market and analysing volume trends, the Commission has used information provided by participating Australian industry members, importers, exporters and information from the ABF import database.[48] The data and analysis on which the Commission has relied to assess the size and volume trends is at **Confidential Attachment 1 – Australian market analysis**.

4.3 The Australian ammonium nitrate market structure

In Australia, ammonium nitrate is primarily used as a raw material in the production of explosives which are consumed by the mining, quarrying and, to a lesser extent, the construction industries. Ammonium nitrate is classified as a dangerous good.[49] Ammonium nitrate has limited secondary usage in Australia as a fertiliser in the agricultural sector, relative to other nitrogenous fertilisers such as urea and urea ammonium nitrate solution. The Commission also understands that small volumes are used to make specialty medical gases.[50]

As depicted in Figure 1 below, ammonium nitrate production facilities are located strategically close to the major mines in New South Wales (NSW), Queensland and Western Australia (WA). In NSW, bulk explosives are used mainly in the coal mines of the Hunter Valley.[51] The main areas of demand for ammonium nitrate in Queensland are in the coal mines in the Bowen Basin and in the central Queensland/Mount Isa region. In WA, the major areas of demand for ammonium nitrate are the Kalgoorlie goldfields and in the Pilbara region iron ore mines.

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[47] Specified on other anti-dumping notices not specific to this continuation inquiry.

[48] The information obtained from CSBP and Orica Australia was subject to verification. The information obtained from QNP was not verified.

[49] Ammonium nitrate is classified under the Australian Dangerous Goods Code as a category 5.1 dangerous good. Licences issued by relevant state authorities are required to sell, purchase, transport and store ammonium nitrate. In addition, there are restrictions on the amount of ammonium nitrate that can be received at a designated port at any one time.

[50] Responses to supplementary questionnaires by QNP, Orica Australia and CSBP, EPR 565, document numbers 11, 12 and 13, responses to section B-1.

[51] See QNP response to supplementary questionnaire, EPR 565, document number 12.

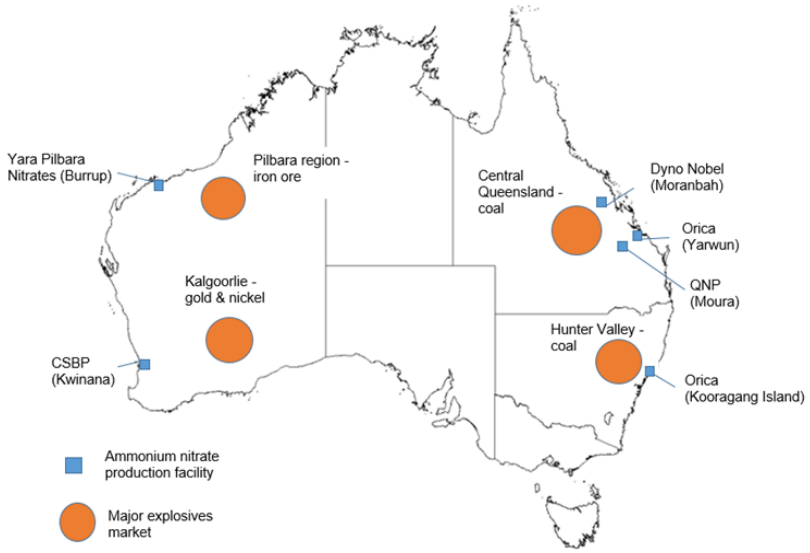
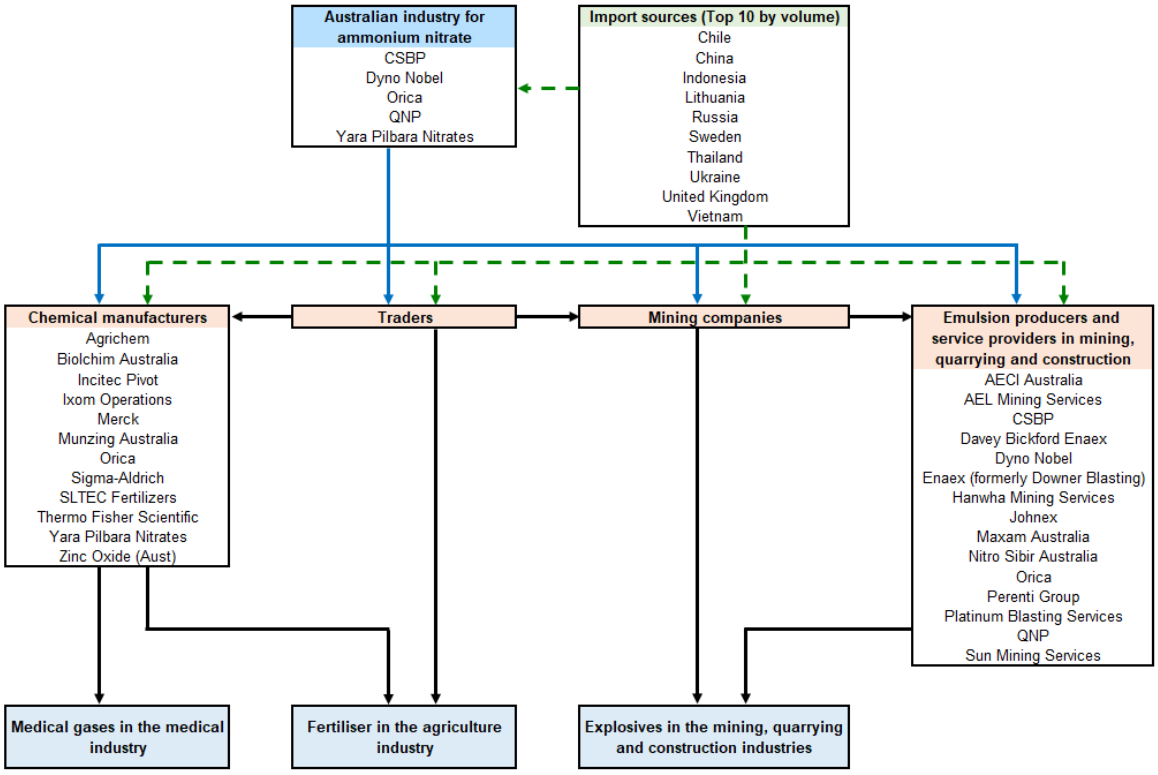


Figure 1: Major ammonium nitrate markets and ammonium nitrate production facilities[52]

4.3.1 Channels to market and competition in the Australian market

In Australia, ammonium nitrate is predominantly sold to and used by the mining and quarrying industries as a raw material in explosives. Figure 2 below illustrates the ammonium nitrate supply channels to the mining sector and other sectors in Australia.



[52] See EPR 473, document number 65, page 24. Figure 1 was referenced in response to the supplementary questionnaire responses from QNP and CSBP. See EPR 565, document numbers 12 and 13.

Figure 2: Ammonium nitrate supply channel[53]

Ammonium nitrate is either sold to commercial explosives and associated blasting services providers or is sold directly to mining companies who consume the ammonium nitrate at mine sites.

Ammonium nitrate is imported either directly by explosives providers or is imported via traders. The Commission also observed that Australian industry members have imported ammonium nitrate. The Commission also observed importations in smaller volumes by entities involved in the production or sale of fertilisers and medical products. The Commission understands that it is unusual for mining companies to directly import ammonium nitrate. The Commission found no evidence that any mining companies directly imported ammonium nitrate from any countries during the inquiry period.

The Commission understands that both Orica Australia and Dyno Nobel, in addition to manufacturing and selling ammonium nitrate, provide blasting services, sell commercial explosives and provide blast initiating systems. The Commission understands that Orica Australia's and Dyno Nobel's main competitors include other explosives and associated services providers. These competitors source ammonium nitrate as a raw material either from domestic manufacturers or imports from various countries, which have included Russia at times.

In relation to the Australian industry members who do not provide blasting services (CSBP, QNP and Yara Pilbara Nitrates), the Commission considers that they are primarily manufacturers of ammonium nitrate and therefore do not directly compete with other vertically integrated ammonium nitrate manufacturers and mining service providers. However, the Commission understands that their customers do compete with other mining services providers who either import ammonium nitrate, obtain ammonium from Australian industry or do both. This includes service providers who have imported ammonium nitrate from a range of countries, including Russia.

Based on the findings in REP 473 and information obtained in this inquiry, the Commission understands that:

- ammonium nitrate is a commodity product and end users are unlikely to discern significant physical or functional differences. Given that there is little product differentiation, the Commission considers that price is a key consideration in any purchasing decision. It is noted that in addition to price, quality, availability, reliability and timeliness of supply can influence purchasing decisions;
- whilst Australian industry members indicate that there are little to no structural impediments to importing ammonium nitrate, other interested parties argue that there are structural or cost impediments to importing ammonium nitrate.[54] The Commission considers that suppliers that are located geographically close to usage sites are able to mitigate some freight costs, storage costs and security and quality risks (ammonium nitrate degrades in quality the longer it is transported and therefore product performance can be compromised). It is also noted ammonium nitrate is considered to be a dangerous good and is subject to various regulatory and licensing requirements;

[53] Confidential Attachment 2 – Australian market channel analysis.

[54] EPR 565, document numbers 5, 19 and 28.

- in limited circumstances some customers may be prepared to pay a small premium for domestically manufactured ammonium nitrate due to flexibility and quality associated with local supply;[55]
- some of the applicants will supply ammonium nitrate, albeit in relatively small volumes, outside the state in which they are located. However, manufacturers have a significant freight advantage on a delivered ammonium nitrate price basis in respect of mines which are within close proximity;[56]
- the three ammonium nitrate manufacturers (Orica Australia, Dyno Nobel and QNP) in Queensland compete for contracts to supply explosives manufacturers and associated blasting services providers, including mining principals. As mentioned above, Orica Australia and Dyno Nobel also compete with other market participants to provide mining blast services; and
- CSBP was the sole ammonium nitrate manufacturer in WA until 2017, when Yara Pilbara Nitrates commenced production in the Pilbara region. Subsequent to Investigation 473, the Commission understands that Yara Pilbara Nitrates commenced producing and selling commercially material quantities of ammonium nitrate during 2020.

4.3.2 Pricing in the Australian market

Sales of ammonium nitrate in Australia are made predominantly in accordance with fixed-term contracts. These contracts are typically of two to five years in duration. However, contracts may also be of longer or shorter durations. Spot sales may occur on occasion.

These contracts are typically negotiated through a tender process and will typically specify a base price, with rise and fall provisions. These base prices are negotiated on a number of commercial parameters, which will include pricing offers from alternative supply sources. The rise and fall provisions will be tied to a range of variables and these variables will vary between contracts. These rise and fall provisions enable for the rise and fall of the base price to occur at specified intervals over the life of the supply agreement. Contracts may also have exclusivity of supply arrangements and/or ‘take or pay’ provisions (minimum offtake volumes stipulated in supply agreements).

The Commission’s analysis of supply channels, customer information, sales data and import data, indicates that parties will source ammonium nitrate from import sources or Australian industry and, at times, from both.

An Australian industry member advised the Commission that price negotiations are generally focused on “next best alternative” or import pricing. The Commission was provided with documents to support these claims. These are contained in **Confidential Attachment 3 – Pricing negotiations**.

4.3.3 Substitutes to ammonium nitrate

The Commission understands that there continues to be no commercially viable substitutes for ammonium nitrate in the Australian market for the production of bulk explosives used in the Australian mining and quarrying industries.

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[55] Information obtained from an Australian Industry verification and REP 473. A copy of REP 473 is available at EPR 473, document number 65.

[56] EPR 473, document number 65.

4.3.4 Demand for ammonium nitrate

Given that ammonium nitrate in Australia is primarily used in the mining, quarrying and construction industries, demand is largely driven by the level of activity in these industries that require blasting services.

Demand for ammonium nitrate (including its derivative, commercial explosives) in NSW and Queensland is primarily driven by demand from entities that mine thermal and metallurgical coal. In WA, demand for ammonium nitrate is primarily driven by demand from mining companies that extract ores and commodities such as iron ore, gold and various other metals from the earth.

In regard to WA, CSBP advised that it anticipated continued growth in the demand for iron ore over the next few years. The iron ore mining industry is the main user of ammonium nitrate in WA. CSBP referenced the Department of Industry, Science, Energy and Resources' (DISER) September Quarter 2020 Report for Iron Ore.[57] This report predicted an increased global export demand for iron ore. This report also identified that production in Brazil would be returning to normal in late 2022 and that production in Africa was expected to grow over the longer term, with China seeking to diversify its iron ore sources. Australian output is also expected to increase over the next two years as new mines open in the Pilbara region. The Commission also examined DISER's December 2020 quarterly report.[58] The analysis in this quarterly report is broadly consistent with the findings in the September quarter report. CSBP also provided an internal forecast for ammonium nitrate. This internal forecast is broadly consistent with the abovementioned iron ore demand and production analysis produced by DISER.

The Resources and Energy Major Projects publication, released in November 2020[59], suggests that investment in Australia's minerals projects has entered a new growth cycle. Record gold prices have driven large investments in gold exploration, development and extraction, with a number of Australian gold mines returning to production. Some of these mines had been closed for more than 20 years. An uptake in battery technology has also driven greater investment in nickel, cobalt, rare earths and lithium, with Australia now hosting around 60 projects in the 'battery commodity' space.[60]

Orica Australia advised that it is more likely to be affected in the east coast as there are more competitors in this region.[61] It mentioned several explosives manufacturers and customers that may purchase Russian imports. East coast supply is predominantly used in the mining of coal. Orica Australia estimated that the demand growth for ammonium nitrate from thermal coal is expected to experience a contraction of about just under one per cent

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[57] See https://publications.industry.gov.au/publications/resourcesandenergyquarterlyseptember2020/documents/Resources-and-Energy-Quarterly-Sept-2020-Iron-Ore.pdf.

[58] See https://publications.industry.gov.au/publications/resourcesandenergyquarterlydecember2020/documents/Resources-and-Energy-Quarterly-Dec-2020.pdf.

[59] See https://www.industry.gov.au/sites/default/files/2020-11/resources-and-energy-major-projects-report-2020.pdf.

[60] See https://publications.industry.gov.au/publications/resourcesandenergyquarterlydecember2020/documents/Resources-and-Energy-Quarterly-Dec-2020.pdf.

[61] EPR 565, document number 31.

compounded annual growth rate (CAGR) over the next 5-6 years, while the demand from the metallurgical coal and iron ore segments is expected to grow over the same period.

The Commission examined the December 2020 DISER Resources and Quarterly report for thermal and metallurgical coal.[62] In relation to thermal coal, the DISER report identified volatility in the demand for thermal coal exports with a reduction in exports and reductions in the output for thermal coal production in Australia. An increase in demand was anticipated in 2021/22. However, it was also noted in the report that future investment in thermal coal projects was highly uncertain. In relation to metallurgical coal, the DISER report identified that export and production volumes had also dropped and were forecasted to fall further in 2020/21. However, export volumes of metallurgical coal were expected to recover in 2021/22. It also identified that investment in future Australian metallurgical coal projects was uncertain.

QNP, in the response to the supplementary questionnaire, noted that the east coast domestic producers had some excess capacity with some ammonium nitrate being supplied by both the west coast and import sources. It noted that the Australian market for ammonium nitrate had experienced reasonable year on year growth resulting in additional domestic capacity being created in the Australian market.

4.4 Market size

Figure 3, below, depicts the Commission's estimate of the size of the Australian market for ammonium nitrate by financial year from 1 July 2015 to 30 June 2020. This estimate is based on import data obtained from the ABF import database, the applicants' data and publically available information in regard to Dyno Nobel's sales volumes. Data included in the application for CSBP and Orica Australia was verified. The data obtained from the ABF was reviewed for accuracy.

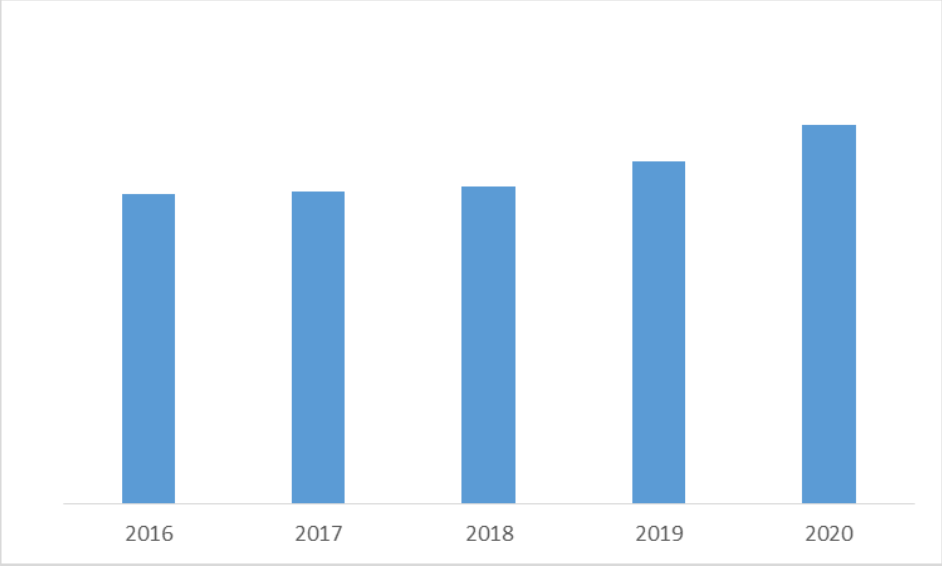

Figure 3: Australia Ammonium Nitrate Market Supply Volume (MT/FY)

Table 7, below, provides an estimated proportion of the Australian market supplied by Australian industry production and by imports (imported by either Australian industry or other parties).

[62] Ibid.

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Proportion of market supplied by Australian industry production	95.0%	94.3%	94.6%	92.5%	92.8%
Proportion of market supplied by Australian industry imports	2.3%	3.5%	2.0%	3.3%	3.6%
Proportion of market supplied by non-Australian industry imports	2.7%	2.3%	3.4%	4.3%	3.5%

Table 7: Australia Ammonium Nitrate Market Supply Volume (%)

4.4.1 Australian market size and Australian industry capacity

Figure 4 below illustrates the relationship between Australian industry's production capacity and the amount of ammonium nitrate supplied into the Australian market from both domestic production and imports.

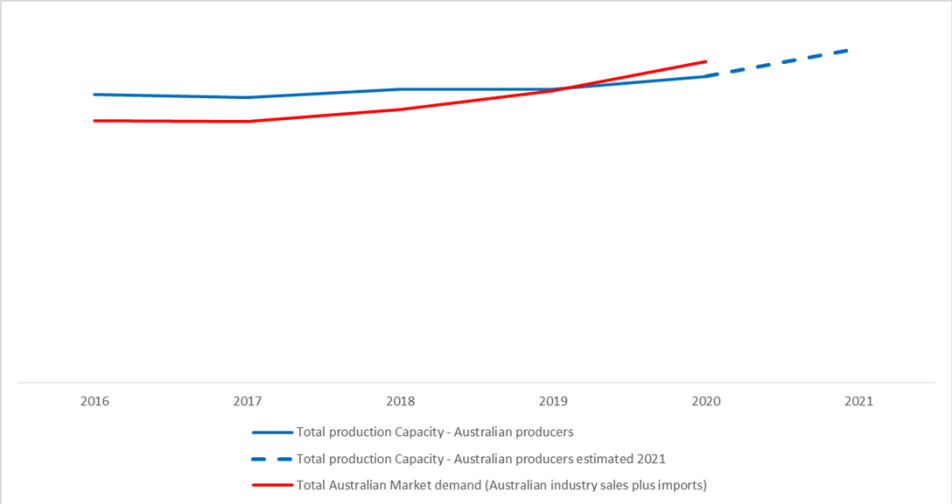

Figure 4: Australian industry production capacity and supply volume (MT/FY)[63]

The Commission notes that the increase production capacity from 2020 to 2021 reflects the additional commercial production capacity of Pilbara Nitrates coming into full commercial operation during 2020 and into 2021.

4.5 Submissions received in response to SEF 565 in regard to the Australian market for ammonium nitrate

Dyno Nobel, in response to the Commission's comments on nickel, cobalt, rare earths and lithium mines, advised that it believes that demand for ammonium nitrate from these mines would be insignificant, if not nil, on the east coast of Australia.[64]

The information provided by Dyno Nobel does not alter the Commission's assessment of the Australian market.

[63] The year 2020 capacity includes only partial total capacity of Pilbara Nitrates as that plant was only commercially operational for part of the year.

[64] EPR 565, document number 37.

5 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

5.1 Finding

The Commissioner finds that:

- the Australian market for ammonium nitrate has grown since 2016, with Australian industry being the primary supplier in the market. Imported ammonium nitrate accounts for a small proportion of the Australia market and has been imported from a range of countries, including Russia;
- imports from countries not subject to measures has increased significantly between 2018 and 2020. This increase from other countries has had minimal impact on Australian industry's market share; and
- the Australian industry has experienced a narrowing of the margin between average unit selling prices and unit CTMS. This is reflected in diminished aggregate industry profit and profitability in FY 2020 in comparison with FY 2015.

5.2 Approach to analysis

This chapter considers the economic condition of the Australian industry since 1 July 2015. The observations in this section are based on, in part, verified financial information submitted by the applicants and information captured in the ABF import database.

The period from 1 July 2015 has been used for the purposes of identifying trends in the economic condition of the Australian industry after the imposition of the measures on exports from the subject country The data and analysis on which the Commission has relied to assess the economic position of the Australian industry is at **Confidential Attachment 4 – Economic condition of Australian industry**. Where possible, aggregated figures relating to the whole Australian industry has been presented. For some injury factors, individual data relating to the Australian industry applicants has been presented.

Consideration of whether it is likely, in the absence of the measures, that material injury caused by dumping will continue or recur is considered in chapter 7 of this report.

5.3 Findings in prior continuation inquiry

Inquiry 312 analysed the economic performance of Australian industry up to and including 30 June 2015. This analysis identified that:

- the Australian market for ammonium nitrate was supplied predominantly by Australian industry with some imports;[65]
- since the measures have been imposed, the Australian industry had significantly scaled up production capacity and production volume to meet increased demand over the same period;[66] and
- average sales prices of ammonium nitrate had been fairly steady relative to costs to manufacture for the Australian industry since the implementation of measures.[67]

[65] REP 312, page 16. A copy of REP 312 is available at EPR 312, document number 28.

[66] Ibid, page 41.

[67] Ibid, 5 page 39.

5.4 Volume effects

5.4.1 Sales volume

The below chart shows the volume of ammonium nitrate sold by the Australian industry during the financial year (FY) periods from 1 July 2015 to 30 June 2020. All five Australian industry manufacturers' volumes have been aggregated to provide a comprehensive picture of the market. More information pertaining to the sources of information are at **Confidential Attachment 4**.

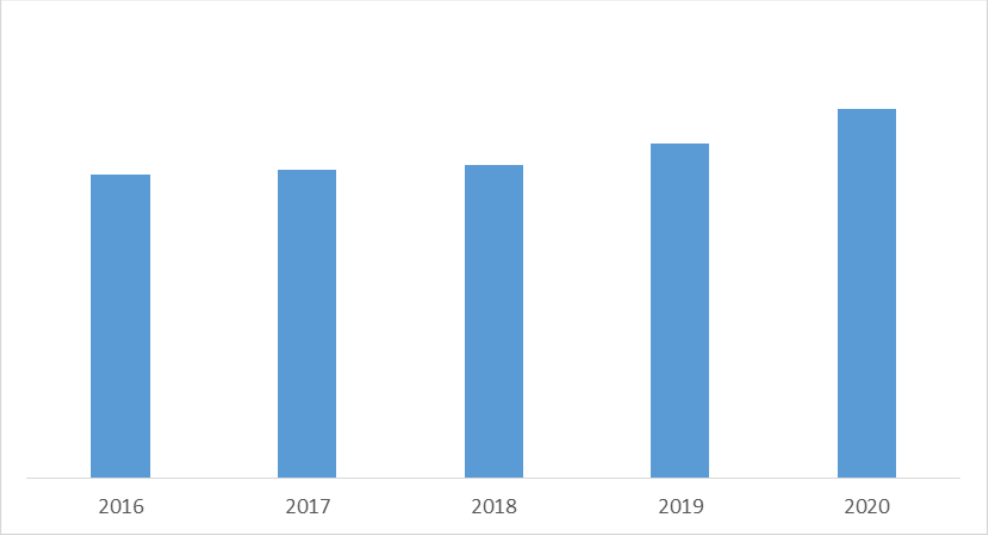

Figure 5: Australian industry sales volume (MT/FY)

Figure 5 above shows that Australian industry's collective sales volumes have trended up between financial years 2016 and 2020. Figure 6 below shows Australian industry volumes and import volumes in comparison to total market volumes.

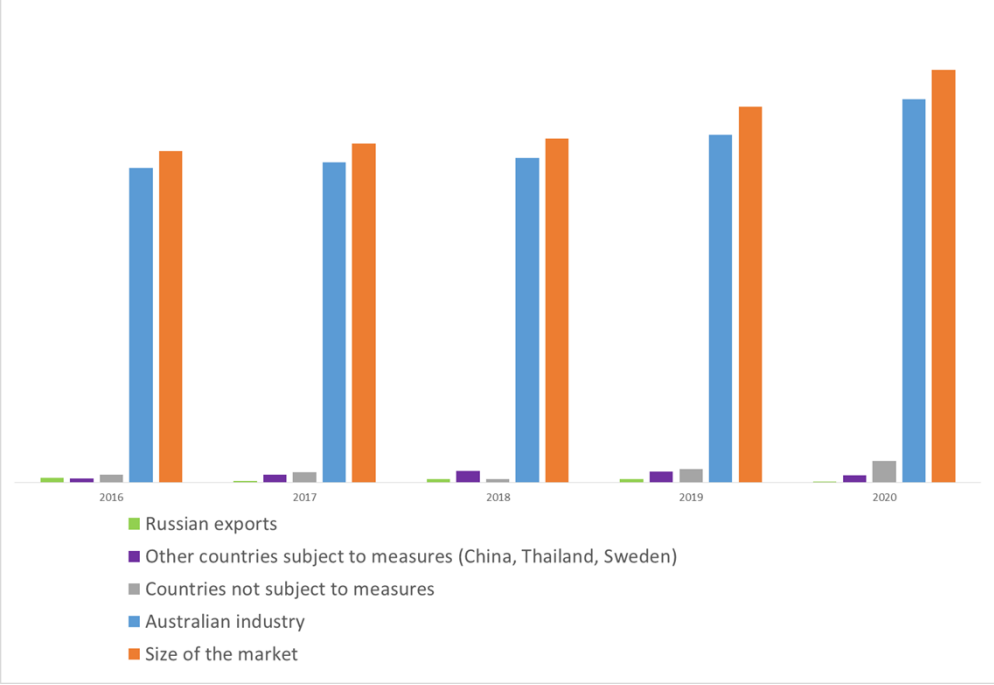

Figure 6: Australian industry volumes, import volumes, total market volumes (MT/FY)

5.4.2 Market share

Figure 7 below shows the proportion of the Australian ammonium nitrate market supplied by:

- countries not subject to measures;
- other countries subject to measures;
- exports from Russia; and
- Australian industry.

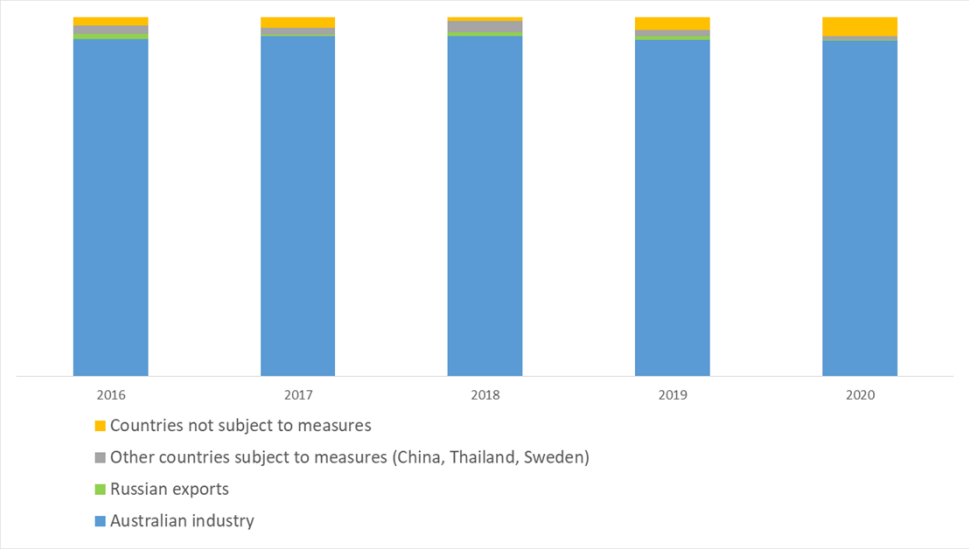

Figure 7: Australian market share (%/FY)

An investigation into dumping of imports from China, Thailand and Sweden was initiated on 25 June 2018. Between 2018 and 2020, it is evident that imports from these countries have reduced as a proportion of the market. Imports from Russia has also reduced in this period. Australian industry market share has reduced marginally, with only a 2 per cent reduction from 2016 to 2020. What is apparent, however, is that the exports from countries not subject to measures has increased significantly between 2018 and 2020. This increase from other countries has had minimal impact on Australian industry's market share.

5.5 Price effects

5.5.1 Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise might have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Figure 8 below demonstrates Orica Australia's unit selling price and unit cost to make and sell (CTMS) for ammonium nitrate.

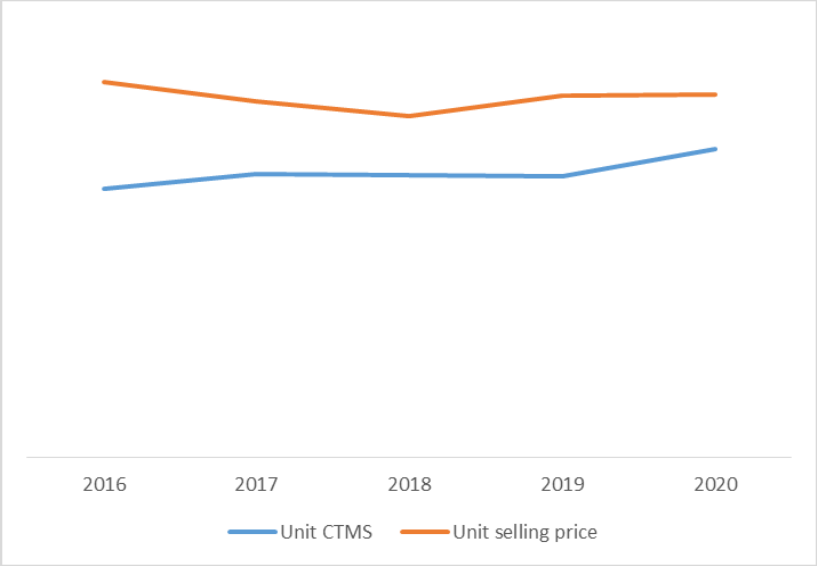

Figure 8: Unit selling price and CTMS – Orica (AUD/FY)

Between 2016 and 2018, Orica Australia's unit selling price trended down with some recovery between 2018 and 2020. During the period unit CTMS has trended up with a narrowing of the margin in 2020. Overall, Orica Australia's unit selling price has not experienced a sustained decline however, there has been a narrowing of its margin during the inquiry period.

Concerning CSBP, the Commission observed that overall, between July 2015 and June 2020 unit CTMS costs have increased and unit selling prices have stayed relatively stable with a reduction during the inquiry period. This has resulted in a narrowing of the absolute and relative margin between average unit selling prices and unit CTMS.

CSBP claimed confidentiality over the inclusion of charts, indices or any further detailed commentary in relation to CSBP's ammonium nitrate price effects for the period between July 2015 and June 2020.

QNP also claimed confidentiality over the inclusion of charts, indices and any commentary concerning its economic indicators. Analysis of the data provided by QNP is included in **Confidential Attachment 4**.

5.6 Profit and profitability

Tables 8 and 9 below demonstrate the aggregated profit and profitability of the applicants indexed to the 2016 financial year (from 1 July 2015 to 30 June 2016).

Profits	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Aggregated	100.00	82.19	–88.90	92.75	73.44

Table 8: Indexed profits of Australian industry applicants

Profitability	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Aggregated	100.00	87.42	-88.43	85.22	65.41

Table 9: Indexed profitability of Australian industry applicants

The aggregate of all applicants (which reflects a large proportion of the industry), have ended with a diminished profit and profitability position in FY 2020 in comparison with the indexed year FY 2015. The significant profit and profitability reduction in 2018 was due

primarily to a particular event experienced by an Australian industry member that was unrelated to imports.

Disaggregated profit and profitability data is at **Confidential Attachment 4**.

5.7 Other economic factors

The Australian industry applicants provided information on a range of other economic factors to underpin the data and claims submitted in its application to this continuation inquiry.

Orica Australia provided its information for calendar years 2015 to 2019 and for half of the year in 2020.

Since 2015, Orica Australia has experienced a general improvement in R&D expense, capacity utilisation, productivity and receivables turnover. Assets, revenue, production, employment numbers, and both wages and average wages have increased after an initial reduction during the period. Orica Australia has experienced injury in the form of reduced capital investment and return on investment (ROI) since 2015. Reduced ROI is a reflection of the reduced profits in the period.

Other economic factors relating to CSBP were reviewed by the Commission during this inquiry. CSBP has claimed confidentiality over the inclusion of charts, indices or any further commentary in relation to CSBP's other economic factors for the period between July 2015 and June 2020.

Other economic factors relating to QNP for the period July 2015 to June 2020 were reviewed by the Commission during this inquiry. QNP also claimed confidentiality over the inclusion of charts, indices and any commentary concerning its economic indicators.

A summary of the economic factors and the calculation of an index for each of these factors is at **Confidential Attachment 4**.

5.8 Submissions received in respect of the economic condition of the Australian industry

In response to the SEF, Dyno Nobel submitted that its profit and profitability had tracked a similar trajectory to that of the aggregated industry data (from the applicants) between 2016 and 2020.[68] Dyno Nobel stated that its 30 September 2020 financial year EBIT was 80 per cent of its 2016 financial year EBIT.[69] The Commission notes that Dyno Nobel did not provide its relevant cost and price data.

The Commission reviewed the published results for the Dyno Nobel Asia Pacific[70] division of Incitec Pivot Ltd for the period between 2016 and 2020. The published results are consistent with Dyno Nobel's claims in its submission. However, the Commission notes that the information contained in the submission is not to the same level of detail as that provided by the applicants.

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[68] EPR 565, document number 37, page 2.

[69] Ibid.

[70] Relevant information was obtained in the annual reports for Incitec Pivot Ltd, published on https://www.incitecpivot.com.au/ (last accessed 8 April 2021). Analysis is contained in Confidential Attachment 4.

The information provided by Dyno Nobel does not alter the Commission's assessment of the economic condition of the Australian industry.

5.9 Conclusion

The above indicators reflect the economic condition of the Australian industry applicants from 1 July 2015 (and in the case of other economic factors for Orica Australia, from 1 January 2015). It is noted, as stated in section 4.3.2 of this report, the vast majority of sales within this industry is in accordance with long term supply agreements.

6 ASCERTAINMENT OF VARIABLE FACTORS

6.1 Finding

For the purpose of assessing whether the expiration of the measures would lead, or would be likely to lead, to the continuation or recurrence of dumping, the Commission has ascertained variable factors in respect of the inquiry period relevant to the taking of the measures.

The Commission has found that the variable factors have changed for the exporters verified as part of this continuation inquiry. The ascertained dumping margins are summarised in Table 10 below.

Exporter	Dumping Margin
NAK Azot	– 0.9%
Nevinka	– 0.1%
Uncooperative and all other exporters	2.8%

Table 10: Dumping margins[71]

6.2 Legislative framework

In accordance with section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied, amongst other things, that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping. The existence of dumping during the inquiry period may be an indicator of whether dumping may occur in the future.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are worked out under section 269TACB.

For all dumping margins calculated for the purposes of this inquiry, the Commission compared the weighted average export prices over the whole of the inquiry period with the weighted average of corresponding normal values over the whole of that period, in accordance with section 269TACB(2)(a).

6.3 Exporter questionnaires received

Section 269T(1) provides that, in relation to an inquiry, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the inquiry and the exporter was not an 'uncooperative exporter' in relation to the inquiry.

At the commencement of the inquiry, the Commission contacted known exporters of the goods and each identified supplier of the goods within the relevant tariff subheading for

[71] During the inquiry period NAK Azot and Nevinka did not export ammonium nitrate to Australia. In accordance with section TAB(3), export prices were based on other sources of information, having regard to all relevant information.

ammonium nitrate as identified in the ABF import database and by the importers of the goods, and invited them to complete an exporter questionnaire.

The Commission did not receive exporter questionnaire responses from exporters who exported to Australia during the inquiry period.

Exporter questionnaire responses were received from NAK Azot and Nevinka, who did not export to Australia during the inquiry period. Both NAK Azot and Nevinka were not determined to be uncooperative exporters for the purposes of this inquiry.

6.3.1 Uncooperative exporters

Section 269T(1) provides that an exporter is an "uncooperative exporter" where the Commissioner is satisfied that an exporter of goods the subject of the inquiry did not give the Commissioner information the Commissioner considered to be relevant to the continuation inquiry within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the inquiry.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states at section 8 that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within a specified timeframe.

After having regard to the Act and Direction, the Commissioner has determined that all exporters which did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the timeframe specified for submitting a response, are uncooperative exporters for the purposes of this inquiry.

6.4 Normal value

6.4.1 Applicable legislation

Under section 269TAC(1), 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 (OCOT) for home consumption in the country of export in sales that are arms length transactions or, if like goods are not so sold by the exporter, by other sellers of like goods.

However, section 269TAC(2) sets out how the normal value is to be ascertained if it cannot be ascertained under section 269TAC(1). In particular, if, in accordance with section 269TAC(2)(a)(ii), the Minister is satisfied that the normal value of the goods exported to Australia cannot be ascertained under section 269TAC(1) because '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 [section 269TAC(1)]', the normal value is such amount as the Minister determines in accordance with sections 269TAC(2)(c) or 269TAC(2)(d).

6.4.2 Particular market situation – the Commission's assessment

The applicants for this continuation inquiry claimed in their application that a particular market situation for ammonium nitrate sold in the Russian domestic market continued to exist.

Upon initiation, the Commission invited the GOR to complete a GOR questionnaire pertaining to the Commission's enquiries into the alleged continuation of the particular

market situation. The GOR queried the relevancy of the *GOR questionnaire.*[72] The Commission also invited the GOR to complete a supplementary GOR questionnaire addressing separate issues to those in the first questionnaire. The information requested in these questionnaires included:

- information regarding the nature and structure of the ammonium nitrate industry in Russia, including information on relevant upstream industries and participants, including the gas industry;
- identification and explanation of the specific roles and responsibilities of government departments, agencies or institutions, which are either directly or indirectly involved in economic policy development, economic regulation and decision-making activities with respect to the ammonium nitrate industry;
- quarterly import and export data of ammonium nitrate and relevant raw materials, including natural gas, ammonia and nitric acid;
- details of the corporate tax rate, import tariff rates/quotas, export tariff rates/quotas, and the Value Added Tax (VAT) rate for ammonium nitrate, natural gas, ammonia and nitric acid;
- details of any financial assistance provided by the GOR in the past five years in support of the ammonium nitrate sector;
- identification of any GOR initiatives, regulations and/or policies that affect the ammonium nitrate sector, including the raw material industries relating to natural gas, ammonia and nitric acid;
- clarification of the current regulations relating to the regulation of the domestic price of gas in Russia since 2016; and
- in the event that the Minister was satisfied that a market situation existed during the inquiry period, information regarding whether, because of that market situation, the exporters' domestic sales of the goods would be suitable for determining a normal value.

The GOR did not provide a response to either the first questionnaire or the supplementary questionnaire.

In assessing whether a market situation exists in relation to the Russian ammonium nitrate domestic markets in the inquiry period, the Commission has relied on all the evidence available to it, including questionnaires and submissions made in this inquiry, findings of previous cases conducted by the Commission and desktop research.

In light of all the information before it, it is the Commission's view that a particular market situation existed in respect of the domestic market for ammonium nitrate in Russia for the inquiry period.

The Commission's reasoning and evidence relied on for this finding is set out in **Appendix B.**

6.4.3 Suitability of domestic sales for use in determining a normal value under section 269TAC(1)

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must also consider whether, because of the situation in the Russian market,

[72] Section 2.3.4 of this report addresses the matters raised by the GOR in relation to the first questionnaire.

sales of ammonium nitrate in that market are not suitable for determining a price under section 269TAC(1).

In undertaking its assessment of whether sales are "suitable" for the purposes of section 269TAC(1), the Commission will consider the relative effect of the market situation on both the domestic sales and export sales. If domestic and export sales are not equally impacted by the market situation, such a finding may render domestic sales not "suitable" for the purposes of section 269TAC(1).

The Commission considers this approach is consistent with Australia's obligations under the WTO's *Anti-Dumping Agreement*[73] and the WTO Panel's interpretation of the obligations set out in the WTO Panel Report *Australia – Anti-Dumping Measures on A4 Copy Paper* (DS 529).

To assess the scale of the market situation's effect on Russia's domestic prices for ammonium nitrate, the Commission has had regard to a competitive benchmark for natural gas. Ammonium nitrate is made by combining ammonia gas with liquid nitric acid, which itself is made from ammonia. Gas represents about 75 per cent of the ammonia's production costs and about 10 per cent of nitric acid's production costs. Accordingly, natural gas accounts for a significant portion of manufacturing costs and the Commission anticipates that distortions in these costs will have a direct impact on ammonium nitrate prices in the Russian market.

The Commission has therefore compared each exporter's actual costs against the benchmark to assess whether the exporters' prices are likely to have been distorted by the market situation and, if so, whether the market situation prevents a proper comparison. The Commission's assessment and determination of a competitive benchmark is contained in **Appendix C**.

In the event that it is found that the exporters' prices are likely to have been distorted by the market situation, the Commission will then assess the relative effect of the particular market situation on domestic and export prices by examining:

- the relationship between gas costs and ammonium nitrate prices (domestic and Australian export – where available) for each relevant Russian ammonium nitrate producer;
- the domestic market conditions (the particular market situation) that create those costs and prices; and
- export market conditions.

The Commission considers that the relationship between cost, price and competition will provide insight into the effect and impact of the market situation in the Russian and Australian ammonium nitrate markets. In turn, this will provide insight into whether a proper comparison is permitted between Russian domestic ammonium nitrate prices and Australian export prices.

In particular, the Commission may undertake:

- a *quantitative* assessment of prices, noting that "…a purely numerical comparison between the two prices may not reveal anything about whether the domestic price can be properly compared with the export price";[74] and

[73] Agreement for the Implementation of Article VI of GATT 1994.

[74] DS 529 – para. 7.75.

- a *qualitative* assessment of prices, to "…focus on how the particular market situation affects that comparison."[75]

This approach would assess the effect and impact of the particular market situation on both domestic and export prices. This is because while a particular market situation may have an effect on both domestic and export prices, it does not follow that the impact on domestic and export prices will be the same[76]

In considering the suitability of sales, the Commission has assessed the relevant evidence before it, including the responses to the supplementary questionnaires and submissions.

An assessment of the suitability of each exporter's domestic sales for determining a price under section 269TAC(1) has been made in each exporter's normal value.

6.4.4 Responses to supplementary questionnaires on issue of whether domestic sales were suitable

The Commission issued supplementary questionaries to the GOR, the cooperating Russian exporters and the applicants seeking further information to inform the Commission's proper comparison and suitability assessment. The Commission received a response to the supplementary questionnaire from the applicants for the continuation inquiry and the cooperating Russian exporters. The GOR did not provide a response to the supplementary questionnaire.

In response to the supplementary questionnaire on the issue of whether domestic sales were suitable for use in determining a price under section 269TAC(1), NAK Azot and Nevinka submitted the following:

- A particular market situation did not exist and that domestic sales were suitable. Consequentially, the issue of whether domestic prices and export prices could be properly compared did not arise.[77]
- How a market situation affects domestic prices was largely impossible when they did not know the facts upon which the Minister would rely to be satisfied that there was a market situation. Further, if the situation was said to be caused by something other than gas prices, or by gas prices and other factors, these other factors should be first articulated such that they had the opportunity to comment.
- Article 2.2 of the Anti-Dumping Agreement, 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 was the market that was the source of the sales, being the exporter's home market, which must have the relevantly different effect on the exporter's domestic sales and its export sales.
- When considering whether a proper comparison was permissible, care must be taken not to conflate price comparison with market comparison. Markets would 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. A comparative advantage was not a particular market situation.

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[75] DS 529 – para. 7.75.

[76] DS 529 – para. 7.76.

[77] NAK Azot and Nevinka's submissions in relation to the existence of the particular market situation are considered in Appendix B of this report.

- In the event that the Commission considered the question was relevant, any alleged market situation relating to gas prices did not affect domestic prices any differently to their export prices. Gas costs were no different depending on whether the ammonium nitrate producer intended to sell the ammonium nitrate it produced on the domestic market or on the export market, and that the competitive cost of gas in Russia was not a differentiating factor with respect to price differences between domestic and export sales.

In response to the supplementary questionnaire, the applicants submitted that, for the purposes of determining normal values, a proper comparison between each exporter's domestic sales and export sales was not permitted. In support of this conclusion, the applicants stated that the effect of the GOR intervention was that the Russian export prices of downstream value-added gas products (including ammonium nitrate) were artificially low due to the impact of the GOR's Federal Laws that suppressed domestic gas prices in Russia. In support of their claim they referenced their joint application, the prior findings in REP 312 and the recently published European Commission's *Staff Working Document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations* (the EC Russia Working Document).[78]

6.4.5 Submissions received in response to SEF 565 on the suitability of domestic sales for use in determining a normal value under section 269TAC(1)

EuroChem Group submitted that it opposed the manner in which the Commission had arrived at its particular market situation finding through its interpretation of Article 2.2 of the WTO Anti-Dumping Agreement.[79] EuroChem Group referenced its earlier submissions on what it considered to be the correct interpretation and advised that it stood by these earlier submissions. The Commission notes that EuroChem Group has not provided any further information subsequent to the referenced earlier submissions. These earlier submissions have been considered by the Commission in SEF 565 and in this report.

6.5 Variable factors – NAK Azot

6.5.1 Verification

The Commission conducted a remote verification of the data and information submitted in NAK Azot's response to the exporter questionnaire (REQ).

The Commission is satisfied that NAK Azot is a producer of the goods under consideration. The Commission is also satisfied that the information and data provided by NAK AZOT is accurate and reliable for the purposes of ascertaining variable factors.

The Commission's assessment of NAK Azot's variable factors is set out below.

6.5.2 Export price

NAK Azot did not export the goods to Australia during the inquiry period. Consequently, the Commission considers that there is insufficient information to ascertain the export price under section 269TAB(1).

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[78] See https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf.

[79] EPR 565, document number 41.

The Commission has therefore determined an export price in respect of NAK Azot under section 269TAB(3), having regard to all relevant information. To establish an export price the Commission used Russian export data concerning sales to third countries that NAK Azot exported to during the inquiry period. The Russian export data was obtained from Trade Data International Pty Ltd (TDI). TDI advised that it had sourced the data from a data provider who originally obtained the data from the GOR. To validate the accuracy of this data the Commission compared the data to export prices contained in the *Russia Ammonium Nitrate (AN) Market Outlook 2020 Report* purchased by the Commission. The Commission's comparison of the TDI data confirmed that it was consistent with the data in the report purchased by the Commission. On this basis the Commission considered the data to be reliable and relevant to the goods under consideration in this inquiry.

The Commission also filtered the Russian export data for sales of the Russian tariff code relevant to ammonium nitrate and those countries that NAK Azot exported to during the inquiry period. Whilst NAK Azot provided the Commission with a listing of its export sales to third countries, these were sales to a related trader. Based on information available to the Commission, the Commission was not able to positively ascertain that these sales were arms length transactions.

As a result of this assessment, the Commission considered it preferable to use the TDI data for the purposes of establishing an export price for NAK Azot.

6.5.3 Normal value

The Commission considers that there is a situation in the domestic market for ammonium nitrate in Russia for the inquiry period. The Commission must also consider whether, because of the situation in the Russian market, sales of ammonium nitrate in that market are not suitable for determining a price under section 269TAC(1).

To assess the scale of the market situation's effect on NAK Azot's domestic prices for ammonium nitrate, the Commission has had regard to a competitive benchmark for natural gas in respect of NAK Azot's cost of gas.

The Commission has found that the cost of gas for NAK Azot was comparable to the competitive price benchmark during the inquiry period. Therefore, the Commission considers that the evidence before it does not demonstrate that the market situation is having a substantial effect on domestic prices. In turn, the Commission considers it does not demonstrate that the market situation is having a different relative effect on domestic and export prices. Accordingly the Commission considers that a proper comparison is permitted.

As a result, the Commission is not satisfied that the situation in the market of the country of export during the inquiry period is such that sales in that market are not suitable for use when determining a price under section 269TAC(1) for NAK Azot.

The Commission has therefore ascertained normal values in respect of NAK Azot under section 269TAC(1).

In late February 2021, NAK Azot presented a revision to its cost information regarding model H-G, which excluded certain costs. NAK Azot stated that the inclusion of these particular costs in the previous version of the cost data was an error, however it did not provide an explanation of the error. In addition, it reallocated certain other costs, also without explanation. Given the lateness of this revision to the cost data, the verification report did not assess the reasonableness of the revision, as doing so would have prevented the timely placement of SEF 565 on the public record. The Commission notes, given that

sales have been calculated under section 269TAC(1), that the revision sought by NAK Azot does not change the domestic sales that fall within the OCOT. Consequently, the adjustment to the costs sought by NAK Azot has no impact on the ascertained normal values and the Commission has not considered the claimed exclusions further.

6.5.4 Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with section 269TAC(8), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport to the port of export	Add an amount for export inland transport
Export handling and port	Add an amount for the export handling and port costs

Table 11: Adjustments to NAK Azot's normal value[80]

6.5.5 Dumping margin

The Commission has calculated a dumping margin in respect of NAK Azot for the inquiry period. The dumping margin is **negative 0.9 per cent**.

The Commission's dumping margin calculations for NAK Azot are set out in **Confidential Appendix 1**.

6.6 Variable factors – Nevinka

6.6.1 Verification

The Commission conducted a benchmarking review of the data and information submitted in Nevinka's REQ.

The Commission is satisfied that Nevinka is a producer of the goods and like goods. The Commission is satisfied that the information and data provided by Nevinka is accurate and reliable for the purposes of ascertaining variable factors.

The Commission's assessment is set out below.

6.6.2 Export price

Nevinka did not export the goods to Australia during the inquiry period. Consequently, the Commission considers that there is insufficient information to ascertain the export price under section 269TAB(1).

The Commission has therefore determined an export price in respect of Nevinka under section 269TAB(3), having regard to all relevant information. To establish an export price the Commission used Russian export data concerning sales to third countries that Nevinka exported to during the inquiry period. For the reasons outlined in section 6.5.2 of this report, the Commission considered this data to be reliable and relevant to the goods under consideration in this inquiry.

[80] Credit terms were not ascertained for export sales. Therefore an adjustment was not made.

The Commission also filtered the Russian export data for sales of the Russian tariff code relevant to ammonium nitrate and those countries that Nevinka exported to during the inquiry period. Whilst Nevinka provided the Commission with a listing of its export sales to third countries, these were sales to a related trader. Based on information available to the Commission, the Commission was not able to positively ascertain that these sales were arms length transactions.

As a result of this assessment, the Commission considered it preferable to use the TDI data for the purposes of establishing an export price for Nevinka.

6.6.3 Normal value

To assess the scale of the market situation's effect on Nevinka's domestic prices for ammonium nitrate, the Commission has had regard to a competitive benchmark for natural gas in respect of Nevinka's cost of gas.

The Commission has found that the cost of gas for Nevinka was comparable to the competitive price benchmark during the inquiry period. Therefore, the Commission considers the evidence before it does not demonstrate that the market situation is having a substantial effect on domestic prices. In turn, the Commission considers it does not demonstrate that the market situation is having a different relative effect on domestic and export prices. Accordingly the Commission considers that a proper comparison is permitted. As a result, the Commission is not satisfied that the situation in the market of the country of export during the inquiry period is such that sales in that market are not suitable for use when determining a price under section 269TAC(1) for Nevinka.

The Commission has therefore ascertained normal values in respect of Nevinka under section 269TAC(1).

6.6.4 Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with section 269TAC(8), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport to the port of export	Add an amount for export inland transport
Export handling and port	Add an amount for the export handling and port costs

Table 12: Adjustments to Nevinka's normal value[81]

6.6.5 Submissions received in response to SEF 565 in regard to dumping margin for Nevinka and amendments made to the normal value

In response to the SEF, EuroChem Group submitted that the Commission had, in its benchmark verification approach, incorrectly calculated the inland transport to the port of export by assuming that Nevinka exported from the same port as NAK Azot.[82] EuroChem Group advised that it shipped its ammonium nitrate from a different port which was significantly closer to its factory. EuroChem Group provided evidence to substantiate that it

[81] Credit terms were not ascertained for export sales. Therefore an adjustment was not made.

[82] EPR 565, document number 41, page 2.

had exported ammonium nitrate to the South East Asia region from this closer port during the inquiry period.

The Commission reviewed the evidence provided and revised the amount for export inland transport costs to reflect Nevinka's actual cost data provided subsequent to SEF 565. The Commission benchmarked these inland transport costs against NAK Azot's verified export inland costs found them to be consistent.[83]

The upwards adjustment to the normal value for export inland transport based on Nevinka's actual cost data has been reduced as a result of making this change.

The Commission also notes that if it were to use NAK Azot's verified export inland transport costs adjusted to reflect the shorter distance to Nevinka's export port, as opposed to using Nevinka's actual cost data, the upwards adjustment to the normal value would have been more greatly reduced (and thus resulted in an even lower dumping margin).

Subsequent to the publication of SEF 565, the Commission also identified a minor error in its calculation of the normal value for Nevinka. Correcting this error resulted in a 0.1 per cent increase in the normal value for Nevinka before applying the revised upwards adjustment to the normal value for inland transport costs.

6.6.6 Dumping margin

The Commission has calculated a revised dumping margin in respect of Nevinka for the inquiry period. The dumping margin is **negative 0.1 per cent**.

The Commission's dumping margin calculations for Nevinka are set out in **Confidential Appendix 2**.

6.7 Uncooperative and all other exporters dumping margin

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be worked out under section 269TAB(3) and normal values are to be calculated under section 269TAC(6).

The Commission has determined the export price for the uncooperative exporters pursuant to section 269TAB(3). Specifically, the Commission has had regard to the lowest weighted average export price in the inquiry period from cooperative exporters in Russia.

The Commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6). Specifically, the Commission has used the highest weighted average normal value in the inquiry period from cooperative exporters in Russia, after removing downward adjustments. No evidence has been provided or verified to establish that these adjustments would be warranted for exporters that did not cooperate with the inquiry.

CSBP submitted that the dumping margin determined for the uncooperative Russian exporters should not be based upon the highest weighted-normal value as this affords the uncooperative exporters the benefit of the higher independent gas suppliers (IGS) gas price

[83] See Nevinka inland freight benchmarking, contained in Confidential Appendix 2.

in the constructed normal value.[84] CSBP submitted that it was likely that other Russian producers do not source gas from the IGS sector in Russia.

The Commission clarifies that the normal value for the uncooperative exporters was not based on a constructed normal value. In addition, although it is possible that the uncooperative exporters do not source gas from an IGS, there is no evidence before the Commission to support this view. As noted in Appendix B 3.3, the IGS sector account for about 25 per cent of gas production in Russia and are not exclusively supplying the cooperating exporters in this inquiry. Consequently, the Commission considers that the evidence before it does not support a conclusion that other producers are not sourcing gas from the IGS sector. The Commission also notes that its analysis of Russian gas pricing indicates that IGS will seek to charge a lower gas price than Gazprom (see the Commission's particular market situation analysis in non-confidential Appendix B).

CSBP's concerns in regard to the Commission's benchmark are addressed in non-confidential Appendix C of this report.

The Commission considers the normal values and export prices calculated for the cooperative exporters of this inquiry represents the best available evidence before it and thus considers it preferable to rely on that information. However, to ensure that uncooperative exporters do not receive an unintended benefit, the Commission has removed the favourable adjustments applied to the cooperating exporters' normal values on the basis that there is no evidence that the uncooperative exporters were also entitled to those adjustments.

As a result of making the amendments specified in section 6.6.5 of this report, the upwards adjustments made to the normal value for export inland transport costs were reduced. This has resulted in the highest weighted average normal value in the inquiry period from cooperative exporters in Russia being reduced and a consequential reduction in the dumping margin for uncooperative and all other exporters.

The margin for uncooperative and all other exporters from Russia is **2.8 per cent**.

The Commission's calculations are included at **Confidential Appendix 3**.

[84] EPR 565, document number 40.

7 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

7.1 Finding

On the basis of the evidence obtained in the course of this inquiry, the Commissioner is not satisfied that the expiration of the measures applying to ammonium nitrate exported to Australia from Russia would lead, or be likely to lead, to a continuation of, or recurrence of, the dumping and the material injury that the measures are intended to prevent.

7.2 Legislative framework

Section 269ZHF(2) provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of 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.

The Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur.[85] However, the Commission's conclusions and recommendation must nevertheless be based on facts.[86]

7.3 The Commission's approach

In assessing the likelihood of whether dumping and material injury will continue or recur, a number of factors are relevant as outlined in the Manual.[87] The Commission's view is that the relevance of each factor varies depending on the nature of the goods being examined and the market into which the goods are being sold. No one factor can necessarily provide decisive guidance. The following analysis therefore examines a range of factors that the Commission considers relevant to this inquiry.

7.4 Australian industry claims

In its application,[88] the Australian industry made the following claims regarding the continuation or recurrence of injury of ammonium nitrate exported to Australia from Russia:

- Ammonium nitrate exported from Russia has remained a presence in the Australian market. Exports increased in 2017/18 by 233 per cent, and then again in 2018/19 by a further 141 per cent and that in 2019/20 (11 months year to date) exports from the Russian Federation have declined to 5,478 metric tonnes as imports from other sources at lower Free on Board (FOB) export prices have entered the market;
- Domestic explosives emulsion manufacturers are motivated to purchase exports at dumped prices;

[85] ADRP Report No. 44 (Clear float glass).

[86] Ibid.

[87] Pages 175 to 176.

[88] EPR 565, document number 1.

- Exporters from the subject countries have maintained distribution links in Australia;
- Russia maintains excess capacity that could result in increased volumes exported to Australia if measures expire; and
- Russia exports ammonium nitrate to most markets at FOB prices which are significantly below export prices to Australia. If measures expire Russian exports to Australia are likely to be at dumped prices.

During its verification, Orica Australia claimed[89] that there is potential for 'country-hopping' where importers sourcing ammonium nitrate from one country will swap to sourcing from another country when measures are imposed. As evidence Orica Australia pointed to the reduction in the volume of exports from China, Sweden and Thailand following imposition of measures and the corresponding increase from other countries not subject to measures.

7.5 Is dumping likely to continue or recur?

This section assesses the likelihood that in the absence of measures Russian ammonium nitrate will be exported to Australia at dumped prices.

7.5.1 Analysis of dumping margins

The dumping margins from chapter 6 of this report are reproduced below:

Country	Exporter	Dumping Margin
Russia or via Estonia	NAK Azot	– 0.9%
	Nevinka	– 0.1%
	Uncooperative and all other exporters	2.8%

Table 13: Dumping margins in inquiry period

In its application,[90] the Australian industry also claimed that Russia exports ammonium nitrate to most markets at FOB prices which are significantly below export prices to Australia. Its contention was that due to these low FOB prices, if measures expire Russian exports to Australia are likely to be at dumped prices.

Orica Australia[91] noted the European Commission's (EC) findings in its sunset review that dumping was likely in the future. QNP and Dyno Nobel submitted[92] that the conclusions concerning dumping of Russian exports in the future that was arrived at by the EC in its sunset review was more reliable due to broader exporter cooperation. CSBP[93] questioned why the Commission did not come to a similar conclusion concerning dumping if the measures were allowed to expire.

EuroChem Group argued[94] that anti-dumping measures being imposed by a country with a land border with Russia is dissimilar to dumping of a product like ammonium nitrate in a country as far away as Australia.

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89 EPR 565, document number 31.

90 EPR 565, document number 1.

91 EPR 565, document number 39

92 EPR 565, document numbers 37 and 38.

93 EPR 565, document number 40.

94 EPR 565, document number 21.

As outlined in section 6.6 of this report, the dumping margin calculated for Nevinka reduced from positive 10.9 per cent to negative 0.1 per cent. This change was largely due to a correction of the Commission's estimated inland transport costs for Nevinka.

Accordingly, in respect of the two cooperating exporters, the Commission found that neither exporter exported ammonium nitrate during the inquiry period and, if there had been exports, those exports would not have been at dumped prices. Accordingly, the Commission is not satisfied the evidence before it indicates that any future exports of Russian ammonium nitrate from these exporters would likely be at dumped prices.

In addition, and as outlined in section 6.7 in this report, the dumping margin calculated for the uncooperative exporters also consequently reduced from positive 14.0 per cent, to positive 2.8 per cent. The Commission determined the export price and normal value for the uncooperative exporters having regard to all relevant information pursuant to sections 269TAB(3) and 269TAC(6), respectively. In determining the dumping margin, the Commission used the highest weighted average normal value in the inquiry period from cooperative exporters in Russia, after removing the downward adjustment for domestic inland transport, as this adjustment could not be quantified for uncooperative exporters.

EuroChem Group[95] submitted that allegations by Australia industry in respect to uncooperative exporters must not be allowed to prejudice their interests as cooperative exporters.

The Commission notes the Australian industry's submissions regarding the EC sunset review but considers it is preferable to consider its own verified information in relation to ammonium nitrate that is likely to be exported to the Australian market. This is because it relates to information provided to the Commission specifically for this inquiry and is specific to the inquiry period.[96] The Commission is also unfamiliar with the specific information and domestic legislative requirements the EC relied upon to determine its dumping margins.

The Commission also notes that the small volume of goods that were exported to Australia during the inquiry period was through an importer sourcing ammonium nitrate from a manufacturer that did not cooperate with this inquiry. The Commission notes that these goods were exported above the current floor price and did not attract dumping duties upon importation into Australia.

The Commission notes that in Continuation Inquiry 312, the Commission was satisfied that, should the measures expire, it was likely that dumping would recur.[97] This finding was primarily made on the basis that verified information of the cooperating exporter led to a positive dumping margin for that exporter.[98] Both cooperative exporters in this inquiry have negative dumping margins.

The Commission further notes that since Continuation Inquiry 312, no review or duty assessment has been completed by the Commission in respect of ammonium nitrate exported from Russia.[99] As a result, there is not a history of dumping since Continuation

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[95] EPR 565, document number 45.

[96] The Review Investigation Period (RIP) of the EC sunset review was 1 July 2018 to 30 June 2019. In contrast, the inquiry period in this inquiry was 1 July 2019 to 30 June 2020.

[97] Chapter 8 of REP 312.

[98] Sections 8.1 to 8.4 of REP 312.

[99] A duty assessment application was received, but subsequently terminated.

Inquiry 312 based on verified information to indicate that Russian ammonium nitrate producers would likely dump in the future.

Overall, and having regard to the negative dumping margins of the cooperative exporters, the Commission considers there is insufficient evidence before it to be satisfied that any future exports are likely to be dumped should the measures be allowed to expire.

The Commission acknowledges that any future exports of ammonium nitrate from uncooperative exporters may be dumped but is not satisfied that it would be *likely*. That is, that while future exports by uncooperative exporters *may* be dumped, the Commission is not satisfied of the higher threshold of *likely* as set out in section 269ZHF(2).

7.5.2 Conclusion – is dumping likely to continue or recur?

For the reasons outlined above, the Commission is not satisfied that the expiration of the measures is likely to lead to a continuation of, or a recurrence of, the dumping that the anti-dumping measure is intended to prevent.

Despite the Commission not being satisfied that the expiration of the measures would likely lead to a continuation or recurrence of dumping that the anti-dumping measures are intended to prevent, for completeness the Commission has also considered the likelihood of exports of ammonium nitrate to Australia continuing or recurring and whether material injury is likely to continue or recur.

7.6 Are exports likely to continue or recur?

To determine whether exports of Russian ammonium nitrate are likely to continue or recur should the measures be allowed to expire, the Commission has regard to the several factors. The following is an assessment of these factors.

7.6.1 Production capacity and capacity utilisation

Russian ammonium nitrate producers produce high density and low density ammonium nitrate (HDAN and LDAN). HDAN can be for use in explosives or for agricultural uses. HDAN used in Australia for explosive use is 'melted' to make emulsion products. The Commission found that LDAN production is close to capacity in Russia, which is consistent with findings presented by the Australian industry, the GOR and exporters. LDAN makes up the majority of sales by the Australian industry. Between 2017 and 2020, Russia predominantly exported HDAN to Australia,[100] albeit in small volumes in recent years (noting that anti-dumping measures have been in place since 2001). The main arguments submitted by the Australian industry discussed below are:

(i) that there are increases in capacity of LDAN either through planned capacity expansions or the ability of Russian exporters to switch from HDAN production to LDAN production;
(ii) that HDAN competes with Australian industry's emulsion sales and that the Commission has underestimated the size of this market; and
(iii) The EC sunset review found that ammonium nitrate producers had excess capacity.

[100] Updated Dumping Specification Numbers (DSNs) in relation to Russian exports were introduced in May 2016 which included a distinction between HDAN or LDAN.

7.6.1.1 LDAN production capacity

During its verification process, the Commission found that the EuroChem Group's capacity utilisation rate was over 100 per cent. EuroChem Group is Russia's largest producer of ammonium nitrate.[101] The Commission found that it is not unusual for ammonium nitrate plants to be over maximum output and an Australian industry producer was also operating above capacity during the period 2016 to 2020.

The Commission notes that the high capacity utilisation of LDAN plants in Russia is not disputed by any of the parties to this inquiry. The argument made by the Australian industry in its application is that Russia's spare capacity to produce HDAN is greater than its spare capacity to produce LDAN, and Russian producers possess the versatility to convert their plants from producing HDAN to LDAN if required.

In its submissions[102] the Ministry of Economic Development (MED) of the GOR advised capacity utilisation rates from the Russian Fertilisers Producers Association as 95.7 per cent (2016), 97.3 per cent (2017), 91.2 per cent (2018) and 96.7 (2019). It did not specify if this was HDAN or LDAN or combined.

In its exporter verification briefing[103] and submission dated 17 February 2021,[104] the Australian industry submitted there are planned increases of capacity in Russia.

The GOR submitted the new plants are an effort to upgrade old production facilities and in response to an increase in demand for fertilisers in the domestic market.[105] As evidence it pointed to the Acron Group's increase of mineral fertilisers sold in the domestic market which it states increased by 93 per cent from 2019 to 2020.

The Commission purchased a report titled 'Ammonium Nitrate Russia Market 2021' by Merchant Research and Consulting (Merchant report). This report points to an increase in the production capacity of Russian producers of ammonium nitrate, and a corresponding increase in the demand for ammonium nitrate in its domestic market. This report is in **Confidential Attachment 8 – Merchant report**.

In response to the SEF, the GOR provided a breakdown of the capacity of the various grades and uses of ammonium nitrate.[106] The capacity utilisation rate appears to be for all the grades combined. The data provided was from Fertecon[107] (Nitrates Outlook Data 2021). The Commission requested the source data in order to verify the data reproduced in the submission. This information was provided by the GOR, together with clarifying certain confidential figures quoted in its submission. The Commission notes that the overall capacity data is largely consistent with capacity data in the Merchant Report.

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[101] Ammonium Nitrate Russian Market Outlook 2021, Merchant Research and Consulting Ltd.

[102] EPR 565, document numbers 3 and 18.

[103] EPR 565, document number 14.

[104] EPR 565, document number 27.

[105] EPR 565, document number 18.

[106] EPR 565, document number 35

[107] Fertecon is a provider of market intelligence relevant to the global fertiliser (including ammonia and ammonium nitrate) industry and markets. In Investigation 473, the Commission found that reports and data prepared by Fertecon are used widely by many entities in the Australian ammonium nitrate market, particularly for the purpose of adjusting the base contract prices for the movements in the prices of ammonia. Information from Fertecon can be accessed via a paid subscription. Refer EPR 473, document number 65, page 102.

Dyno Nobel[108] submitted that it is aware of a number of Russian producers that have made investments to enable them to switch their production. These Russian producers were not named and no further information was provided to enable the Commission to verify this claim.

In response to the SEF, Orica Australia submitted that some suppliers have converted former HDAN production processes to LDAN.[109] Orica Australia stated that while the conversion of an HDAN plant to an LDAN plant requires some additional capital, once installed, plants may readily switch capacity between LDAN and HDAN manufacture, and that these claims are confirmed by the GOR in its submission.[110] Orica Australia cited the Acron Group's Novgorod facility in Russia as one such plant that has made this conversion and which now supplies significant volumes to Latin America and other markets. CSBP provided a press release by Acron Group dated 22 March 2021 where the Acron Group announced three projects, one of which is an increase of capacity of 180,000 tonnes of ammonium nitrate per year. In addition to the Acron expansion, Orica Australia, CSBP, QNP and Dyno Nobel submitted[111] that there is an expected expansion at the KAO Azot (Kemerovo) facility. Orica Australia[112] stated that this increase would be 250,000 tonnes (noting information in a GOR submission[113]) and Dyno Nobel stated a 200,000 tonne increase of ammonium nitrate per year.

The GOR[114] provided a copy of an Acron Group press release dated 27 January 2021, in support of its statement that the Acron Group is focused on its domestic market. The press release details the increase the group has experienced in 2020 within the Russian domestic market. Concerning the planned expansion of KAO Azot, the GOR advised that 90 per cent of its ammonium nitrate is for the domestic market. In support of this, the same submission provided a letter from the Executive Director of the Russian Association of Fertilizer Producers (RAFP) which states that 90 per cent of KAO Azot's sales are made domestically to the agricultural and industrial sectors.

This letter attributes the increased demand domestically to growing agricultural demand for fertilisers and industrial demand for coal mining. The letter states that the increase in capacity is to meet this demand. The RAFP letter sets this increase at 250,000 tonnes per year. In the absence of positive evidence to show a link between this increased capacity and the grade of ammonium nitrate used extensively in Australia, and that the ammonium nitrate is for KAO Azot's export market, together with statements by the RAFP that the increased capacity is for domestic use, the Commission finds that this increased capacity is unlikely to lead to increased exports to Australia.

During its verification, EuroChem Group responded to the Australian industry's claims concerning the EuroChem Group's new projects to increase its capacity. EuroChem Group stated that much of the capacity increases were finalised in 2015. In addition, some of the

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[108] EPR 565, document number 37, page 3.

[109] EPR 565, document number 42, page 2.

[110] EPR 565, document number 35.

[111] EPR 565, document numbers 37, 38, 39 and 40.

[112] EPR 565, document number 42.

[113] EPR 565, document number 35.

[114] EPR 565, document number 35.

projects referred to were ammonia plants rather than ammonium nitrate plants. EuroChem Group claims the projects completed in 2015 were modernisation projects for ageing plants.

The Commission notes that Acron's press release on 22 March 2021 sets out its planned expansion of 180,000 tonnes per annum. It does not detail the density of the ammonium nitrate or the end use of the ammonium nitrate (technical ammonium nitrate (TAN) for explosives or FGAN for agriculture).

In response to the SEF, Orica Australia further submitted[115] that the Commission appears to have dismissed or had little regard to the conclusions contained within the CRU Report, which was included in the Australian industry's application. It provided an extract from the CRU Group's Technical Ammonium Nitrate Outlook. Orica Australia claims that this extract makes three findings pertinent to this inquiry:

- Russian production of LDAN operates at close to production capacity;
- Russian AN producers possess production flexibility to "switch" between LDAN and HDAN (reference to Table 14 in the report);
- the 'flex' capacity raises TAN production from 3.4 M tonnes per annum to 5.6 M tonnes per annum (references Figure 24 in the report), away from the lower under-utilised HDAN production capacity to TAN, significantly raising the available capacity to export to the attractive growth explosives market in Australia by 2.2 M tonnes.

Orica Australia noted the Commission's reliance on the Merchant Report and submitted that the conclusions contained in the CRU report should be preferred.[116] In support of the submission, Orica Australia stated that the CRU is a reputable and industry acknowledged specialist which understands the market dynamics of the ammonia and fertiliser industry. Orica Australia submitted that, in contrast, the Merchant report is not a widely referenced report within the ammonium nitrate industry and has not been endorsed by an industry-recognised specialist.

In a further submission, Orica Australia further questioned the reliability of the Merchant report in respect of Russia's production capacity on the basis that the Merchant report has incorrect production capacities and consumption data of four Australian producers of ammonium nitrate.[117] Orica Australia referred to tables 143 and 144 in its attached Merchant report in support of its assertion.

Glencore disagreed with this assessment stating that producers have a limited ability to flexibly alternate between FGAN and TAN.[118] Glencore stated that this was due to the complexity and time required to adapt production plants, high capital costs involved and the ongoing long-term supply arrangements in place for fertiliser.

Glencore also submitted that most market research reports contain multiple errors of some sort and that market research by its nature is inexact and cannot fully replace first-hand experience of all supply and demand points in any given market.[119] It included both the Merchant report and the CRU report in this assessment.

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[115] EPR 565, document number 43.

[116] EPR 565, document number 43.

[117] EPR 565, document number 46.

[118] EPR 565, document number 5.

[119] EPR 565, document number 48

The Commission notes that the report attached with Orica Australia's submission is the 'Ammonium Nitrate 2021 World Market Outlook and Forecast up to 2030' and was not the Merchant report obtained by the Commission. The Merchant report obtained and relied on by the Commission is the 'Ammonium Nitrate Russia Market Outlook 2021' and did not contain Australian market specific data. All Australian industry production figures used by the Commission were based on data provided directly by the applicants, or from Annual Reports. The Commission's views concerning Russian capacity was informed by its own verifications, the Merchant report, the CRU report and the Fertecon data supplied by the GOR. Further comparison of these data sources is at **Confidential Attachment 7 – Other Confidential Information** and **Confidential Attachment 12 – Russian AN capacity data**.

In respect of the CRU report, the Commission has reviewed the provided extracts of the CRU report and found it largely consistent with the Commission's findings. Specifically:

- The finding that LDAN is close to capacity is consistent with the Merchant report, as well as the verifications completed by the Commission during the course of the inquiry. 120
- The Commission observes that Table 14 is a list of producers of ammonium nitrate with the plants which produce LDAN, HDAN (for agricultural use), HDAN (for technical use, i.e. TAN) and ammonium nitrate solution. The Commission considers that this table shows that these facilities produce multiple ammonium nitrate products but does not evidence flexibility for these producers to "switch" between these products.
- Figure 24 is headed "Russian HDAN capacity allows flexibility between technical and fertiliser sales". This figure shows that 3.28 M tonnes per annum of 'HDAN for explosives and agriculture' may be used for its explosives use rather than its agricultural use. Thereby making more HDAN of either type available. The Commission considers that this figure does not show an ability to switch between HDAN and LDAN but rather an ability to switch between uses of HDAN (from agriculture to explosives), as described in the heading of Figure 24.

As noted above, the high capacity utilisation of LDAN plants in Russia is not disputed by Australian industry. Instead, the disagreement is about the capability of Russian producers to convert its excess HDAN production to LDAN production for export to Australia. In the SEF, the Commission considered that while it may be possible for Russian producers to convert plants to produce LDAN rather than HDAN, given that the majority of its domestic market is agricultural and uses HDAN, it is not likely.

The evidence provided in response to the SEF has not changed this view.

The Commission considers that it may be possible for Russian ammonium nitrate producers to "switch" production but is not satisfied on the evidence before it that it is likely they would do so. The evidence has not demonstrated that "switching" from HDAN to LDAN production is straightforward or likely.

The Commission further notes that due to the nature of sales in this market, to compete with Australian industry, Russian exporters (or importers of Russian ammonium nitrate) would need to bid for long-term contracts and lock in set volumes over a period of time. The trends in imports from Russia are not consistent, except for two importers that supplied over a three year period at varying volumes, and therefore are more likely to be spot sales or

[120] See CRU Report, page 7.

purchases to make up a shortfall (as in the case of Australian industry imports). The Commission thus considers the nature of sales in Australia would make it less likely that Russian ammonium producers would routinely switch back and forth from HDAN to LDAN production for opportunistic sales in the market.

7.6.1.2 **HDAN Competition in Australia**

During verifications, Australian industry advised the Commission that customers have the option of purchasing HDAN, which will require a solution tank to melt, or ANsol from the Australian industry for the purposes of making emulsion for explosives

The Australian industry's contention is that the existence of capacity in HDAN production in Russia means that it has an incentive to increase exports to markets like Australia.

The Commission received a submission from Orica Australia on 3 February 2021, which it claimed to be confidential.[121] The Commission also received a submission from EuroChem Group on 8 February 2021, which it claimed to be confidential.[122] Assessment of these confidential submissions is contained in **Confidential Attachment 7**.

In the SEF, the Commission considered that the growing domestic demand for HDAN for the domestic agricultural market makes it more likely that Russian producers will supply their growing domestic demand and their established export markets rather than increase exports to Australia. The Commission notes that agriculture is also an area of focus for the GOR with an import ban on agricultural goods[123] and a state support program for agricultural producers that was initially in place until 2020 but has now been extended to 2025.[124] The Commission considers this will also make it unlikely that Russian producers will convert plants from HDAN to produce LDAN to export to Australia.

Glencore submitted[125] prior to SEF 565 that there were two grades of HDAN: industrial and agricultural. HDAN for industrial purposes required an ammonium nitrate content of 98%, whereas there was no standard for agricultural grades. Glencore submitted that the EC findings were not informative to the situation in Australia and should not influence the Commission's considerations.

In response to the SEF, CSBP[126] submitted that the Australian market for ammonium nitrate is a more attractive market for supply than the broader fertilizer ammonium nitrate market and so it is logical that producers are incentivised to actively seek-out supply for higher-value explosives market sales that are commonplace in the Australian market.

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[121] The Commission agrees it is confidential. Pursuant to section 269ZJ(3), the Commissioner is satisfied that a non-confidential summary cannot be given to allow a reasonable understanding of the substance of the information.

[122] Ibid.

[123] https://ec.europa.eu/food/safety/international_affairs/eu_russia/russian_import_ban_eu_products_en.

[124] 'Agricultural Development and Regulation of Agricultural Products, Commodities and Food Markets, 2013-2020', Government of Russia, http://government.ru/en/docs/3360/ and Russian Agricultural Bank, https://www.rshb.ru/en/development/program/.

[125] EPR 565 document number 30

[126] EPR 565, document number 40.

Dyno Nobel,[127] CSBP[128] and Orica Australia[129] submitted that the Commission had minimised the significance of the market for emulsion. While it is the smaller market, Australian industry claims that it is a growing segment and large enough for an imported substitute to ANsol to cause material injury. Dyno Nobel disagreed that HDAN imports are less injurious to Australian industry than LDAN imports and noted that in its 2020 financial year, a significant portion of its AN produced was supplied into emulsion (which consumes HDAN).

Dyno Nobel further submitted that since the GOR policies have been in place for the last five years, "it is unlikely that the extension of the program for a further five years will result in a sharp increase in domestic demand".

Glencore submitted[130] that the substitutability of HDAN and ANsol is limited to circumstances where a customer has access to a solution tank and an emulsion plant.

The Commission received a further confidential submission on 1 March 2021.[131] Assessment of this confidential submission is contained in **Confidential Attachment 7**.

The Commission clarifies that its conclusions concerning the smaller size of the emulsion market was based on the sales figures provided by the applicants. Further analysis of Australian industry sales is at **Confidential Attachment 7**. As Dyno Nobel was not an applicant and has not provided its sales data, the Commission is unable to verify its claims concerning its emulsion sales. Accordingly, the Commission maintains that, from the information before it, the emulsion market forms the minority of sales within the ammonium nitrate market in Australia. Within this market, customers who have the ability to melt HDAN (a solution tank) are those that may potentially choose to purchase HDAN as a substitute in its making of emulsion.

The Commission also notes that, as outlined in section 7.6.2.1 of this report, the RAFP letter sets this increase at 250,000 tonnes per year. In the absence of positive evidence to show a link between this increased capacity and the grade of ammonium nitrate used extensively in Australia, and that the ammonium nitrate is for KAO Azot's export market, together with statements by the RAFP that the increased capacity is for domestic use, the Commission is not satisfied that this increased capacity is likely to lead to increased exports to Australia.

In addition, the Commission did not state that the extension of the GOR policies would cause a "sharp increase" in domestic demand. However, the Commission does consider that the information before it demonstrates that agriculture remains an area of focus for the GOR and that the extension of this program includes an expansion of its goals. For example the "growth of exports of agricultural products to the amount of USD 45 billion by 2024"[132] which may have the effect of increasing domestic demand for ammonium nitrate for fertilisers.

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[127] EPR 565, document number 37, page 3.

[128] EPR 565, document number 40.

[129] EPR 565, document number 39, page 5.

[130] EPR 565, document number 36.

[131] The Commission agrees it is confidential. Pursuant to section 269ZJ(3), the Commissioner is satisfied that a non-confidential summary cannot be given to allow a reasonable understanding of the substance of the information.

[132] State Program on Agribusiness Development, available at https://www.rshb.ru/en/development/program/

The Commission accepts that exports of explosive grade HDAN is possible but is not satisfied that an increase of exports of HDAN to Australia is likely due to the smaller size of the emulsion market in Australia.

7.6.1.3 EC sunset review

Dyno Nobel,[133] QNP[134] and CSBP[135] also drew attention to the excess capacity of 440,000 tonnes of ammonium nitrate that was found in the EC sunset review. All three of these submissions questioned the finding in the SEF that excess capacity of ammonium nitrate in Russia that could be exported to Australia is low and therefore unlikely to cause material injury to the Australian industry. QNP further submitted that the Commission's analysis regarding excess capacity only focused on the two cooperating exporters to this inquiry and failed to consider the excess production of all Russian ammonium nitrate producers.[136]

In addition, Dyno Nobel also referred to the EC's inquiry which found Russia's Acron Group announced that it would be commissioning a further 180,000 tonnes of AN in late 2021 and then an addition 200,000 tonnes in 2022.[137] Dyno Nobel thus submitted that Russian producers had substantial available production capacity for export to Australia.[138]

EuroChem Group argued[139] that anti-dumping measures being imposed by a country with a land border with Russia is dissimilar to dumping of a product like ammonium nitrate in a country as far away as Australia.

Glencore also submitted that the findings of the recently concluded EC sunset review into anti-dumping measures on Russian ammonium nitrate are not comparable with this inquiry.[140] Specifically, Glencore submitted there also differences with HDAN, which can be categorised as TAN, or FGAN, which is specifically used for fertilisers. Glencore submitted that FGAN will be sold at a lower price than TAN.[141]

Australian industry[142] disputed this and pointed to previous investigations and inquiries by the Commission that has found that HDAN and LDAN are substitutable goods.

As outlined in section 7.6.2.1 of this report, in its analysis of production capacity, the Commission relied on its verification of EuroChem Group and other sources such as the Merchant report and the CRU report provided by Orica Australia to arrive at its conclusions specific to LDAN and HDAN in Russia. Although the Commission's verified information is limited to the two cooperative exporters to this inquiry, the Merchant report and CRU report relates to all Russian producers of ammonium nitrate. Further, and for the reasons outlined above in this section, the Commission considers there is likely an excess capacity of HDAN

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[133] EPR 565, document number 37, pages 2 to 3.

[134] EPR 565, document number 38, pages 2 to 3.

[135] EPR 565, document number 40.

[136] EPR565, document number 38.

[137] Ibid.

[138] Ibid.

[139] EPR 565, document number 21.

[140] EPR 565, document number 20.

[141] Glencore in its submission dated 8 April 2021 submitted that it was important that the correct terminology should be used in regard to grades of ammonium nitrate to prevent confusion and incorrect conclusions being reached. See EPR 565, document number 48.

[142] EPR 565, document number 26.

but that excess capacity of LDAN is minimal, and LDAN made up the majority of sales of the Australian industry.

The Commission found that there were differences in the method of calculation of excess capacity in the two inquiries, as well as a difference in inquiry periods.[143] It is also noted that there are differences in end uses in the European and Australian markets that will have a bearing on the analysis of excess capacity. The EC inquiry does not make distinction of the type of ammonium nitrate and states the following concerning the end use of the good:

> "Ammonium nitrate ('AN') is a solid nitrogen fertiliser commonly used in agriculture, but is also used for industrial purposes such as the production of explosives (for instance used in mining). AN used both for agricultural and for explosive purposes is covered by the anti-dumping measures in force. Both types of AN have the same technical and chemical characteristics, are easily interchangeable and are considered as the product under review."[144]

In the Australian market, the Commission found that the vast majority of ammonium nitrate is used in explosives, with a small percentage used in fertilisers. The majority of sales in the Australian market is in LDAN with the imports from Russia predominantly being HDAN. As the Commission found that there is likely excess capacity in HDAN, it may be consistent with the EC findings, however, as it is not possible to identify if the excess capacity found by the EC is HDAN or LDAN, the Commission is limited in directly using the excess capacity information in that inquiry.

As a result, the Commission considers its own assessment is preferable in relation to ammonium nitrate that is likely to be exported to the Australian market. Further information concerning the Commission's sources and findings concerning capacity in Russia is in **Confidential Attachment 7 – Other Confidential Information**.

7.6.2 Country-hopping

During its verification, Orica Australia submitted that if the measures were allowed to expire, importers would engage in 'country-hopping', whereby they would switch from one source country to another when measures are imposed or lifted. As evidence, Orica Australia[145] pointed to the shift away from the countries the subject of Investigation 473, being China, Sweden and Thailand to countries not subject to measures.

Specifically, Orica Australia submitted that if the measures were allowed to expire, importers would switch to sourcing ammonium nitrate from Russia, resulting in greater exports to Australia and thus volume related injury to Australian producers.

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[143] The EC sunset review's Review Investigation Period (RIP) was 1 July 2018 to 30 June 2019. The Commission's inquiry period for Continuation inquiry 565 is 1 July 2019 to 30 June 2020.

[144] Recital 55, EC Review, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R2100&from=EN

[145] EPR 565, document number 31.

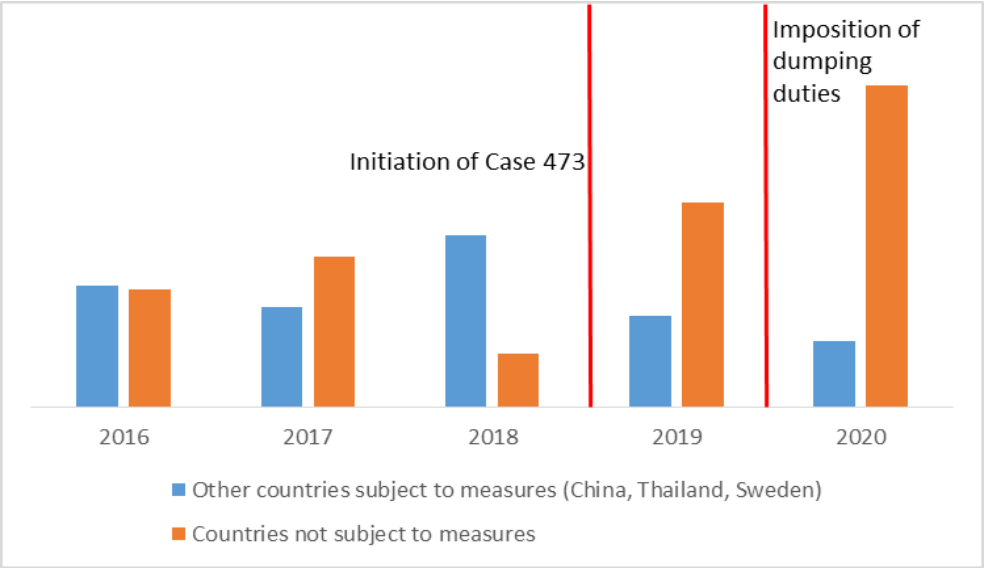

Figure 9: Change of source countries following measures, volume (MT/FY)

Figure 9 above shows a decline in exports from China, Sweden and Thailand following the initiation of Investigation 473. It is also noted that exports from 'countries not subject to measures' increased from 2018 to 2019 and has increased further from 2019 to 2020.

CSBP[146] submitted that recent negotiations have demonstrated that customers and traders have switched sources of supply away from countries the subject of anti-dumping measures to those countries where measures do not apply. As a result, CSBP continued, that should the measures against Russia be allowed to expire, those same customers and traders will source from suppliers who dump products at the lowest price, being Russian exporters.

The Commission considers that, unlike a commodity product that can be sourced from multiple sources, the vast majority of purchases of ammonium nitrate are in accordance with long term contracts. During the Australian industry verifications, the Australian industry applicants advised that spot sales are a small minority of sales in this industry. Therefore, while the Commission sees the potential for a shift between countries with measures to those without measures, this is likely to be a longer term process. One Australian industry applicant advised that the contract negotiation process takes between 18 months to two years.

As seen in Figure 7 in section 5.4.2, the Australian industry's market share has remained relatively stable while the makeup of exporting countries has shifted. In other words, even if importers ceased to import from the current countries and commenced importing from Russia, there is no indication that this would be at the expense of Australian industry volumes or market share.

7.6.3 Australian industry's imports

As identified in Figure 10 below, the Australian industry was also the largest importer of Russian ammonium nitrate during 2019. It did not import ammonium nitrate from Russia in any of the other years analysed. Australian industry producers have imported from other countries during the years 2016 to 2020. The main supply countries other than Russia were Chile, China, Indonesia, Lithuania and Vietnam. In the Commission's analysis of market

[146] EPR 565, document number 40.

volumes and market share in section 5.2 of this report, these imports have been excluded from the Australian industry sales to ensure they are not double-counted. In its application, the Australian industry claimed that exports increased in 2017/18 by 233 per cent, and then again in 2018/19 by a further 141 per cent and that in 2019/20 (11 months) exports from Russia have declined to 5,478 tonnes as imports from other sources at lower FOB prices entered the market.

Figure 10 below shows volumes of Russian exports to Australia in financial years 2016 to 2020.

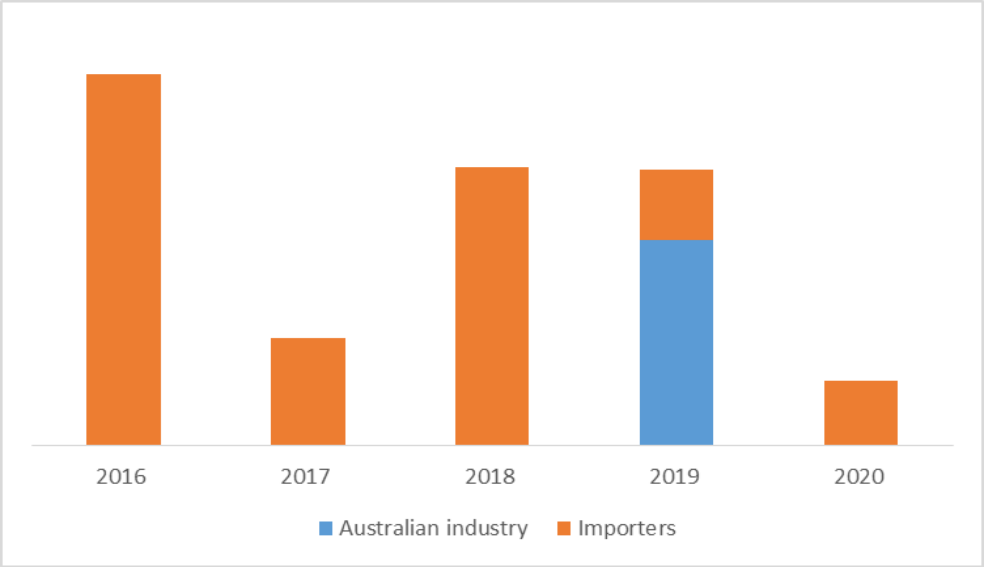

Figure 10: Imports of Russian ammonium nitrate to Australia (MT/FY)

There was an increase in Russian exports to Australia from 2017 to 2018. While this level was sustained in 2019, most of this volume was imported by Australian industry. Excluding Australian industry imports, total imports of ammonium nitrate from Russia have remained at very low volumes since 2018, representing less than half of one per cent of the Australian market.

Analysis is at **Confidential Attachment 6 – Import data analysis**

7.6.4 Maintenance of distribution links

In its application,[147] the Australian industry claimed that the ongoing distribution links between Russian exporters and the Australian market shows that in the absence of measures, it is likely that dumping and material injury will continue or recur.

In its analysis of ABF data, the Commission found that while no importer purchased from the same exporter continuously over the five year period, three importers purchased from Russia in four of the five years analysed. Further, the importers that consistently imported Russian ammonium nitrate for three years consecutively in the analysis period did so in low volumes and ceased importing in 2018.

Only one (non-Australian industry) importer has imported ammonium nitrate from Russia since 2018. This importer was responsible for the small volume of goods that were exported to Australia during the inquiry period and sourced the goods from a manufacturer that did

[147] EPR 565, document number 1.

not cooperate with this inquiry. Based on confidential information before the Commission, the Commission considers this importer is unlikely to import material volumes ammonium nitrate in the next few years. Assessment of this confidential information is contained in **Confidential Attachment 7.**

The Commission found that the Australian industry was the largest importer of Russian ammonium nitrate in the 2019, however did not import Russian ammonium nitrate in the other years analysed between 2016 and 2020.

The trend in imports leads the Commission to the view that most of the purchases are on a spot basis or to address a shortfall in Australian industry supply. Accordingly, the Commission accepts that distribution links do exist in Australia and may be used to import small volumes of ammonium nitrate.

The Commission's analysis of import trends is in **Confidential Attachment 6**.

7.6.5 Conclusion – are exports likely to continue or recur?

For the reasons outlined above, the Commission is satisfied that exports of ammonium nitrate are likely to continue or recur on a spot sale basis, which forms approximately 5 per cent of sales in the Australian market.

Specifically, the Commission has found:

- The Australian market is comprised mostly of LDAN;
- LDAN capacity utilisation by Russian ammonium producers is high and the capability for Russian producers to easily "switch" HDAN production to LDAN production has not be demonstrated;
- The size of the emulsion market in Australia is the smaller market, and importers of HDAN for emulsion require a solution tank to 'melt' the HDAN for emulsion production. Thus there is less market demand for HDAN;
- There is a growing domestic demand for HDAN in Russia;
- Country-hopping behaviour displayed by importers in the past has not resulted in a market share decrease for the Australian industry; and
- Long term contracts that are typical of the ammonium nitrate industry and import trends have not indicated that more than minimal volumes would likely be imported into Australia.

7.7 Is material injury likely to continue or recur?

To determine whether material injury to Australian industry is likely to continue or recur should the measures be allowed to expire, the Commission had regard to the several factors. The following is an assessment of these factors.

7.7.1 Price injury

In considering any future price injury to the Australian industry the Commission has estimated the likely landed price of any Russian ammonium nitrate exported to Australian industry and the impact of any imports on existing and future supply agreements in the Australian market.

7.7.1.1 Estimated landed price of Russian ammonium nitrate

In its application,[148] the Australian industry claimed that Russia exports ammonium nitrate to most markets at FOB prices which are significantly below current export prices to Australia. Its contention was that due to these low FOB prices, if measures expire Russian exports to Australia are likely to be at dumped prices and cause price and volume injury to the Australian industry.

In its submission, Glencore[149] stated that Russian exporters face a large freight penalty in exporting ammonium nitrate to Australia which it refers to as "built in protection" for the Australian industry. The high freight costs were apparent from the Commission's verifications of the Australian industry and an importer.

To investigate these claims, the Commission performed an analysis which compared landed prices from other countries to Australia with an 'estimated Russian landed price' using ABF data.[150]Specifically, the Commission used data from TDI which sets out the FOB export prices from Russia to key mining markets.[151] The Commission then used the ocean freight costs by one of the Australian industry producers to import Russian ammonium nitrate, to estimate freight for shipments from Russia to Australia.[152]

The Commission found that freight costs for ammonium nitrate shipments are significant. In the shipments reviewed, the freight costs were between 32 and 34 per cent of the total landed cost of the imports. The Commission added the freight costs to the TDI FOB export prices to arrive at an estimated landed price for each month of the inquiry period. The Commission then compared the estimated Russian landed price with the landed prices of other countries exporting to Australia. The Commission estimates are illustrated in Figure 11 below.

The Commission's analysis of the landed price is at **Confidential Attachment 5 – Import landed price analysis.**

[148] EPR 565, document number 1.

[149] EPR 565, document number 5.

[150] The landed price was line VOTI in ABF data which is the total of the CIF price, interim dumping duties (if applicable) and general duties.

[151] The key markets used were Brazil, Argentina, Canada, Chile, India, South Africa and the USA.

[152] The Commission notes that importers must also pay freight insurance and it is a relevant cost to get to the landed cost. In this instance the insurance cost was not included and from verified data from Australian industry the Commission observes that this cost would make an immaterial difference.

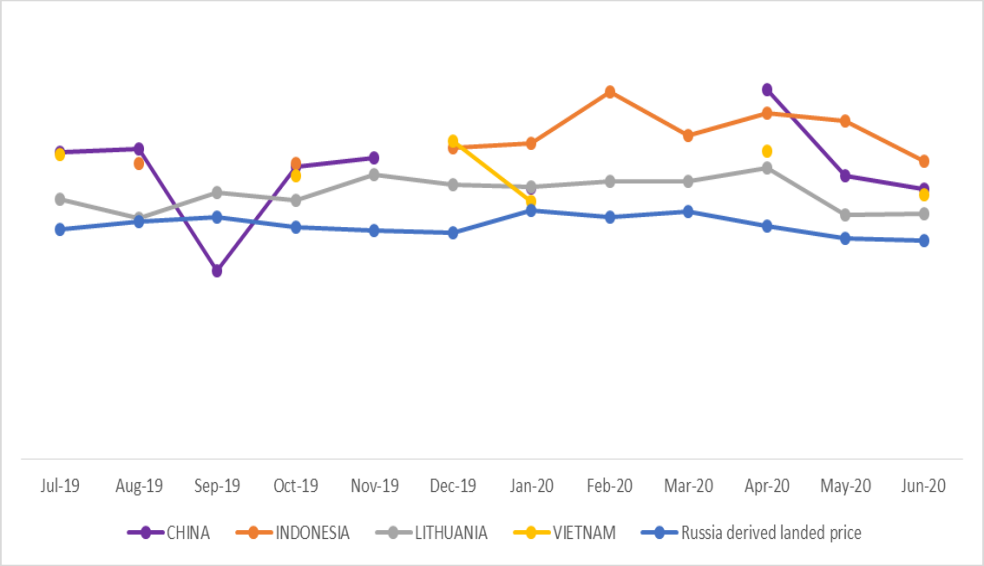

Figure 11: Comparison of estimated Russian landed price with other countries' landed prices (AUD/MT)

Figure 11 shows that the Commission's estimated Russian landed price is below landed prices from other countries for 10 of the 12 months in the inquiry period.

However, the Commission acknowledges that this analysis has the following limitations:

- It is not possible for the Commission to know the FOB prices at which Russia exports to other countries is the price at which Russian exporters would export to Australia.
- The information relied upon for the estimate did not differentiate between HDAN and LDAN exports. Accordingly, the Commission was unable to use information relating only to exports of LDAN.
- During the inquiry period, the export volumes from Russia in the TDI data were about twenty times the volume of ammonium nitrate imported to Australia from the other countries in the above graph. The volumes exported from Russia to its main export markets consisted of many large individual trades, which is likely to have affected the price.
- It was also necessary for the Commission to choose a port from which to calculate freight. As 56.8 per cent of the exports analysed originated from the Saint Petersburg port, the freight was calculated from this port. This port is on the west coast of Russia. If a port on the east coast was used the freight may be less as it is a shorter distance to Australia, however that would depend on the location of the production facility and the cost to get it to port.

In response to the SEF, Glencore[153] submitted a further potential limitation to this analysis, being that, as the majority of ammonium nitrate exported from Russia was for fertilisers, fertilisers are also likely to represent the majority of the sales reported in the TDI data. Glencore contended that this lower priced FGAN will drive down the estimated Russian landed price therefore impacting the outcome of the price undercutting analysis.

[153] EPR 565, document number 36. See also EPR 565, document number 20, in which Glencore makes a similar submission.

The Commission notes that the three main producers of ammonium nitrate in Russia state that their main focus is the agricultural market.[154] The Merchant report found that the majority of ammonium nitrate produced in Russia was for agricultural uses.[155] The Commission sought to mitigate the impact of the inclusion of ammonium nitrate for fertilisers by only including countries that are considered mining markets. This list of countries was derived in consultation with Australian industry. However, the Commission agrees that exports to these countries may also include exports of FGAN. The Commission also agrees that the inclusion of lower grade ammonium nitrate will impact the price of the estimated Russian landed price.

7.7.1.2 Existing and future supply agreements in the Australian market

In its application the Australian industry claimed that Australian market selling prices for ammonium nitrate are price sensitive and relatively transparent. Therefore the emergence of exports at dumped prices will impact on future negotiations. No information was provided during the verification process to suggest that competition for specific upcoming contracts would be from Russian exports.

The Australian industry applicants advised that their pricing for contracts, where the end use is mining, is linked to globally traded ammonia, natural gas costs, the Consumer Price Index (CPI), labour costs and/or other factors. Typically contracts are for a set volume or volumes up to a maximum, in each case using a set price formula. Above this volume, customers can usually source from anywhere, including imports.

The applicants also advised that import prices are monitored internally and that Australian prices for ammonium nitrate are influenced by import prices from well-known supply sources which it stated were Chile, China, Lithuania, Russia, Sweden, Thailand, Ukraine and Vietnam. Two of the applicants advised the Commission that, in addition to import parity pricing, the 'next best alternative' for the customer is assessed during negotiations. The Commission was also advised that pricing is further influenced by availability, volume, quality and reliability of supply. Further, Australian industry has claimed that some supply agreements include clauses that make it vulnerable to lower import prices.

Glencore submitted[156] that 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 and those contracts have now been awarded. It claimed that it is expected therefore that there will be fewer opportunities for market entry and therefore limited room for imports from Russia. The Commission notes that the Australian industry applicants advised that an increasing number of its current contracts are coming up for re-tender in the next five years as the contract terms end. As contracts in this industry are typically 2 to 5 years in length, contracts will be renegotiated in the next 5 years.

The Commission further notes that the importers that consistently imported Russian ammonium nitrate for three years consecutively in the analysis period did so in low volumes and ceased importing in 2018.

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[154] https://www.eurochemgroup.com/ (home page), https://www.acron.ru/en/ (home page), URALCHEM: 72% of its export revenue was from the mineral fertiliser market (2015 Annual Report, page 22, https://www.uralchem.com/upload/iblock/5c2/annualreport2015.pdf).

[155] Ammonium Nitrate Russian Market Outlook 2021, Merchant Research and Consulting Ltd.

[156] EPR 565, document number 5.

The Commission has also considered the impact of Russian export prices on new supply agreements or those being renegotiated in upcoming years.

As stated in section 7.7.1.1 of this report, the Commission found that in the inquiry period, the estimated Russian landed price sat below other countries that exported to Australia. As such, the Commission considers it is reasonable to assume that these prices may affect contract negotiations going forward.

However, as also noted in section 7.7.1.1 of this report, there were limitations with this analysis. In the context of contract negotiations, the Commission also considers that the ability of Russian exporters to service large ongoing contracts in the Australian market will necessarily be limited by its high capacity utilisation. As outlined in section 7.6 of this report, the Commission considered that the information before it only demonstrated low volumes of ammonium nitrate being exported to Australian in the future. Accordingly, to service large ongoing contracts in Australia, Russian ammonium nitrate producers would need to shift LDAN supply from existing contracts to Australian contracts, where it would compete with domestic producers with long established relationships with customers and the benefits of manufacturing plants closer to mines.

Due to these limitations the Commission considers the impact of Russian pricing on contract negotiations would be minimal and that, instead, there would be a greater impact on spot sales.

In response to SEF 565, Dyno Nobel[157] QNP[158] and CSBP[159] submitted that spot pricing from Russia has a significant impact on long term contracts and that the Commission was incorrect in asserting that there will be a minimal impact on volumes and would not lead to reduced Australian industry pricing.

Dyno Nobel estimated its weighted average contract tenure and the amount of contracts each year on average renegotiated.[160] Dyno Nobel further questioned the categorising of these trades as spot sales.[161] Dyno Nobel claimed that these are not truly made on a spot basis but that they are facilitated by explosives companies in a bid to reduce demand for locally produced ammonium nitrate, thereby putting downward pressure on locally produced goods.[162]

Dyno Nobel[163] also submitted that the agreements do not extend to all five members of the Australian industry. Dyno Nobel further submitted that any agreements in place would be unlikely to prevent Russian producers exporting to the Australian market, particularly because of present and future spare capacity.[164]

Considering the Commission's finding that the estimated Russian landed price was found to be the lowest among countries exporting ammonium nitrate to Australia, QNP[165] referred to

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[157] EPR 565, document number 37, page 3.

[158] EPR 565, document number 38, page 3.

[159] EPR 565, document number 40, pages 3 to 5.

[160] EPR 565, document number 37, page 3.

[161] EPR 565, document number 37, page 4.

[162] Ibid.

[163] EPR 565, document number 37, pages 2 to 3.

[164] EPR 565, document number 37, pages 2 to 3.

[165] EPR 565, document number 38, pages 2 to 3.

the Commission's findings in Investigation 473. In this investigation the Commission found that low import parity pricing impacted specific ongoing contract negotiations resulting in material injury to the Australian industry.[166] QNP also offered to provide commercially sensitive information concerning pricing information to support its submissions.[167]

Based on its claims that import pricing has significantly impacted its volume and pricing, QNP submits that in the absence of measures the landed import prices of Russia would impact on forward contract prices and volumes, resulting in a recurrence of material injury.[168]

Orica Australia's submissions were consistent with Dyno Nobel and QNP.[169] Orica Australia provided further analysis concerning two significant contracts. The Commission's assessment of these contracts is contained in **Confidential Appendices 4** and **5**.

CSBP[170] submitted that the conclusions of SEF 565 conflict with the conclusions in Investigation 473, in which the Commissioner was satisfied that imports at dumped prices with a relatively small share of the Australian market can have a significant, injurious impact on negotiations in long-term contracts.[171] CSBP submitted that even if Russian exports were for spot sales, these sales inform import parity pricing which are then used in negotiations. Consistent with the findings in Investigation 473,[172] and following review of confidential submissions provided in response to SEF 565, the Commission accepts that low spot prices may impact import parity pricing, and consequently contract negotiations.

However, in contrast to Investigation 473,[173] in this inquiry the Commission has found that volumes of ammonium nitrate that would likely be exported to Australia would remain low.

Further, in respect to contract negotiations, in Investigation 473 the Commission assessed specific examples of contract negotiations being impacted by dumped prices that in turn reduced import parity pricing such that it caused material injury to the Australian industry.[174] In contrast, in this inquiry, the Commission has not been provided with evidence of this kind.

In respect of the examples provided by Orica Australia, the Commission accepts that low priced imports will have some price effect but considers the degree of future injury claimed to be arising from both these contracts is contingent on several assumptions that would need to be realised for the imports to be injurious to a material degree. The Commission's full assessment is set out in **Confidential Appendices 4** and **5.**

The Commission also notes that CSBP has not provided information about specific contracts that are due to be negotiated following the expiry on a year on year basis.

Overall, the Commission accepts that the expiration of the measures applying to ammonium nitrate exported to Australia from Russia would likely impact spot sales.

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[166] Ibid, page 3.

[167] Ibid.

[168] Ibid.

[169] EPR 565, document number 39.

[170] EPR 565, document number 40, pages 1 and 3 to 5.

[171] Ibid.

[172] EPR 473, document number 65, pages 70 to 82

[173] EPR 473, document number 65, section 10.3

[174] EPR 473, document number 65, section 9.2.1

However, due to the minimal volumes of exports likely to be exported to Australia, the Commission is not satisfied on the evidence before it that any impact would be material in degree. Further information concerning the Commission's findings concerning existing and future supply agreements in the Australian Market is in **Confidential Attachment 7 – Other Confidential Information**.

7.7.2 Volume injury

The Manual provides that the inquiry may gather facts relevant to whether the expiration of the measures is likely to lead to a continuation or recurrence of material injury to the Australian industry, such as reduced sales volumes and reduced market share.[175]

The MED of the GOR submitted[176] that exports of ammonium nitrate from Russia could not have any sufficient influence on the Australian market, as it accounts for an insignificant share of the "Australian visible consumption". It further claimed that the applicants did not provide any clear evidence of material injury to the domestic industry from Russian exports. As seen in Figure 6 in section 5.4.1 of this report, Australian industry volumes have trended up between 2016 and 2020. Figure 7 shows that there has been only a minimal impact on market share despite an increase in exports from China, Sweden and Thailand (the countries the subject of Investigation 473). The minimal impact on volumes is due to the majority of sales volumes in this industry being in accordance with fixed-term contracts (refer section 4.3.2 of this report).

Glencore[177] prior to SEF 565 submitted that a significant portion of imports had been made by Australian industry and that imports from all sources had remained relatively stable. Glencore further claimed that imports were limited by both geography and laws that limited the volume and locations into which ammonium nitrate can be imported.

In Investigation 473, it was found that imports from the countries the subject of that investigation impacted contract negotiations and in two instances the Australian industry lost volumes that were subsequently supplied by imports.[178]

As outlined in section 7.7.2 of this report, in the course of this inquiry, no evidence was provided to demonstrate that Russian ammonium nitrate currently or is likely to in the future be in competition with the Australian industry for specific contracts that will be due for renegotiation in upcoming years. As outlined in section 7.6.2 of this report, the Commission has also found that Russian producers are at maximum capacity utilisation for the production of LDAN. Overall the Commission found that the export volumes from Russia are expected to remain low.

Lastly, as outlined in section 7.6.2 of this report, despite some importers engaging in 'country-hopping' in response to anti-dumping measures, it has not been at the expense of Australian industry market share.

For these reasons, the Commission considers that that the expiration of the measures would not be likely to lead to reduced Australian industry volumes.

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[175] The Manual 2018, pages 175 to 176.

[176] EPR 565, document number 3.

[177] EPR 565, document number 30

[178] EPR 473, document number 65.

7.7.3 Profit and Profitability Injury

The Australian industry's profitability is based on the margin between its sales revenues and its costs.

Australian industry applicants have experienced a narrowing of margins between unit selling prices and unit CTMS, as outlined in section 5.5.1 of this report. However, as sales revenue is based on volumes and prices as set out in fixed-term contracts during the period, the Commission considers Australian industry reduced profitability is unlikely to have been influenced by Russian exports in the 2016 to 2020 period.

With respect to a forward looking assessment, the Commission considers that ongoing profits and profitability would be affected if future Russian exports influence Australian industry's prices and volumes. As stated in the above sections 7.7.1 to 7.7.2 of this report, the Commission considers that any effect of Russian exports on price would not likely be material in degree and is not likely to affect its volumes and market share.

For these reasons, the Commission is not satisfied that the expiration of the measures would likely impact Australian industry profits and profitability to a material degree.

7.7.4 Conclusion – is material injury likely to continue or recur?

As outlined above, the Commission is not satisfied that the expiration of measures would be likely to lead to a continuation of recurrence of material injury that the anti-dumping measure is intended to prevent.

Specifically, the Commission is satisfied that the expiration of the measures would likely result in minimal volumes of Russian ammonium nitrate being exported to Australia and that the estimated landed price of Russian ammonium nitrate may be lower than other participants in the market. The Commission considers that the impact of the low priced imports would likely affect pricing of spot sales, which account for up to 5 per cent of the ammonium nitrate market in Australia. The Commission also accepts that low-priced imports would have some price effect on the contract examples provided by Orica Australia.

However, due to the low volumes of goods likely to be exported, insufficient positive evidence before it, and the speculative nature regarding the degree of impact of the low priced-inputs, the Commission is not satisfied that it is *likely* that any injury to Australian industry would be material in degree. The Commission notes that the estimated Russian landed price calculation also contained many limitations and is also not satisfied that it is likely any injury would be attributable to dumping for the reasons outlined in section 7.5 of this report.

7.8 Conclusion

The Commission accepts that, should the measures be allowed to expire, it is possible for Russian ammonium nitrate to be exported to Australia in the future and materially injure Australian industry. However, the Commission is not satisfied on the evidence before it that this is *likely*.

For the reasons outlined above, the Commission is not satisfied that expiration of the measures would likely lead to any exports of Russian ammonium nitrate being exported to Australia at dumped prices.

The Commission is also not satisfied that that the expiration of the measures would be likely lead to injury to Australian to a material degree. In any case, the Commission is not satisfied any injury suffered by the Australian industry would likely be due to dumping.

As a result, the Commissioner is not satisfied that the expiration of the measures would lead, or would be likely be 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.

8 RECOMMENDATIONS

On the basis of the reasons contained in this report, and in accordance with section 269ZHF(2), the Commissioner is not satisfied that the expiration of the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

As a result, pursuant to section 269ZHF(1)(a)(iv), the Commissioner recommends that the notice expire on the specified day, being 24 May 2021.

The Commissioner further recommends the Minister declare pursuant to section 269ZHG(1)(a) that he has decided not to secure the continuation of the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia with effect from 25 May 2021. The dumping duty notice would therefore expire on 24 May 2021.

The Commissioner recommends that the Minister be satisfied that:

- pursuant to section 269TAB(3), sufficient information has not been furnished, or is not available, to enable the export price of the goods exported to Australia from Russia by JSC Novomoskovsky Azot (NAK Azot), JSC Nevinnomyssky Azot (Nevinka), and the category of 'uncooperative and all other exporters' to be determined under subsection 269TAB(1); and
- pursuant to section 269TAC(6), sufficient information has not been furnished, or is not available, to enable the normal value of the goods exported to Australia from Russia by the category of 'uncooperative and all other exporters' to be ascertained under the preceding subsections of section 269TAC (other than subsection 269TAC(5D)).

The Commissioner recommends that the Minister determine that:

- pursuant to section 269TAB(3), having regard to all relevant information, the export price of the goods exported to Australia from Russia by NAK Azot exported during the inquiry period as set out in chapter 6 and Confidential Appendix 1 of this report;
- pursuant to section 269TAB(3), having regard to all relevant information, the export price of the goods exported to Australia from Russia by Nevinka exported during the inquiry period as set out in chapter 6 and Confidential Appendix 2 of this report;
- pursuant to section 269TAB(3), having regard to all relevant information, the export price of the goods exported to Australia from Russia by the category of 'uncooperative and all other exporters' exported during the inquiry period as set out in chapter 6 and Confidential Appendix 3 of this report;
- pursuant to section 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Russia in sales that are arms length transactions by NAK Azot, the normal value of ammonium nitrate exported to Australia from Russia is the price paid or payable for like goods as set out in Chapter 6 and Confidential Appendix 1 of this report;
- pursuant to section 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Russia in sales that are arms length transactions by Nevinka, the normal value of ammonium nitrate exported to Australia from Russia is the price paid or payable for like goods as set out in Chapter 6 and Confidential Appendix 2 of this report;

- pursuant to section 269TAC(6), having regard to all relevant information, the normal value for the category of “uncooperative and all other exporters” is as set out in Chapter 6 and Confidential Appendix 3 of this report; and

pursuant to sections 269TACB(1) and 269TACB(2), dumping margins for NAK Azot, Nevinka, and for the category of “uncooperative and all other exporters”, are calculated by comparing the weighted average export prices over the whole of the inquiry period with the weighted average of corresponding normal values over the whole of that period. The Commissioner recommends that the Minister direct that:

- pursuant to section 269TAC(8), adjustments be made to the price paid or payable for like goods, where the normal value has been calculated under section 269TAC(1) for NAK Azot and Nevinka, so that the differences between that price and the export price would not affect its comparison, as set out in Tables 11 and 12 of this report.

9 APPENDICES AND ATTACHMENTS

Non Confidential Appendix A	List of submissions to Continuation Inquiry 565
Non Confidential Appendix B	Market Situation Assessment
Non Confidential Appendix C	Benchmark Selection and Adjustments
Confidential Appendix 1	Calculations for inquiry period of export prices, normal, values and dumping margins for NAK Azot
Confidential Appendix 2	Calculations for inquiry period of export prices, normal, values and dumping margins for Nevinka
Confidential Appendix 3	Calculations for inquiry period of export prices, normal values and dumping margins for uncooperative exporters
Confidential Appendix 4	Confidential Appendix
Confidential Appendix 5	Confidential Appendix
Confidential Appendix 6	Confidential Appendix
Confidential Appendix 7	Confidential Appendix
Confidential Attachment 1	Australian market analysis
Confidential Attachment 2	Australian market channel analysis
Confidential Attachment 3	Pricing negotiations
Confidential Attachment 4	Economic condition of Australian industry
Confidential Attachment 5	Import landed price analysis
Confidential Attachment 6	Import data analysis
Confidential Attachment 7	Other confidential information
Confidential Attachment 8	Merchant report
Confidential Attachment 9	Railway freight cost assessment
Confidential Attachment 10	Gas price comparison
Confidential Attachment 11	Benchmark assessment and calculations
Confidential Attachment 12	Russian AN capacity data

APPENDIX A — LIST OF SUBMISSIONS

Date placed on EPR	Interested party	EPR document number
29 Sep 2020	Government of Russia (GOR)	3
8 Oct 2020	Glencore Coal Assets Australia Pty Ltd and Mount Isa Mines (Glencore)	5
21 Jan 2021	CSBP, Orica Australia and QNP, as joint applicants	17
8 Feb 2021	GOR	18
8 Feb 2021	Glencore	20
9 Feb 2021	JSC Novomoskovsky Azot and JSC Nevinnomyssky Azot (collectively referred to as the EuroChem Group)	21
11 Feb 2021	EuroChem Group	23
19 Feb 2021	CSBP, Orica Australia and QNP, as joint applicants	25
19 Feb 2021	CSBP, Orica Australia and QNP, as joint applicants	26
19 Feb 2021	CSBP, Orica Australia and QNP, as joint applicants	27
1 Mar 2021	EuroChem Group	29
1 Mar 2021	Glencore	30
25 March 2021	GOR	35
26 March 2021	Glencore	36
26 March 2021	Dyno Nobel Asia Pacific Pty Ltd (Dyno Nobel)	37
26 March 2021	QNP	38
26 March 2021	Orica Australia	39
26 March 2021	CSBP	40
30 March 2021	EuroChem Group	41
30 March 2021	Orica Australia	42
31 March 2021	Orica Australia	43
1 April 2021	EuroChem Group	45
6 April 2021	Orica Australia	46
7 April 2021	Glencore	47
8 April 2021	Glencore	48

APPENDIX B — MARKET SITUATION ASSESSMENT

B 1 Finding

The Commission is satisfied that there is a situation in the Russian domestic market for ammonium nitrate, pursuant to section 269TAC(2)(a)(ii).

B 2 Background

B 2.1 Prior findings in original investigation and continuation inquiries

The original 2001 investigation and the subsequent continuation inquires in 2006 and 2011 found Russia to be an economy in transition. Consequently, section 269TAC(5D) was used to determine the normal values. Following the 2011 continuation inquiry findings, Russia acceded to the WTO and was subsequently recognised by Australia as a market economy.

In their joint application for the 2016 continuation inquiry, Orica Australia and CSBP claimed that the price of natural gas, the chief raw material used in the manufacture of ammonia and nitric acid for the production of ammonium nitrate, was regulated by the GOR, resulting in the market selling prices for ammonium nitrate being artificially low. The applicants claimed that a particular situation in the market existed within Russia which rendered domestic sales unsuitable for determining the normal value of ammonium nitrate under section 269TAC(1).

In the report for Continuation Inquiry 312, the Commissioner found that there was a situation in the market in Russia such that sales of ammonium nitrate in Russia were not suitable for use in determining the normal value of the goods under section 269TAC(1). The Commission found that the GOR exerted a substantial influence on the Russian natural gas market through OAO Gazprom (Gazprom), a state-owned enterprise with an exclusive licence to export gas, monopoly ownership of and provision of access to gas pipeline infrastructure and which was subject to substantial price controls (which also heavily influenced the prices obtained by independent, unregulated suppliers). This influence resulted in Russian domestic gas prices being substantially less than what would be achieved in a competitive market.

REP 312 also made certain findings in relation to an arrangement between Russian ammonium nitrate producers where pricing decisions were made with reference to a price established by the All-Russian Association of Fertiliser Manufacturers (the ARAFM).

B 2.2 Approach to assessment

B 2.2.1 Legislation and Policy Framework

Section 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the WTO *Anti-Dumping Agreement*:

> 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 [*footnote omitted*], 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.

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must also consider whether, because of the situation in the Russian market, sales of ammonium nitrate are not suitable for determining a price under section 269TAC(1). If a market situation exists in a country such that domestic sales are not suitable for comparison with export sales, normal values may instead be constructed under section 269TAC(2)(c) or determined by reference to prices from a third country under section 269TAC(2)(d).

This appendix sets out the Commission's assessment of whether a particular market situation existed in the Russian ammonium nitrate market during the inquiry period.[179]

The Act does not prescribe what is required to reach a finding of a market situation. A market situation will arise when there is some factor or factors impacting the relevant market in the country of export generally. When considering whether a market situation exists, the Commission's assessment generally involves consideration of the existence of government influence on prices or input costs.

Such government influence could come from any level of government.

In assessing whether a market situation exists due to government influence, the Commission will assess whether government involvement in the domestic market has materially distorted market conditions.

The Manual provides further guidance on the circumstances in which the Commission will find that a market situation exists.[180]

B 2.2.2 Submissions received in response to the Commission's approach to Particular Market Situation assessments

Glencore submitted that a particular market situation can no longer be maintained because of the changing circumstances in the Russian market, and the changed legal conditions concerning the mandatory use of costs in the country of export.[181] Glencore also contends that there has been a seismic change in the cost and availability of natural gas in international markets over the past ten years.[182]

The GOR submitted[183], in summary, that:

- WTO Appellate Body decisions had established that, dumping was the result of the pricing behaviour of individual exporters or foreign producers of the product under consideration;[184]
- the applicants' approach to using a surrogate gas price in their constructed normal value in their application was inconsistent with WTO Dispute Panel and Appellate Body findings. This resulted in them reaching an invalid conclusion in their application;

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[179] The Commission's assessment of proper comparison is set out in respect of each exporter in chapter 6 of this report.

[180] The Manual, page 36.

[181] EPR 565, document number 5, page 3.

[182] EPR 565, document number 5, page 5. The Commission's assessment of a benchmark is contained in Appendix C.

[183] EPR 565, document number 3. The GOR also raised similar concerns in a further submission. See document number 18.

[184] The GOR referenced the findings in US – Zeroing (Japan), WT/DS322/AB/R, US – Zeroing (EC), WT/DS294/AB/R, US – Stainless Steel (Mexico), WT/DS344/AB/R and EU – Biodiesel (Argentina),WT/DS473/AB/R.

- cost adjustments had been found to be inconsistent with the agreement in WTO Dispute Panel and Appellate body findings in *European Union — Anti-Dumping Measures on Biodiesel from Argentina* and *Ukraine — Anti-Dumping Measures on Ammonium Nitrate;*
- in the recent WTO Panel report *European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint)* the cost adjustment methodology applied by the European Union was found to be inconsistent with Articles 2.2 and 2.2.1.1 of the WTO Anti-Dumping Agreement; and
- any conclusions reached that dumping was likely to reoccur would be incorrect if based on costs of production calculated inconsistently with WTO rules.

The Commission considers the approach taken in this continuation inquiry is both consistent with domestic legislation, the Customs Act, and Australia's obligations under the WTO Anti-Dumping Agreement and the WTO Panel's interpretation of these obligations as set out in the WTO Panel Report DS 529.

B 2.3 Information relied upon to undertake the Commission's assessment

In undertaking this assessment, the Commission considered the following:

- the previous market situation assessment undertaken by the Commission in Inquiry 312;[185]
- the application for the current continuation inquiry and Australian industry's responses to the supplementary questionnaire;[186]
- responses to the exporter questionnaire and supplementary questionnaires by cooperating exporters;[187]
- information provided in submissions relevant to the Commission's particular market situation assessment;[188] and
- research, including information obtained from departmental resources and third party information providers. These sources are specified in the Commission's analysis below.

B 2.4 The applicants' claims in their application for Continuation Inquiry 565

The applicants claimed that the particular market situation for ammonium nitrate sold in Russia continued to exist. In support of their claim the applicants referenced the findings in REP 312 and submitted that:

- the applicable Federal laws concerning gas supply in Russia identified in REP 312 continued to apply in 2020;
- Gazprom accounted for approximately 72 per cent of gas sales in Russia – 48 per cent of its own gas and 24 per cent of gas from other domestic producers. Other independent producers accounted for the remaining 28 per cent of gas sales, however, these sales are transported through Gazprom's monopoly gas pipelines; and

[185] EPR 312, document number 28 (REP 312).

[186] EPR 565, document number 1.

[187] EPR 565, document numbers 6, 7, 9 and 10.

[188] EPR 565, document numbers 3, 5, 18, 21, 25, 27, 29, 30, 35, 36, 39 and 40.

- the disparity between Gazprom's domestic and export gas prices continued in 2019, noting a disparity in the average pricing between the price of gas sold domestically within Russia to gas exported to Europe, other countries and former Soviet Union (FSU) countries.

The applicants concluded that the gas sold by Gazprom domestically in 2019 was approximately 30 per cent lower than the prices for gas sold outside of Russia and the FSU. They submitted that the artificially low prices continued to influence the domestic selling prices for ammonium nitrate and, consequently, a particular market situation continued to apply for ammonium nitrate sold in Russia. In support of their application they provided a copy of Gazprom's annual report for the year ended 31 December 2019.

The applicants also provided further information in relation to their particular market situation allegations in their supplementary questionnaire responses. Australian Industry's submission of 17 February 2021 also contested EuroChem Group's claims that the *EuroChem – Brattle Report* evidenced that gas prices in Russia were determined on a competitive basis.[189] Australian industry also submitted that the GOR had not provided information regarding any changes of circumstances which would alter the Commission's earlier findings.[190]

Subsequent to the initiation of this inquiry, Australian industry also raised allegations that the GOR owned the Russian railway infrastructure, subsidised some rail freight and set all railway freight tariffs.[191] They alleged that this resulted in distorted low freight costs in Russia. The Commission has considered Australian industry's railway freight allegations in this report.

Australian industry also made allegations concerning the differing environmental regulatory standards between Australia and Russia. It is noted that beyond making the assertion, Australian industry provided a single example of Russian environmental damage relating to potash mines and sinkholes. Based on the limited information provided by Australian industry, the Commission considers that their concerns regarding differing environmental standards is not relevant to the Commission's particular market situation assessment.

B 2.5 Response to exporter questionnaires

Both NAK Azot and Nevinka provided responses to the Commission's exporter and supplementary questionnaires, which included sections relevant to the Commission's particular market situation assessment. This information was considered during the Commission's enquiries.

B 2.6 Response to GOR questionnaires

The Commission invited the GOR to complete a GOR questionnaire and a supplementary GOR questionnaire. The GOR did not complete either questionnaire. The GOR in its first submission queried the relevancy of the GOR questionnaire.[192] In the absence of

[189] EPR 565, document number 27.

[190] EPR 565, document number 25.

[191] EPR 565, document number 14.

[192] See section 3.3.4 of this report for the Commission's consideration of GOR concerns regarding the relevancy of the questionnaire.

responses to either of the questionnaires, the Commission has relied on all other available information in undertaking its assessment of the market situation allegations.

B 2.7 Submissions received in relation to the particular market situation

Submissions were received from the GOR, EuroChem Group, Australian industry and Glencore which canvassed matters relevant to the particular market situation analysis.[193] These submissions have been considered and addressed in this report.

B 3 Assessment of particular market situation

The Commission's assessment of the applicants' particular market situation allegations has separately canvassed the following matters:

- alleged pricing arrangements between Russian ammonium nitrate producers;
- railway freight costs, including government ownership of railways, freight tariff controls and the subsidisation of railway freight; and
- government influence on gas prices.

B 3.1 Pricing arrangements between Russian ammonium nitrate producers

In Inquiry 312 it was found that there was an arrangement between Russian ammonium nitrate producers whereby pricing decisions were made with reference to a price established by the ARAFM. This was based on information provided by the cooperating exporter in that inquiry, JSC Kemerovo "Azot".[194]

Glencore submitted that it had been advised that prices in the Russian domestic market are currently established independently by individual producers and that there is no price coordination between producers.[195]

The Commission queried the existence of such a pricing arrangement with the cooperating exporters in this inquiry. NAK Azot and Nevinka denied that such an arrangement had ever existed. They advised that it was unclear to them why JSC Kemerovo "Azot" would have made such a statement in 2015. The exporters advised that any such arrangement would be illegal under Russia's anti-monopoly regulations. These regulations prevented pricing coordination between market participants. They provided a copy of the relevant regulations (Federal Law No. 135-FZ of July 26, 2006 on Protection of Competition).

They also advised that, as members of ARAFM, they had not heard of any such pricing arrangements being made between members and that this was not a function of ARAFM. They advised that, broadly, the function of ARAFM was limited to the role of advocating for the industry on government policy and conducting market research that was of benefit to the industry. The exporters provided the Commission with a link to ARAFM's website which detailed the functions of the association. The Commission's review of this website did not identify any information to indicate that ARAFM was involved in setting industry prices.

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[193] EPR 565, document numbers 3, 5, 18, 21, 25, 27, 29, 30, 35, 36, 39 and 40.

[194] See REP 312 (EPR 312, document number 28) and JSC Kemerovo "Azot" verification report (EPR 312, document number 25).

[195] EPR 565, document number 5.

Based on the information provided by the cooperating exporters in this inquiry, the Commission is satisfied that the pricing arrangement identified in Inquiry 312 no longer exists.

B 3.2 Government influence on Railway freight costs

During a briefing provided to the Commission by Australian industry in December 2020, it was alleged that the GOR owned Russian railway infrastructure, subsidised some rail freight and set all railway freight tariffs in Russia. They claimed that this resulted in low and/or distorted freight costs in Russia.[196] In support of their concerns they stated that the subsidisation of the railway freight had been acknowledged by the WTO. They also referenced findings in the European Commission's '*Staff Working Document On Significant Distortions In The Economy Of The Russian Federation For The Purposes Of Trade Defence Investigations'* (the EC Russia Working Document*).*[197]

To demonstrate the impact of these government influences on railway freight costs, Australian industry referenced a reported Russian freight rate obtained from a market intelligence firm. They then compared this freight rate to an Australian long distance freight rate. This comparison demonstrated that the Australian freight rate was materially higher than the Russian freight rate.

Given the late notification of this allegation in regard to Russian freight costs, the Commission did not have an opportunity to seek information from either the GOR or Russian exporters on Russian railway freight costs in the first questionnaire or the supplementary questionnaire.

To assess Australian industry's allegations the Commission assessed both the materiality of railway freight costs to Russian producers and benchmarked the verified actual freight costs against a relevant benchmark.

Analysis of the cost data provided by the cooperating exporters identified that railway freight costs are a material cost but not a significant cost incurred in the manufacturing and selling of ammonium nitrate. Freight costs are more relevant to the freight of the finished goods to end customers than the production of ammonium nitrate.

Based on evidence obtained during the verification of NAK Azot's costs, the Commission was able to calculate a verified freight rate that was both relevant to the goods and the inquiry period. For these reasons the Commission considers that this rate is preferable to use than the Russian freight rate provided by Australian industry.

To assess any impact of alleged government influence, the Commission considers that Australian freight costs are not a preferable benchmark. It is noted that compared to Russia, Australia's rail sector is relatively small for the amount of freight transported. For instance, in 2019 Russia transported 2,602,493 million tonnes-km, whereas Australia transported 413,490 million tonnes-km in 2016.[198] The Commission considers that Europe is an appropriate region from which to derive a benchmark, as it is more likely to have similar climatic and geographical conditions to Russia than compared to Australia and Russia.

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[196] EPR 565, document number 14.

[197] See https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf.

[198] Sourced from https://data.worldbank.org/indicator/IS.RRS.GOOD.MT.K6?locations=RU, last accessed 22 February 2021. Most recent statistics for Australia are 2016 and for Russia are 2019.

In order to assess the comparative railway freight transport costs, the Commission sourced revenue and volume data on the UIC-Stats website for the International Union of Railways.[199] From this data the Commission was able to derive a price per metric tonne-kilometre for a range of countries in Europe. Compared to the freight rate paid by NAK Azot, multiple countries within Europe had similar freight railway costs to that of NAK Azot's freight costs.[200] The Commission's assessment of freight railway costs is contained in **Confidential Attachment 9 - Railway freight cost assessment**.

The Commission is not satisfied based on the evidence presented by Australia industry that any alleged government influence on railway freight costs has resulted in distorted or lower freight costs in Russia

B 3.3 Government influence on gas prices

B 3.3.1 Russian natural gas industry – Domestic market

Russia remains one of the leading natural gas producers, contributing 17 per cent to the world's combined gas output in 2019.[201]

A range of producers and suppliers of natural gas operate in the Russian domestic gas market.[202] The predominant operator in the Russian domestic market is Gazprom, a government majority-owned entity.[203] The Commission understands that the next largest range of companies supplying and/or producing gas in the Russian domestic market are:

- PAO Novatek (Novatek);
- Rosneft;
- Lukoil; and
- Surgutneftegaz.

Novatek is privately-owned. Lukoil is a former state-owned enterprise which was privatised in 1993. Surgutneftegaz was also created in 1993 by merging previously state-owned companies and is today a fully privately-owned company[204]. The Commission understands that Rosneft's major shareholder is Rosneftegaz JSC, which is fully owned by the Russian government.[205]

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[199] See https://uic.org/freight/.

[200] Confidential Attachment 9 – Railway freight cost assessment.

[201] BP Statistical Review of World Energy - 2020 - 69th edition, available at https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2020-natural-gas.pdf.

[202] The Commission sought information from the GOR regard to manufacturers/traders of ammonium nitrate and upstream raw materials (natural gas, nitric acid) in Russia. The GOR declined to complete the questionnaire. The Commission has consequently used information available to assess suppliers and producers of natural gas in Russia.

[203] See https://www.gazprom.com/investors/stock/, accessed 13 January 2021, Gazprom's website specified that *"Russian Government controls over 50 per cent of the Company's shares"* and see page 206 of PJSC Gazprom Annual Report 2019*: "As at 31 December 2018 and 31 December 2019, the cumulative share in PJSC Gazprom directly or indirectly controlled by the Russian Federation totals 50.23 per cent and is owned through the full ownership of AO ROSNEFTEGAZ which also holds a 74.55 per cent stake in AO Rosgazifikatsiya".*

[204] European Commission staff working document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, page 208.

[205] See https://www.rosneft.com/about/Rosneft_today/, accessed 13 January 2021, "*The Company is included in the list of Russia's strategic companies. Its main shareholder (40.4 per cent shares) is ROSNEFTEGAZ JSC, which is 100 per cent owned by the state, 19.75 per cent of shares are owned by BP, 18.93 per cent of shares are owned by QH Oil*

The applicants in their application stated that Gazprom accounted for approximately 72 per cent of gas sales in Russia – 48 per cent of its own gas and 24 per cent of gas from other domestic producers. They stated that the other independent producers accounted for the remaining 28 per cent of gas sales.

Analysis completed by the European Commission identified that between 2014 and 2018 Gazprom was the predominant producer of gas, accounting for 74 per cent of total production. The other previously mentioned companies accounted for approximately 24 per cent of the total production.[206] The European Commission's assessment is reflected in Table 13 below.

Producer	2014	2015	2016	2017	2018
Gazprom	75.3%	71.8%	71.3%	74.3%	74.5%
Novatek	10.5%	11.6%	11.5%	10.0%	10.3%
Rosneft	9.6%	10.7%	11.5%	10.7%	10.0%
Lukoil	3.4%	3.5%	3.4%	3.6%	4.2%
Surgutneftegaz	0.0%	0.8%	0.7%	0.0%	0.0%
Other (not specified)	1.2%	1.6%	1.6%	1.4%	1.0%

Table 13: Natural gas production of the largest Russian companies (% shares)

Gazprom's 2019 annual report stated that Gazprom accounted for 68 per cent of Russia's natural gas production during 2019.[207]

The *EuroChem – Brattle Report* (*EuroChem – Brattle Report*)[208] claimed that, whilst Gazprom remained the dominant supplier in the domestic market, the market had slowly developed into an oligopoly featuring emerging players, including Novatek and Rosneft.[209]

The *EuroChem – Brattle Report* further claimed that *"(b)y 2019, the Gazprom Group's share of the domestic Russian market had fallen just below 50%. The market share of the (independent gas producers) outside of the residential segment, which is almost entirely supplied by Gazprom Group, is even higher – potentially over 60%."*

The *EuroChem – Brattle Report*, in referring to Gazprom's sales of its own gas, appears to be consistent with the applicants' claims. However, it is not entirely clear how accurate their estimate of the private producers 60 per cent share of the non-residential market is given

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Investments LLC, one share is owned by the Russian Federation represented by the Federal Agency for State Property Management".

[206] European Commission staff working document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, page 212.

[207] 2019 Gazprom Annual Report, page 28.

[208] *'The Cost of Russian Gas, A Benchmark Study on Russian Industrial Gas Prices'*, 2 November 2020, The Brattle Group. The report was provided as part of the exporters' response to the Commission's supplementary questionnaire. See EPR 565, document numbers 9 and 10. The report was commissioned by EuroChem Group and prepared by the Brattle Group for the purpose of a countervailing duty investigation by the United States Department of Commerce. EuroChem Group requested the Brattle Group consider three things: a) Whether the prices of Russian independent gas producers ("IGS") can be regarded market prices, not influenced by Gazprom's provision of the majority, or substantial portion of the Russian natural gas market; b. Whether there are world market prices for natural gas that would be available for the Russian fertilizer companies like EuroChem Group; c. Whether Gazprom's prices are set in accordance with market principles. See *EuroChem – Brattle Report*, p. v. EuroChem Group advised that the report was updated for the purposes of this inquiry.

[209] *EuroChem – Brattle Report,* page 5.

their conclusion that it was *"… not possible to determine a precise figure for the industrial segment alone"*.[210]

The Commission also understands that since October 2014 natural gas has been sold on the Saint-Petersburg International Mercantile Exchange (SPIMEX), thereby allowing exchange-based gas trading within the Russian domestic market. The Commission understands that gas sales on SPIMEX are based on unregulated prices and are exclusive of transportation costs.[211] However, the volumes traded directly at the hub only account for around 3 per cent of the total gas consumed in Russia.[212]

The applicants claimed that Gazprom held a pipeline monopoly which private sellers must use for transporting gas. A review of the Gazprom website confirmed that "*Gazprom owns the world's largest gas transmission system, most of which forms part of the Unified Gas Supply System (UGSS) of Russia. The UGSS is a unique engineering complex encompassing gas production, processing, transmission, storage and distribution facilities in European Russia and Western Siberia."*[213] The Gazprom website also identifies that they provide *"… independent companies with non-discriminatory access to its gas pipelines"*.[214]

In regard to the supply participants in the Russian domestic gas market, the Commission's assessment is that:

- Gazprom, which is government majority owned, is the dominate producer in terms of volume in the Russian domestic market and is the largest single supplier to domestic customers in Russia. The GOR also holds an indirect controlling interest in gas producer and supplier Rosneft, which produces about 10 per cent of gas in the Russian market.
- There are a range of privately owned producers and suppliers of natural gas in the Russian domestic market. Whilst it is claimed that they are supplying a growing proportion of non-residential customers, their overall share of the Russian gas market has not grown significantly since 2014.
- A gas hub exchange, SPIMEX, has operated in Russia since 2014, however, this exchange only accounts for about 3 per cent of the gas sold on the Russian domestic market.
- Gazprom holds a pipeline monopoly in Russia which private sellers must use for transporting gas. Private users are provided with non-discriminatory access to this gas pipeline.

B 3.4 Russian natural gas industry – Export markets

The Commission understands that Gazprom holds a government created monopoly on pipeline gas exports.

This monopoly is acknowledged in the *EuroChem – Brattle Report*.[215] The *EC Russia Working Document* also identifies Gazprom's export gas pipeline monopoly for export sales and specifies that Gazprom has dominated the exports of natural gas destined to Europe,

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[210] *EuroChem – Brattle Report,* footnote 17.

[211] REP 312, pages 26 to 27.

[212] EPR 565, document number 10, *EuroChem – Brattle Report*, page v.

[213] See https://www.gazprom.com/about/production/transportation/, last accessed 28 February 2021.

[214] Ibid.

[215] EPR 565, document number 10, *EuroChem – Brattle Report*, page v.

increasing its share of European gas imports from 26 per cent in 2012 to 37 per cent in 2018.[216]

B 3.5 Current government regulation of domestic gas prices and gas supply

Given that the GOR declined to complete the questionnaire or supplementary questionnaire, the Commission has sought to establish the current regulatory framework in Russia by reference to the findings in Inquiry 312 and completing an assessment of available contemporaneous information to determine what, if any, material changes had been made to the regulatory framework.

The final report for Inquiry 312 stated that the GOR had advised the Commission that:

- The Federal Law No. 147-FZ of 17 August 1995 '*On Natural Monopolies'* (as last amended on 21 July 2014) was enacted to enable the GOR to regulate the price of goods and services produced by natural monopolies.
- The Federal Law No. 69-FZ of 31 March 1999 *"On Gas Supply in the Russian Federation"* (as last amended on 30 December 2012) provides the GOR with the authority to establish the principles used in formulating gas prices.
- The Resolution of the Government of the Russian Federation No. 1021 of 29 December 2000 *"On State Regulation of Gas Prices and Gas Transportation Services Tariffs on the Territory of the Russian Federation"* provides guidance on the setting of gas prices and tariffs for the transportation of gas on a cost plus profit basis.
- The regulated prices in the gas sector are only applicable to:
    - the gas produced by Gazprom and its affiliates; and
    - services for the transportation of gas produced by privately owned companies through pipelines owned by Gazprom and its affiliates.
- The Resolution of the Government of the Russian Federation No. 333 of 28 May 2007 established regulated prices for Gazprom, with minimum and maximum price levels for different consumer categories and regions. The right to negotiate and determine gas prices within these minimum and maximum limits is granted to suppliers and buyers. The resolution also introduced measures whereby the domestic gas prices would be increased to align them with international gas prices by 2011.
- The price levels for gas are regularly assessed by the Russian Government Federal Taxation Service, taking into account:
    - recovery of economically justified costs covering gas production, overheads, financing charges, and gas transportation;
    - maintenance and upgrade of extraction and distribution infrastructure;
    - investment in exploration and development of new fields;
    - price regions, which generally match the territory and entities of the Russian Federation, to take into account the location of customers from the gas fields; and
    - recovery of reasonable profits.
- The price for transportation services of gas from non-Gazprom producers through the gas pipe network owned by Gazprom is dependent on the volumes of gas being transported as well as the distance travelled.

[216] EC Russia Working Document, page 214.

The Commission's enquiries have not identified any substantive changes to the regulation of the natural gas prices and supply in the Russian domestic market since Inquiry 312. The Commission's review of the *EC Russia Working Document*, recent Gazprom annual reports and the *EuroChem – Brattle Report* identified that:

- The GOR continues to regulate the gas prices of Gazprom by mandating the tariffs it can charge. These tariffs continue to include minimum and maximum price levels for different consumer categories and regions.[217]
- The tariffs charged for the transport of gas on the gas network continues to be set by the GOR.[218]
- Private producers and suppliers of natural gas continue to not have their prices regulated.[219]
- Whilst Gazprom has a government mandated monopoly on the Russian gas pipeline system, they are obliged to provide non-discriminatory access to the pipeline to privately owned producers and suppliers of gas.[220]
- Gazprom continues to hold a government mandated monopoly on the export of pipeline natural gas. However, it is noted that private producers are now able to export liquefied natural gas. [221]
- The regulated Gazprom tariffs for gas are determined having regard to economic, fiscal and developmental circumstances including (but not limited to):
    - Gazprom's economically justified costs;
    - reasonable rates of return on capital, including providing the profit necessary for their self-financing;
    - satisfying the demand for gas while also balancing the interests of sellers and buyers of gas;
    - taxes and other obligatory payments; and
    - differences in the cost of transportation and supply.[222]

B 3.6 Commission's analysis

Consistent with the findings in Inquiry 312, the Commission considers that the GOR continues to exert significant influence and direct control over the Russian natural gas industry through its price regulation and creation of a mandated Gazprom export monopoly on piped natural gas. As a result, the Commission is satisfied that a market situation exists in Russia in respect of its domestic natural gas industry.

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[217] Gazprom Annual Report, https://www.gazprom.com/f/posts/72/802627/gazprom-annual-report-2019-en.pdf, page 60: *"In Russia, gas is sold and purchased using two different pricing approaches for suppliers, which results in the existence of two gas sales sectors, one with prices fixed by the Government, the other with unregulated prices. Gas produced by PJSC Gazprom's subsidiaries is sold mostly at prices fixed by the Government. In accordance with applicable Russian laws, wholesale prices of gas produced by PJSC Gazprom and its affiliates are subject to regulation. These prices are differentiated between consumer groups (households vs industrial consumers), as well as by price zone, based on the relative distance from the gas production".*

page 115: *In accordance with applicable Russian laws, end consumers buy gas at regulated prices which are differentiated between consumer groups (households vs industrial consumers), as well as by price zone, based on the relative distance from the gas production region to the consumer, region to the consumer.*

[218] EC Russia Working document, pages 256 to 219.

[219] *EuroChem – Brattle Report,* page v.

[220] https://www.gazprom.com/about/production/transportation/, last accessed 1 March 2021.

[221] EC Russia Working document, pages 81 and 217 to 219.

[222] EC Russia Working document, pages 256 to 262.

B 3.6.1 The impact of price regulation on Gazprom prices and profitability

As previously mentioned, gas prices of Gazprom are regulated by the GOR. These regulations include price ceilings and price floors which are adjusted depending on the region of Russia the gas is supplied to and the nature of the customer.

The Commission has reviewed the average pricing specified in Gazprom's annual reports to assess the average weighted pricing between 2015 and 2019, which is reflected in Table 14 below.

Price Description	2015	2016	2017	2018	2019
Domestic weighted average annual price for industrial consumers, (net of VAT), RUB per thousands of cubic meters (mcm)	3,958.10	4,158.10	4,202.30	4,315.40	4,423.70
Domestic weighted average annual price for subsequent resale to households (net of VAT), RUB per mcm	3,253.00	3,422.80	3,512.90	3,640.00	3,734.40
Average selling price gas sales to FSU countries, (including customs duties), RUB per mcm	11,911.00	10,263.10	9,237.00	10,225.90	10,175.90
Average selling price to far overseas countries (including excise tax and customs duties), RUB per mcm	11,670.50	11,783.30	11,670.50	15,499.50	13,613.00

Table 14: Natural gas production of the largest Russian companies (% shares)[223]

Although some of the variance between the domestic and export prices is attributable to higher transport costs and export taxes, it is clear that there has been a significant and consistent discrepancy between Gazprom's domestic and export prices. The Commission also notes that there is a greater level of volatility in the export prices. Whilst some of this fluctuation may be attributable to currency movements, the Commission considers that this lower variability in domestic prices is indicative of the regulated floor and ceiling prices suppressing movements in Gazprom's domestic pricing.

The Commission also analysed Gazprom's audited 2019 financial statements in relation to the sales revenue generated from domestic and export gas sales. After accounting for the cost of gas and transport costs, this analysis indicates that there was a significant difference in the gross profit on export sales compared to domestic sales. It is further noted that export sales achieved a substantially higher gross return on sales revenue. This analysis is reflected in Table 15, below.

	In Russia (RUB '000)	Outside Russia, including far away customers (RUB '000)	To far abroad countries (RUB '000)
Revenue from gas sales:	1,114,253,405	2,196,863,689	1,877,016,277
Less purchase cost of gas, including gas sold	-610,388,812	-676,924,589	-596,888,837
Less gas transportation costs, including gas sold	-446,853,241	-894,172,163	-807,430,672

[223] Information sourced from Gazprom's annual reports for 2019 and 2017.

Estimated gross profit	57,011,352	625,766,937	472,696,768
Gross profit as proportion of Revenue	*5%*	*28%*	*25%*

Table 15: 2019 profitability of Gazprom's domestic and export sales[224]

The Commission considers that the substantial variation in the gross profit of Gazprom's export sales compared to its domestic sales is indicative of both the likely suppression of Gazprom's domestic sales prices and the government mandated Gazprom monopoly on exports of piped natural gas.

The Gazprom price and profitability analysis completed by the Commission only pertains to the period up to the end of 2019 and all exports of natural gas, via pipelines, by Russian producers. At the time of the preparation of this report, Gazprom's audited annual report for 2020 had not been published on its website.[225] Consequently, the Commission was unable to complete the above price and profit analysis for the first six months of 2020. As identified in Appendix C of this report, the German benchmark price selected by the Commission identified that the competitive market prices for natural gas in Russia declined during the inquiry period, including in the first six months of 2020. The Commission considers that this reduction in German gas prices during 2020 is likely to have impacted on the reported export profitability and export pricing for Gazprom. However, given the lack of audited results and the fact that the Germany is only one of the countries to which Gazprom exports, the Commission is unable to reach any substantive conclusion on the impact of the reduction in German gas prices on Gazprom during the first six months of 2020.

To substantiate their claims that Gazprom's prices were set in accordance with market principles, the *EuroChem – Brattle Report* completed an analysis of Gazprom's costs and prices to evidence that Gazprom's prices covered its costs. They submitted that this analysis concluded that the gas prices paid by EuroChem Group producers enabled Gazprom to cover its minimum all-in delivered costs.

Australian industry contested the *EuroChem – Brattle Report* conclusions. Australian industry submitted that the GOR determined pricing for the consumer and industrial sectors and was able to enforce the pricing via its ownership in Gazprom. They contended that the Russian gas industry did not operate free from GOR influence.[226]

Given that the GOR regulatory framework for establishing Gazprom's gas tariffs includes provision for the recovery of costs, maintenance, investment and 'reasonable profits', the Commission considers that the *EuroChem – Brattle Report* conclusion in regard to cost recovery is not necessarily incorrect. However, the Commission considers that the *EuroChem – Brattle Report's* conclusion that this cost recovery supports a finding that Gazprom's prices were set in accordance with market principles is incorrect.

The Commission considers that the discrepancy between its domestic and exports sales in terms of pricing and profitability suggests that Gazprom is not able to engage in profit

[224] Information sourced from Note 14 of the explanatory notes to the balance sheet and the statement of financial results in the statutory financial statements of Gazprom for 2019.

[225] Gazprom's website was last accessed by the Commission for the purpose of this report on 8 April 2020.

[226] EPR 565, document number 27.

maximising behaviour in the Russian domestic market which would be reflective of a competitive market price. It is noted that the 2019 Gazprom Annual Report identifies that it had made multiple representations to the GOR in relation to amending its gas tariffs.[227] This is reflective of the degree of active market intervention by the GOR in setting prices for Gazprom rather than Gazprom, as a profit maximising market participant, being able to set its own prices in accordance with market principles.

B 3.6.2 The impact of price regulation on private suppliers' prices and profitability

As previously mentioned, private natural gas producers, who are not subject to regulated prices, supply approximately 28 per cent the Russian domestic market. The two largest participants in the domestic market after Gazprom are Novatek and Rosneft.

The *EuroChem – Brattle Report* claims that Gazprom's average sales prices have consistently been higher than those of Novatek and Rosneft. Analysis of the gas purchase data provided by the cooperating exporters, which source gas from a variety of sources, would tend to validate this claim. The *EuroChem – Brattle Report* further claims that the private suppliers are exerting competitive pressure on Gazprom with respect to gas prices in Russia and that the prices they receive enable these private suppliers to cover their costs and make a 'reasonable return'.

The Commission has reviewed the annual reports for Novatek and Rosneft. The 2019 annual report for Novatek stated that it was not subject to state regulation of its natural gas prices. However, the company's prices were strongly influenced by the prices established by the government. It further considered that state regulation of gas prices significantly reduced the risk of price volatility on the Russian gas market.[228] Analysis of the Rosnfelt annual reports identified that the Russian regulation of Gazprom prices was considered by them to be a benchmark for the domestic gas market.[229]

To substantiate their claims that prices were set in accordance with market principles, the *EuroChem – Brattle Report* also completed an analysis of the production costs of Novatek.

As identified in REP 312, the successful performance of private gas producers is due to a number of factors. These include freedom from the restrictions of a regulated price, which allows them to charge prices the market will accept. However, in order to be able to compete for volume, the Commission considers that the private suppliers must offer gas supply at or below the 'benchmark' regulated prices of Gazprom. Gazprom has stated that a direct result of this is that independent gas producers offer their gas at lower than the minimum regulated price.

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[227] 2019 Gazprom Annual report, Page 194: *"PJSC Gazprom is engaged in intensive dialogue with government authorities to improve the pricing and tariff policy; objective supporting cases are prepared to inform decision making by "PJSC Gazprom's Board of Directors and page 225: "As part of implementation of the Instruction, the Company continued with efforts aimed at maintaining the status quo in the regulation of PJSC Gazprom's business, resisting regulation of the Company's investment activities (draft law On Amending the Federal Law On Natural Monopolies and Article 29 of the Federal Law On Power Generation), and excluding from the draft Federal Law On the Framework of Government Regulation of Prices (Tariffs) the provisions that would have a negative regulatory effect on the Company's business."*

[228] 2019 Novatek Annual Report 2019, page 67.

[229] Rosnfelt's management's discussion and analysis of financial condition and results of operations for the three months ended December 31, 2020 and September 30, 2020 and for the twelve months ended December 31, 2019 and 2020

Consequently, private producers are able to offer gas to reliable major commercial customers in high-income regions within Russia. This allows them to target the most profitable areas, which often allows them to incur lower transportation costs due to shorter distances travelled. This is also supported by the fact that they supply almost no gas to households[230] whereas Gazprom is required to be the gas supplier of last resort, and consequently it is required to guarantee the supply of gas to all commercial customers (including in less profitable regions in Russia) as well as to households (which are regulated by separate gas prices lower than those applied commercially).

The Commission further notes that, due to Gazprom's export monopoly on piped natural gas, private suppliers and producers are not able to access piped gas export markets where they may be able to achieve higher prices.

The Commission acknowledges that independent producers are able to make profits when selling gas at prices below those of Gazprom. However, the fact that they are able to make a profit on a sale in itself does not evidence that a particular market situation does not exist.

B 3.6.3 The impact of SPIMEX

As noted previously, since 2014 natural gas has been sold on SPIMEX, thereby allowing exchange-based gas trading within the Russian domestic market. The Commission understands that gas sales on SPIMEX are based on unregulated prices and are exclusive of transportation costs. The EuroChem Group contented that gas prices were discovered on and purchased through SPIMEX.[231]

Given that the volumes traded directly at the hub only accounts for around 3 per cent of the total gas consumed in Russia, the Commission considers SPIMAX not to be a significant influence on gas prices in Russia.

B.4 Impact of gas prices on ammonium nitrate prices in Russia

The regulation of prices has resulted in the establishment of an artificial price cap in the Russian domestic market for natural gas which prevents the largest producer and supplier of gas in Russia from pricing above this cap, despite being free to charge higher and more profitable prices for the gas it exports.

Whilst a proportion of the domestic market is supplied by private producers and suppliers, the establishment of a price cap for Gazprom effectively operates as a benchmark or upward price limit in the Russian domestic market which the private producers would be reluctant to exceed. The export ban on piped natural gas by these private producers further exacerbates the pressure to find sales volumes in the domestic market by undercutting the regulated prices offered by Gazprom.

The Commission further notes that gas is the primary raw material used in the production of both ammonia and nitric acid, representing about 75 per cent of the ammonia's production costs and about 10 per cent of nitric acid's production costs. Ammonia and nitric acid are the key inputs into the production of ammonium nitrate. Confidential information provided by

[230] Gas prices to domestic customers are regulated irrespective of the source of the gas.

[231] EPR 565, document number 21.

the cooperating exporters which described the factors influencing their pricing decision also supported the view that the cost to manufacture and the cost of raw materials are considered in pricing decisions.[232]

The Commission considers that:

- the continuing price regulation of gas prices in the domestic market by effectively imposing a price cap on the price of natural gas in Russia;
- the continuing lowered price and gas cost has induced and allowed the ammonium nitrate producers to supply more ammonium nitrate at each possible price point than they otherwise would have; and
- the resultant price of ammonium nitrate during the inquiry period in Russia was the end result of the interactions between those selling, and those buying ammonium nitrate in Russia. The resultant price of ammonium nitrate in Russia in the inquiry period was artificially lower than would have otherwise been and reflected the capped price and cost of gas in Russia that resulted from the programs and policies of the GOR.

B.5 Submissions in response to SEF 565 in regard to the particular market assessment

Submissions were received from the GOR, CSBP, Orica Australia, EuroChem Group and Glencore in response to the Commission's particular market situation assessment in SEF 565.

The submissions from CSBP and Orica Australia concurred with the Commission's particular market situation finding, however, disagreed with aspects of the Commission's determination of the relevant benchmark.[233] The Commission's assessment of CSBP and Orica Australia's submissions in regard to determining the benchmark price are considered in non-confidential Appendix C of this report.

The GOR in in its submission noted that the Commission had relied on the determinations of the WTO Panel in *Australia – Anti-dumping measures on A4 Copy Paper (DS529)*.[234] The GOR advised that at the WTO meeting at which the Panel's report had been adopted they had submitted that the Panel in DS529 had deviated from customary rules of interpretation of public international law and, therefore, its interpretations and reasoning were legally flawed.

The Commission respectfully notes the concerns raised by the GOR in relation to DS529. However, the Commission considers that the findings and the methodology applied in DS529 are consistent with the WTO rules and therefore the Commission considers it is appropriate to consider the decision in this inquiry.

[232] Confidential data contained in EPR 565, document numbers 6 and 7. This information was redacted from the public record version.

[233] EPR 565, document numbers 39 and 40.

[234] EPR 565, document number 35.

Glencore submitted that[235]:

- It did do not understand the Commission's conclusion regarding gas prices in Russia being artificially low where the conclusion was based on a comparison between the gross profit achieved on gas sold in Russia with that achieved on sales outside of Russia. Glencore submitted that Gazprom's export monopoly would enable it to achieve monopoly prices, which tended to be higher than those which would be achieved in a competitive market; and

- It disagreed 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. Glencore submitted that the reasoning presented in SEF 565 did not seem to take into account whether the exporters had regard to gas prices at all in setting their ammonium nitrate price.

The Commission disagrees with Glencore's conclusion that Gazprom is achieving monopoly prices for its exports of piped natural gas to Germany. The monopoly referenced by the Commission is a monopoly on piped gas exported from Russia. The Commission does not consider that Gazprom has a supply monopoly in the German natural gas market. As noted in non-confidential Appendix C, Germany imports natural gas from a variety of counties including Russia, Norway and the Netherlands. Consequently, the Commission disagrees with Glencore's submission that Gazprom is obtaining monopoly prices in the German natural gas market as a result of its monopoly on the export of piped gas from Russia.

The Commission also disagrees with Glencore's submission that there was no evidence that low gas prices would automatically lead to low prices in the domestic market for ammonium nitrate. In its analysis, the Commission' demonstrated that natural gas is the primary raw material used in the manufacture of ammonium nitrate and that the competitive interaction between producers in the domestic market would induce and allow the producers to supply more ammonium nitrate at each possible price point than they otherwise would have in the absence of the distorted gas prices. Confidential information provided by the cooperating exporters which described the factors influencing their pricing decision also supported the view that the cost to manufacture and the cost of raw materials are considered in pricing decisions.[236]

B 5 Conclusion

The Commission considers that the GOR continues to exert significant influence over the Russian natural gas industry through its price regulation and creation of a mandated Gazprom export monopoly on piped natural gas.

Consequently, the Commission is satisfied that there is a market situation in the Russian domestic market for ammonium nitrate.

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[235] EPR 565, document number 36.

[236] Confidential data contained in EPR 565, document numbers 6 and 7. This information was redacted from the public record version.

APPENDIX C — BENCHMARK SELECTION AND ADJUSTMENTS

C 1 Introduction

As outlined in Appendix B, the Commission considers that there was a particular market situation in the Russian ammonium nitrate market during the inquiry period.

The Commission has consequently sought to identify a relevant benchmark that, after making relevant adjustments, would reflect the competitive market prices for natural gas in Russia. This benchmark would then be used to assess the competitive market nature of the Russian exporters' natural gas costs and the impact of those gas costs under the Commission's proper comparison framework.

C 2 Gas benchmark used by the Commission

The Commission has used a benchmark (the gas benchmark) consisting of daily NetConnect Germany (NCG) gas prices at 1 month ahead prices.

The Commission considers that this benchmark, after making relevant adjustments, reflects a competitive market price for natural gas in Russia.

C 3 Assessment of sources

The Commission's preferences for determining a competitive market cost are, in descending order:

i. private domestic prices;
ii. import prices; and
iii. external benchmarks.

C 3.1 Private domestic prices

As specified in Appendix B, whilst a proportion of the domestic market is supplied by private natural gas producers and suppliers, the establishment of a price cap for Gazprom effectively operates as a benchmark or upward price limit in the Russian domestic market which the private producers would be reluctant to exceed. The export ban on piped natural gas by these private producers further exacerbates the pressure to find sales volumes in the domestic market by undercutting the regulated prices offered by Gazprom. The Commission considers that private domestic prices of gas in Russia are affected by GOR influence arising from the particular market situation.

Consequently, the Commission considers that private prices in Russia are unsuitable for establishing a benchmark.

C 3.2 Import prices

Russia is one of the leading natural gas producers in the world, producing 17 per cent of the world's combined gas output in 2019.[237]

[237] BP Statistical Review of World Energy - 2020 - 69th edition, available at https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2020-natural-gas.pdf.

Enquiries made by the Commission have not identified any data for Russian natural gas imports which would enable the Commission to establish a gas benchmark based on the imports of gas into Russia.

C 3.3 External benchmarks

Consistent with the findings in Inquiry 312, the Commission considers that the preferable benchmark to use is a price that reflects the price of Russian natural gas at the German border after adjustments for export and domestic transport costs.

Glencore submitted that there had been a significant change in the cost and availability of natural gas in international markets over the past ten years, driven by the "shale gas revolution".[238] In completing its analysis, Glencore stated that increased gas supplies had caused both a downward and equalising shift in gas prices the world over. The Commission considers gas prices are typically regionally based[239] and that benchmarks within the European region should be used.

The Commission considers that it is preferable to use a German price for the following reasons:

- It is consistent with the approach taken in the last continuation inquiry where, after considering submissions from interested parties, a German price benchmark was used by the Commission.[240]
- The *EuroChem – Brattle Report* identified that the German market was the nearest liquid competitive market to Russia.[241]
- A German price is more likely to reflect a competitive market price given that gas prices in Germany are not subject to the same price controls as in Russia.
- Germany is geographically close to Russia and Russian gas is delivered to Germany via gas pipelines, requiring less adjustment for transport costs and export costs. Relevant information was also readily available to the Commission to identify, calculate and validate these adjustments.
- Whilst Russia is not the sole provider of gas to Germany, it is considered by the Commission to be a significant supplier. During 2018, Russia accounted for "about 40%" of gas imports into Germany.[242] [243]

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[238] EPR 565, document number 5.

[239] This view was also expressed in the *EuroChem – Brattle Report*, see page 11.

[240] In Inquiry 312, the GOR alleged that there is a free market for natural gas in Russia due to the existence of SPIMEX and other non-Gazprom sellers of gas who are not subject to government regulation of prices. The use of non Gazprom and/or SPIMEX prices was not accepted by the Commission for reasons set out in REP 312.

[241] The *EuroChem – Brattle Report* also indicated that they considered that all European hub prices were closely correlated and that results would not differ materially if another hub price was chosen.

[242] Excerpt from BGR Energy Study 2019 – Data and Developments Concerning German and Global Energy Supplies, "For data protection reasons, the Federal Office of Economics has not published any information on the delivery quantities of the individual exporting countries since 2016", page 26.

[243] Excerpt from: https://www.cleanenergywire.org/factsheets/germanys-dependence-imported-fossil-fuels, last accessed 21 February 2021; "*Germany imported 5,419 petajoules (PJ) of natural gas in 2019, according to the Federal Office for Economic Affairs and Export Control (BAFA). This is an increase of 22 per cent over the previous year. The country exported 2,821 PJ in 2019. Due to data privacy regulations, BAFA stopped publishing import volumes by country in 2016. However, the economy ministry says that Russia, Norway and the Netherlands continue to supply "large amounts." In 2015, 35 per cent of gas imports came from Russia, 34 per cent from Norway and 29 per cent from the Netherlands. In July 2018, an economy ministry spokesperson put Russia's share in German natural gas imports at "about 40 per cent."*

- Given that Russian gas is a significant source of gas for Germany, the German prices will reflect the qualities of Russian gas, including calorific values, which would entail less adjustment for differences in the gas supplied from other sources.
- As Russian gas is a significant source of gas for Germany, the price best reflects and incorporates Russia's cost to produce gas.

The Commission notes that no submissions disputing the use of a German benchmark were received in response to SEF 565.

C 3.4 Consideration of relevant German benchmarks available to the Commission

The Commission considered a range of German natural gas prices for the purposes of establishing a benchmark price. The Commission's consideration is outlined below.

The cooperating exporters advised that, whilst their priority is to source the cheapest gas available, their preference would be to enter longer term contracts for the supply of gas. The *EuroChem – Brattle Report* also stated that Russian producers do not generally purchase gas very far in advance and that many European industrial customers, whilst they will enter contracts, these contracts will be based on day ahead or month ahead prices.[244]

In REP 312, the German border price was established from pricing data on the International Monetary Fund (IMF) database. However, it is noted that the IMF ceased reporting this price series in 2017.[245] Consequently, this price series is was not available to the Commission to use for the inquiry period in this case.

In their application, the applicants' provided data on gas sold by Russia to the European market. This data was sourced from IndexMundi.[246] The Commission was unable to validate the source of data used by IndexMundi and thereby confirm its relevancy to German natural gas prices.

The Commission's enquiries identified German gas prices published for two gas hubs in Germany: Gaspool and NCG. Both the NCG and Gaspool hubs provided daily prices on a day ahead or month ahead basis. The Commission notes that, based on data available, a larger volume of gas is traded on the NCG hub as opposed to the Gaspool hub.[247]

The *EuroChem – Brattle Report* selected the NCG hub prices and the Dutch TTF prices for its benchmarking of Russian and European prices. Whilst the Dutch TTF hub is the largest traded gas hub in Europe[248], the Commission considers that the Dutch TTF hub is not preferable compared to the NCG hub, which includes Germany's purchases of Russian natural gas to be used to establish a benchmark price.

The Commission completed a comparative analysis of these potential benchmark prices over the inquiry period. This analysis is reflected in Figure 12 below.

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[244] *EuroChem – Brattle Report,* page 28.

[245] See Information extracted from the IMF database website: https://www.imf.org/external/np/res/commod/External_Data.xls, last accessed 21 February 2021.

[246] See https://www.indexmundi.com/commodities/?commodity=russian-natural-gas&months=60.

[247] The Oxford Institute for Energy Studies, European Traded Gas Hubs: the Supremact of TTF, May 2020.

[248] Ibid.

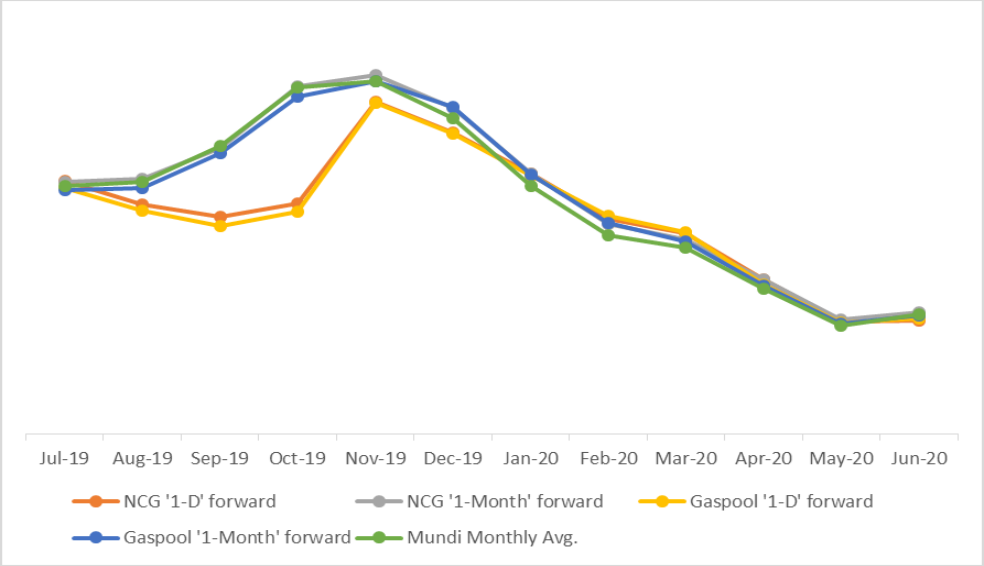

Figure 12: Gas hub monthly average prices (USD/MMBtu)[249]

Apart from a deviation between the month ahead and day ahead German hub prices between August 2019 and October 2019, there is a high level of correlation between all the data available to Commission. The reason for this deviation in the day ahead price is unclear to the Commission. However, it is noted that the month ahead Gaspool and NCG pricing was consistent with the IndexMundi data provided by the applicants, which is reflective of European gas prices. The Commission understands that there is a strong correlation in pricing for natural gas in the European market.

The Commission considers that, whilst either day ahead or month ahead prices are both appropriate benchmarks, the unexplained deviation in the Gaspool and NCG's '1-day forward' prices makes the month ahead prices preferable. The Commission also considers that it is preferable to use the NCG hub given the higher trading volumes and, unlike the IndexMundi data, the Commission verified the prices related to Germany.

The Commission's comparison of relevant German benchmarks is contained in **Confidential Attachment 10 – Gas price comparison**.

C 3.5 Gas series used

The Commission had access to four different series of gas prices on the German hub, namely the '1-day forward' and '1-month forward' gas prices for the Gaspool and NCG hubs.

The *EuroChem – Brattle Report* used the '1-day forward' and '1-month forward' NCG prices as well as Dutch TTF hub prices.

As previously mentioned, the Commission considers that, whilst either day ahead or month ahead prices are appropriate benchmarks, the unexplained deviation in the Gaspool and NCG's '1-day forward' prices makes the month ahead prices preferable. The Commission also considers that it is preferable to use the NCG hub prices given the higher trading volumes.

[249] Confidential Attachment 10 – Gas price comparison.

The Commission also noted that the NCG price data in the *EuroChem – Brattle Report* was sourced from Independent Commodity Intelligence Services, while the Commission relied on NCG price data from Bloomberg. The Commission has used the Bloomberg data given that it has been able to validate its source.

The Commission notes that no submissions disputing the choice of gas series used by the Commission were received in response to SEF 565.

C 4 Adjustments made to external benchmark

To ensure that the gas benchmark is relevant to what would be the competitive gas price in the Russian domestic gas market, the Commission considers that the NCG hub price should be:

- adjusted to reflect a price at the Russian border by deducting relevant German charges and costs to arrive at the border price;
- adjusted to remove relevant export costs and export transport costs; and
- adjusted back to equivalent 'netback price' that is comparable to the price paid by the Russian exporters.

As previously mentioned, the *EuroChem – Brattle Report* included a netback comparison of the Russian exporter's prices and the German hub price. It is noted that no submissions were received from interested parties contesting the methodology applied in this report to establish a netback price prior to the publication of SEF 565.

The Commission evaluated the methodology, assumptions and calculations in the *EuroChem – Brattle Report*. At the time of publishing SEF 565, the Commission considered that the framework or methodology for making relevant benchmark adjustments in the *EuroChem – Brattle Report* were reasonable.

C 4.1 Submissions received in response to SEF 565 in relation to the benchmark selection and adjustments

Submissions were received from both CSBP and Orica Australia in relation to the methodology applied to make adjustments to the benchmark in SEF 565.

CSBP submitted[250] that:

- the Commission did not detail how the methodology to arrive at the Russian gas benchmark in SEF 565 differed to the methodology used in REP 312. CSBP considered it appropriate for this to be demonstrated so that interested parties could compare, contrast and comment on the previous methodology with the methodology applied in the current case; and
- the Commission could not determine the uncooperative Russian exporters with the same gas cost input as NAK Azot and Nevinka, as it is likely the other Russian producers did not source gas from the IGS sector in Russia.

The Commission's consideration of CSBP's submissions in relation to uncooperative Russian exporters is discussed in section 6.7 of this report.

[250] EPR 565, document number 40.

Orica Australia submitted[251] that:

- the Commission's assessment in SEF 565 was inconsistent with previously determined normal values for ammonium nitrate in Russia prior to REP 312;
- the Commission had not adequately explained the differences in adjustments to the gas benchmark as applied in REP 312;
- there was no indication from the Commission before the publication of SEF 565 that it was considering the use of the *EuroChem – Brattle Report* in the determination of an appropriate benchmark gas price for Russia and that the Commission had not engaged with them in regard to their view of gas pricing as part of its application for the continuation of the measures;
- the 30 per cent export tax should not be excluded from the benchmark gas price as this was a GOR tax for accessing Russian resources and that this export tax was correctly included in the NCG month head gas price, which had been priced to compete with supply external to Russia; and
- they do not consider it reasonable for the Commission to rely on gas transmission tariffs (that are determined by the GOR) in developing a benchmark that is intended to represent a gas price free of GOR intervention.

C 4.1.1 Comparison of methodology applied in inquiries prior to continuation Inquiry 312

As specified in section B 2.1 of this report and SEF 565, the original 2001 investigation and the subsequent continuation inquiries in 2006 and 2011 found Russia to be an economy in transition. Consequently, section 269TAC(5D) was used to determine the normal values. This led to the Commission using a surrogate normal value based on the United Kingdom. Following the 2011 continuation inquiry findings, Russia acceded to the WTO and was subsequently recognised by Australia as a market economy.

C 4.1.2 Comparison with methodology applied in continuation inquiry 312 and that in the application for the continuation inquiry

The Commission outlined the methodology used to arrive at the Russian gas benchmark in Appendix C of this report and SEF 565. The methodology used in the previous continuation inquiry is detailed in chapter 7 of REP 312, which is available on the EPR for that inquiry.[252]

The benchmark selected in REP 312 was the price for Russian natural gas at the German border, as recorded in the International Monetary Fund (IMF) database. REP 312 noted that this price would have been inclusive of taxes and all transportation costs up to the German border.

Adjustments to the benchmark used in REP 312 were made to reduce the cost of export to the wellhead price and to add the cost of domestic transport for the gas to the relevant plant of the cooperating exporter. REP 312 identified that the total cost of export for Russian gas when delivering to the German border was US$3.50 per MMBtu[253]. This cost was established based on information contained in a 2016 report obtained from the Oxford Institute for Energy Studies.[254] The upwards adjustment was completed based on the

[251] EPR 565, document number 39.

[252] EPR 312, document number 28, pages 29 to 35.

[253] Metric Million British thermal unit (MMBtu).

[254] Oxford Institute for Energy Studies (2016), *Gazprom – Is 2016 the Year for a Change of Pricing Strategy in Europe?*, https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/01/Gazprom-Is-2016-the-Year-for-a-Change-of-Pricing-

distance from the wellhead and the fee each specific carrier charged on the use of that pipeline.

As specified in section C 3.4 of this report and SEF 565, the Commission found that:

- the benchmark price series used in REP 312 was not available for the current inquiry period as the IMF had ceased reporting this price series in 2017;[255] and
- it was unable to validate the IndexMundi data used in the application to confirm its relevancy to German natural gas prices.[256] However, it was noted that the Commission's comparison of IndexMundi data provided by the applicants and the benchmark selected by the Commission showed a high level of correlation. This is reflected in Figure 12, above.

Section C 4 of this report and SEF 565 identify the adjustments made to the benchmark to:

- convert costs to a common denominator;
- derive the gas price at the Russian Border by deducting costs from the NCG hub to the border;
- deduct the 30 per cent export tax; and
- account for the difference between Russian domestic transmission costs for export gas and domestic supply to each cooperating exporter.

The Commission considers that export costs and transmission costs used in REP 312 are not contemporaneous and are, therefore, not suitable to be used in the current inquiry. As mentioned above, export costs were established based on information contained in a 2016 report obtained from the Oxford Institute for Energy Studies. The domestic transmission costs were based on actual costs relevant to the cooperating exporter during the 2014/15 inquiry period.

Figure 13 below, reflects the value of the relevant net deductions made to the benchmark in this report, REP 312 and the application for this continuation inquiry.

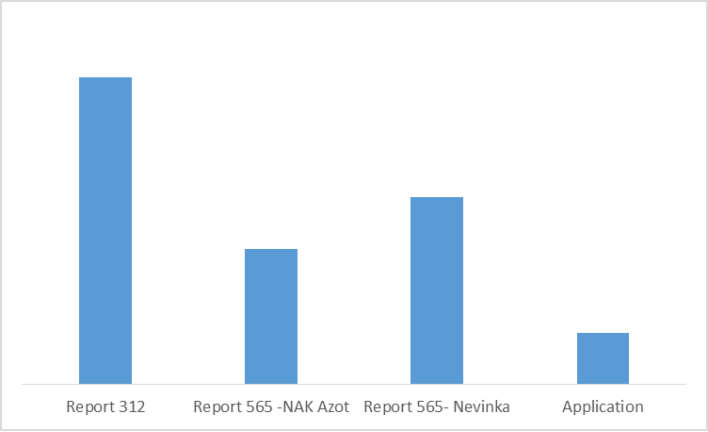

Figure 13: Net benchmark adjustment (USD/MMBtu)

In assessing the relative differences between the benchmark used in REP 312 and the current benchmark, the Commission considers it is also necessary to consider the relative movement in natural gas prices in Germany between the REP 312 inquiry period and the

Strategy-in-Europe.pdf.

[255] See section C 3.4 of this report and SEF 565.

[256] Ibid.

current inquiry period. This is reflected in Figure 14, below. As noted, there has been a substantial fall in the benchmark price between the Continuation 312 and Continuation 565 inquiry periods.

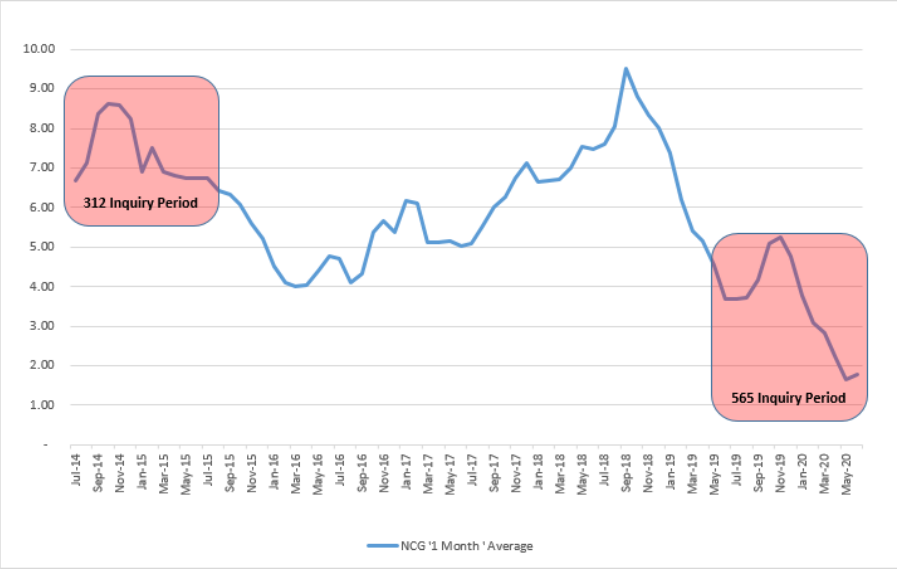

Figure 14: Historic NCG One month ahead pricing USD/MMBtu

C 4.1.3 30 per cent tax adjustment

Orica Australia submitted that the 30 per cent export tax should not be excluded from the benchmark gas price as this was a *'GOR tax for accessing Russian resources'* and the *'export tax was correctly included in the NCG month head gas price, which had been priced to compete with supply external to Russia.'*[257]

In deriving a relevant competitive benchmark, the Commission considers it is necessary to make adjustments to the competitive benchmark price to take account of differences that may affect its comparison with the distorted domestic prices. In addition, when using an out-of-country benchmark, the Commission considers whether adjustments are necessary to account for different conditions in the country of export to reflect what competitive cost would be. Such differences may include prices occurring at different times, differing physical characteristics, differing delivery costs or terms and differing taxes. In this case, the Commission has considered whether the competitive benchmark should be adjusted to deduct the 30 per cent export tax levied on gas exported to Germany.

In undertaking this consideration, the Commission has also had regard to whether this export tax forms part of the distortive impact caused by the GOR and which constitutes the particular market situation in Russia's domestic natural gas market.

In the first instance, the Commission notes that the market situation finding outlined in Appendix B of this report and SEF 565 does not rely on, nor cite as contributing factor, the 30 per cent of export tax levied on natural gas exports.

Further, on the basis that domestic prices are regulated for the largest domestic supplier, Gazprom, who also holds an export monopoly on piped natural gas, the Commission does not consider that the export tax distorts Gazprom's domestic pricing in the Russian market. Given that the IGS sector will seek to supply at prices at or below the regulated Gazprom

[257] EPR 565, document number 39.

domestic price and are prohibited from exporting piped natural gas, the Commission considers that the export tax does not have a distortive effect on the gas prices offered by the IGS sector.

Accordingly, the evidence before the Commission does not demonstrate that the export tax is part of the distortive impact caused by the GOR, which constitutes the market situation, and thus should be deducted from the competitive benchmark to reflect an in-country competitive cost for natural gas.

The Commission notes Orica Australia's concerns that it was not provided with notice of a change to the methodology followed in Investigation 312 prior to the publication of SEF 565. As required by the Act, the mechanism by which the Commission provides notice to interested parties about its proposed findings of fact and recommendations to the Minister is through the publication of the SEF. In drafting SEF 565, the Commission considered all relevant information provided to the Commission and submissions made, including the applicants' application for this continuation inquiry.

C 4.1.4 Use of Russian gas transmission tariffs

As specified in Section C4.5 of SEF 565 and C4.6 of this report, the Commission used Gazprom's published unit prime cost of transmitting the gas domestically within Russia. The Commission considers it is necessary to adjust the benchmark for differences in transmission distances and costs to account for different conditions of delivery relevant to the cooperating exporters for which the normal value was calculated.

The Commission acknowledges that Orica Australia has claimed that the transmission tariffs are not reasonable to use because they are determined by the GOR. The Commission clarifies that it used Gazprom's published unit actual (prime) cost of transmitting the gas to the Russian border and then used a tariff price for transmitting the gas from the Russian border to the German hub. The Commission considers that Gazprom's actual costs was the preferable cost to use within Russia because it represents the actual costs incurred and is thus directly relevant to the coopering exporters for which the normal value is being determined. The Commission also clarifies that the relevant tariffs used for transmitting the gas from the Russian border to the German hub is not exclusively set by the GOR. The Commission is satisfied that these costs and the gas transmission costs from the Russian border to the German hub would not be directly relevant to the cooperating exporters. Further detail about the Commission's approach in respect of the gas transmission from the Russian border to the German hub is outlined in section C.4.3.

It is also noted that the applicants relied on information contained in a confidential attachment to their application to establish the deduction for transmission costs from the benchmark. Based on the evidence provided, the Commission considers it is not clear whether this deduction is relevant to export costs of gas by Russian producers or better reflects the actual domestic transmission costs relevant to the cooperating exporters.

C 4.2 Assessment of the EuroChem – Brattle Report calculations and data

To validate the calculations in the *EuroChem – Brattle Report* the Commission reconstructed the calculations based on the underlying data used in the *EuroChem – Brattle Report*. The Commission found minor variations between the cross – EU border gas transmission costs calculated by the Commission and those calculated in the *EuroChem – Brattle Report* for the first six months of the inquiry period. These variations were not considered to be material.

Whilst the Commission considers the methodology applied in the *EuroChem – Brattle Report* to be reasonable, for some of the adjustments made, the Commission considers that there is more relevant and/or more contemporaneous data available for making these adjustments. This more contemporaneous and relevant data was adopted by the Commission. The approach used by the Commission to establish the benchmark price is detailed below.

C 4.3 Adjustments to derive the gas price at EU-Russian Border

The Commission accepted the *EuroChem – Brattle Report's* assessment regarding identifying the three primary routes of gas export from Russia to Germany as being the:

1. Ukraine route;
2. Nordstream route (offshore pipeline); and
3. Yamal route (through Belarus, Poland).

In the final assessment of the netback prices, the *EuroChem – Brattle Report* used all three routes for the netback comparison for NAK Azot. However, in regard to Nevinka they only selected the Ukraine route for the netback comparison.

The Commission observed that while NAK Azot sourced its gas from the Urengoy field in the Yamal region, Nevinka's location meant that it could not source gas from the larger gas fields in the Yamal region that supply gas to Germany, but instead relies on the gas from the fields of Astrakhan. The gas from Astrakhan field is able to be exported to Europe economically only through the Ukraine route. The Commission accepted *EuroChem – Brattle Report's* approach of only calculating one netback price for Nevinka based on the Ukraine route.

However, the Commission disagreed with the approach of using all three routes for the NAK Azot comparison. The Commission considers that it is preferable to use the shortest or most economical route of the three routes available. Accordingly, the Commission only used the Yamal route for the purposes of the benchmark comparison for NAK Azot.

Having identified the three primary routes of gas transmission from Russia to the German gas market and the most appropriate routes for calculating the netback price, the Commission then evaluated the various costs incurred by gas exporters to make the gas available at the NCG hub.

This step involved tabulating the entry and exit fee on each section of the three routes. Similar to the *EuroChem – Brattle Report*, the Commission relied on the data published by the Agency for Cooperation of Energy Regulators (ACER). In addition to entry and exit fees for various sections of pipeline, the Commission also included the neutrality charges incurred by Russian gas entering the German gas network system. For neutrality charges, the Commission relied on the data published by Gaspool and NCG on their websites. The Commission used the transmission costs for each of the calendar years of the enquiry period (2019 and 2020) to factor in changes in the fees over the inquiry period.

For the first two routes, namely the Ukraine and the Nordstream route, the Commission followed the same approach as the *EuroChem – Brattle Report* (these two routes were not ultimately adopted by the Commission for NAK Azot). The Commission assessed the entry and exit fee on each leg of the pipeline for each month of the inquiry period. The Commission relied on information reported by ACER. The Commission was able to observe consistency in the *EuroChem – Brattle Report's* data for the first six months for transmission costs. However, the Commission was not able to observe the transmission costs in the *EuroChem – Brattle Report's* data for the last six months as this data was not

included in the report. However, the Commission ascertained the transmission costs for the remaining six months using ACER and Oxford Institute of Energy Studies (OIES) data which the Commission found to be consistent with the first six months data used by the *EuroChem – Brattle Report*.

For the Yamal route, the Commission observed that no data was available on the ACER website, since the Belarus leg of the pipeline was outside the purview of ACER. The Commission was also not able to verify a number of factors, assumptions and data the *EuroChem – Brattle Report* relied on to arrive at the transmission cost on this route. The Commission instead chose to follow the transmission cost estimated for this route by a report[258] prepared by the OIES. In the report on Russian Gas sector, OIES estimated the total costs of gas transmission on the Yamal route for the year 2019 factoring in the payment made by Gazprom to EuroPol[259], the operator of part of the total length of Yamal route.

The Commission notes that no submissions disputing the Commission's choice of route were received in response to SEF 565.

C 4.4 Conversion of all costs to a common denominator

Following the tabulation of the monthly pan-EU border gas transmission costs, the Commission converted the different measures of gas volume and prices in different currencies to a single currency and volume measure (USD/MMBtu). Since gas volume measures are dependent on the calorific content of gas from each source, the Commission chose to use the conversion factor used in the *EuroChem – Brattle Report* to reflect values for Russian gas. For the foreign exchange rates, the Commission relied on the currency rates provided by the Reserve Bank of Australia. The *EuroChem – Brattle Report* relied on the foreign exchange rates provided by Eurostat.

The Commission notes that no submissions disputing Commission's conversions were received in response to SEF 565.

C 4.5 Export tax deduction

After deducting the pan-EU border transmission costs, the *EuroChem – Brattle Report* deducted the 30 per cent Russian export tax (alternatively referred to as an excise duty) to arrive at the gas price at the Russian border.

As specified in section C 4.1 of this report, the Commission has considered submissions received in response to SEF 565 regarding the deduction of the export tax. As specified, the Commission continues to consider, after reviewing submissions, that it is appropriate to deduct the 30 per cent export tax from the benchmark.

C 4.6 Adjustments for incremental Russian domestic transmission costs

Once having determined the NCG gas price at the Russian border net of export taxes, the Commission assessed the incremental gas transmission cost from the Russian gas wellheads to the border points compared to that of the exporters' plants. This exercise of determining the incremental pipeline length difference was performed for all the three routes described earlier. The Commission independently attempted to assess the length of

[258] See https://www.oxfordenergy.org/publications/russian-gas-the-year-of-living-dangerously/.

[259] EuroPol is a joint venture between Gazprom and Polish PGNiG.

pipeline from the main Russian gas fields to the three exporter border points as well as to the two exporter's plants producing ammonium nitrate. Having internally calculated this length of pipeline from publicly available sources, the Commission found the *EuroChem – Brattle Report's* assessments of pipe lengths to be reasonable. The Commission used the length of pipeline data from the *EuroChem – Brattle Report* given its higher level of accuracy.

Having determined the relevant routes for each of the two plants, the Commission sought to determine the domestic gas transmission fee that was applicable. For this the Commission concurred with the *EuroChem – Brattle Report's* approach of relying on Gazprom's published unit prime cost of transmitting the gas domestically. The figure of Rub 67.43/mcm/100 km for the domestic transmission cost was also specified in Gazprom's Annual Report for 2019. As noted in section C 4.1.4, having considered submissions received on the Russian tariff rate, the Commission continues to consider it appropriate to use Gazprom's published unit prime cost of transmitting the gas to the Russian border.

The Commission's assessment of the benchmarks and benchmark calculations are contained in **Confidential Attachment 11 – Benchmark assessment and calculations**.

Figure 13, below, reflects the final prices determined as the competitive benchmark.

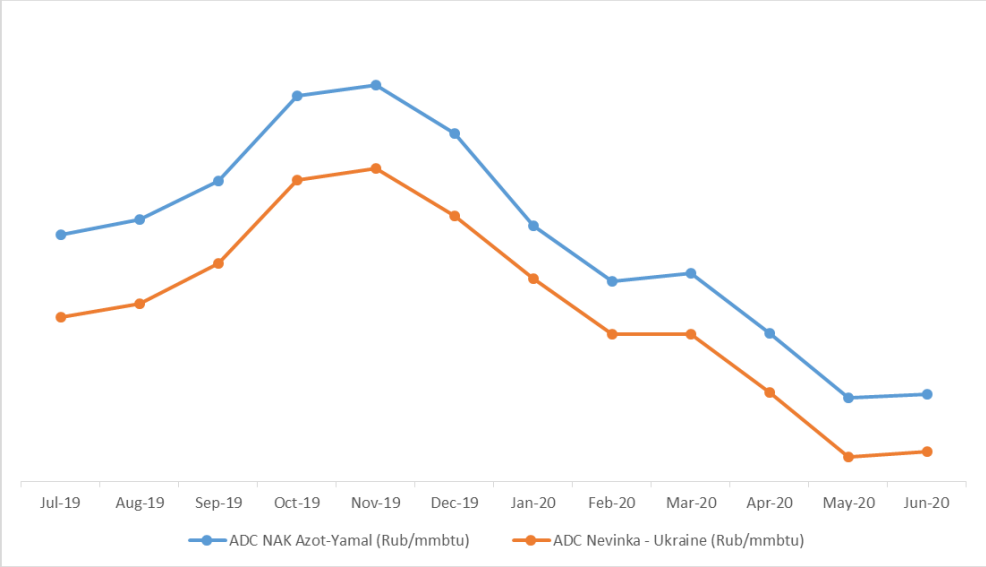

Figure 15: Competitive benchmark average prices (Rub/MMBtu)

C 5 Comparison of cooperating exporters' gas costs to external benchmark

The Commission compared the competitive benchmark, after making the aforementioned adjustments, against the actual gas costs incurred by NAK Azot and Nevinka. The comparison was completed on both a monthly basis and on a whole of inquiry period basis. This analysis identified that:

- for one of the exporters, their actual costs were below the benchmark for five months, in close alignment with the benchmark for two months and above the benchmark for five months. On an average basis, this exporter's gas costs were broadly consistent with the average benchmark price for the inquiry period; and
- for the other exporter, their actual costs were above the benchmark for 10 months of the inquiry period and below the benchmark for two months. On an average basis, this exporter's gas costs were above the benchmark for the inquiry period.

The Commission's analysis is contained in **Confidential Attachment 11.**