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Dear Tim

Ammonium Nitrate exported from the Russian Federation: Reinvestigation should support discontinuation of measures

On 17 September 2021 the Anti-Dumping Review Panel's (ADRP)¹ requested that the Commissioner reinvestigate specific findings that formed the basis for the decision of the Minister for Industry, Science and Technology (the **Minister**) to discontinue measures relating to exports of ammonium nitrate from Russia (the **Reviewable Decision**), in accordance with s 269ZH(1)(a) of the *Customs Act 1901* (the **Act**).

This letter relates to that reinvestigation request.

1. The scope of the reinvestigation

Reinvestigation under subsection 269ZZL of the Act is not an open invitation to remake the reviewable decision. A reinvestigation must be in accordance with the ADRP's requirements.² Those "requirements" go to the scope of the reinvestigation; the ADRP needs to identify a specific finding or findings upon which the reviewable decision was based, that are required to be reinvestigated.³ A "finding" is defined to be *a finding on a material question of fact or on a conclusion based on that fact*.⁴ In this case, the "findings" are identified as being:

FINDING 1: The finding that the Commissioner is not satisfied that the expiration of the antidumping 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.

...

¹ ADRP Review No 134.

² Section 269ZZL(2).

³ Section 269ZZL(2).

⁴ Section 269ZZL(1)(a).

GLENCORE

FINDING 2: The finding that the Commissioner is not satisfied that the expiration of the antidumping measures in respect of exports of ammonium nitrate from Russia would lead, or would likely lead, to a continuation of, or a recurrence of injury.

The detail in the reinvestigation request further narrows the scope of the reinvestigation. In our view, the scope of the ADRP's request is to reinvestigate the following specific findings:

- (a) Whether the competitive market benchmark adopted should include what is referred to as the "gas export tax".
- (b) Whether the "reinvestigated benchmark" (if any) results in a market situation that prevents a proper comparison under s 269TAC(1).
- (c) Whether, because of the conclusions drawn from (a) and (b), it is likely that exports will recur.
- (d) Whether, considering the "further information" exports are likely to recur other than in spot sales.
- (e) Whether, if the conclusions drawn from (a) and (b) result in different margin outcomes, that changes the view that the Commissioner was not satisfied that the expiry of anti-dumping measures would lead to, would be likely to lead, to a continuation or recurrence of material injury.

So, this is a reasonably discrete reinvestigation. In defining the scope of the reinvestigation, we hope that the Commission will resist interested parties attempts to elicit information that falls outside that scope. Again, this is not a reinvestigation at large but one that is narrowly defined and focussed only on specific findings. To the extent there is any confusion about the scope, we hope that you will seek clarity from the ADRP.

The reinvestigation request specifically adopts the terms of s 269ZHG(2) of the Act in defining its scope. We understand that the Commissioner will ultimately be assessing the conclusion of the reinvestigation against that test: does the evidence satisfy him that the expiration of the 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. If not, then he must affirm his original findings.

We would also draw the Commissioner's attention to our interested party submission to the ADRP of 18 August 2021, which is referred to you in the reinvestigation request.

We will now address the "findings" in turn.

2 The benchmark gas cost needs to relate to the country of export

The ADRP's reasons to reinvestigate the benchmark cost are extracted below:⁵

It would appear to me that a relatively high 'export tax' (30 per cent) that is paid to government, from a government-owned entity that has a monopoly on exports in a market (natural gas), where it has been found that a market situation exists, warrants a thorough and comprehensive analysis as to whether the Gas Export Tax is a usual tax, and appropriate for an adjustment to the benchmark, to account for different conditions in the country of

⁵ Reinvestigation Request. Page 7.

GLENCORE

export (Russia) so as to reflect what a competitive cost would be in Russia. I consider that there is merit in the Applicants' submissions that:

- the "tax" applies only to sales by Gazprom, a majority government owned monopoly exporter (and is thus, in effect, a mark-up by the seller rather than an external impost);
- Gazprom's prices net of that "tax" are not the product of competitive market conditions and the appropriate benchmark is the price at which gas is sold into a competitive market; and
- the Gas Export Tax should be considered a levy that corrects the artificially low Russian gas price to an equivalent competitive market gas price that compensates Russia for the export of its natural resource.

Fundamentally, the scope of this reinvestigation pivots on the "benchmark" adopted to measure whether natural gas costs "reasonably reflect competitive market costs" for the purpose of s 43(2) of the *Customs (International Obligations) Regulations 2015 (Regulations)*. Whether that benchmark should include the "gas export tax" or not.

We agree with the position taken by the Commissioner in Inquiry 565. The "gas export tax" should be deducted from the competitive market benchmark. Indeed, we think the ADRP will be dissuaded of the merit they perceive in the Australian industry's submission when regard is had to the nature of the gas export tax, the purpose of any benchmark and, whether there is any rational basis to consider the gas export tax somehow "corrects" domestic prices. We discuss each of these below.⁶

The nature of the "gas export tax"

There does not appear to be any basis for suspicion regarding the nature of the export tax, or to consider it to be something other than a "usual tax". Perhaps there is some confusion around the terminology adopted. In any regard, Gazprom's Audited Report is quite clear:

*The export of hydrocarbons, including natural gas and crude oil, outside of the Customs union countries, which includes the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan, is subject to export customs duties. According to Resolution of the Government of the Russian Federation No.754 dated 30 August 2013 export of natural gas outside the boundaries of the Customs union is subject to a fixed 30% export customs duty rate levied on the customs value of the exported natural gas.*⁷

⁶ We disagree with the characterisation of Gazprom as having a "monopoly in a market". The Russian market itself exhibits competition. The markets to which Gazprom exports gas are also competitive markets. In either case, Gazprom faces competition and so does not have a monopoly, nor does it have monopolistic pricing power.

The ADRP may be using the term monopoly as a shorthand to describe Gazprom's predominant role as an exporter of Russian natural gas. But this does not mean it has a monopoly in any market it sells into. In any regard, Novatek also sells LNG to spot markets in Europe. LNG and natural gas are essentially interchangeable – the difference is the physical form of the gas. So the idea that Gazprom is the sole exporter from Russia is not accurate.

⁷ <https://www.gazprom.com/f/posts/72/802627/gazprom-financial-report-2019-en.pdf>, at page 97.

GLENCORE

These duties are implemented pursuant to Russian law, specifically *Resolution of the Government of the Russian Federation No. 754*. They do not relate only to natural gas, but also to other forms of hydrocarbons. In the year 2019, Gazprom paid RUB 653,035 million in customs duties on its sales of gas.⁸

So, we see no reason to consider this is anything other than a normal export duty imposed in accordance with Russia's legal system.

The idea that the duty is just a "mark-up" to the price is based on faulty logic. Specifically, that logic incorrectly equates Gazprom with the Russian Government. For clarity, Gazprom is not wholly owned by the Russian Government, but rather the Government of Russia, directly and indirectly, control 50.23% of Gazprom shares (as of 31 December 2020).⁹ Other shareholders include sovereign wealth funds from Qatar, Hong Kong and Singapore, and significant volumes of shares are held by parties in both the United States and the United Kingdom,¹⁰ all of which are emphatically not part of the Russian Government.

The export gas tax is in fact a duty, which is legitimately imposed under Russia's legal system and that applies to more products than just Gazprom's gas exports. Gazprom pays that duty to the Russian government. Gazprom is not part of the Russian government. The duties are emphatically not a "mark-up by the seller".

The appropriate benchmark is a competitive market cost in Russia

The ADRP has indicated merit to the Australian industry's assertion that the appropriate benchmark is the "price at which gas is sold into a competitive market". Respectfully, that is an oversimplification that does not reflect the legislation, nor Australia's international obligations.

Nowhere in the Act nor the Regulations is the term "benchmark" used. A benchmark is merely a way of assessing whether an exporter's records reasonably reflect competitive market costs for the purpose of s 43(2) of the Regulations. But such an assessment is only useful, and can only lead to a legally correct decision, to the extent that it is informed by the law to which it is applied.

Put another way, the determination of a "benchmark" is not a "finding" for the purpose of a reinvestigation. The relevant finding is that made in relation to s 43(2) of the Regulations. But the purpose of s 43(2) is not to assess whether an exporter's records reflect competitive market costs in the abstract. Its purpose is to assess whether the Minister is required to determine costs of production in the country of export for a particular exporter using that exporter's records. Determination of the costs of production in the country of export is the primary statutory objective under s 269TAC(2)(c)(i).¹¹

A "price at which gas is sold to a competitive market" is not necessarily relevant to the costs of production in the country of export. The relevance of such a price depends on the comparability of the export market to the domestic market, and the German market for gas is incredibly different from the Russian market for gas. But even if we were dealing with

⁸ <https://www.gazprom.com/f/posts/72/802627/gazprom-financial-report-2019-en.pdf>, at page 137.

⁹ Report 565, page 82.

¹⁰ <https://www.gazprom.com/f/posts/13/041777/gazprom-annual-report-2020-en.pdf>, at page 210.

¹¹ *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2019] FCAFC 122 (25 July 2019), at para 93.

GLENCORE

identical markets, there will obviously be factors in an export price that are not relevant to costs *in* the country of export. Such factors would include cross-border transportation costs, and we would think, export duties. For that simple reason it should be clear that export duties should not be included in any benchmark that tests whether an exporter's records should be used to determine costs of production in Russia.

In Report 565, the Commission identified Germany as a natural gas market in which it considered there were no restrictions to free competition. By deducting export related costs, including the duty, it identified what it considered to be a competitive market price free from other factors that are not relevant to the Russian domestic market. That is exactly what the Act calls for: a cost that is referable and relevant to the country of export. A cost into a different market is not that. Including the export duty in the cost benchmark does not result in a more accurate outcome.

The export duty does not "correct" domestic Russian prices

The assertion that export duty should be considered to correct domestic Russian prices so to make them *competitive* is one made without any support. Given the duty is a proper, legally imposed duty, we do not see how this position can be maintained.

In any regard, the Commission concluded that the export duty was not a contributing factor in the market situation finding.¹² That is, the tax was not found to be a cause of what the Commission considered to be lower natural gas costs for the producers of ammonium nitrate. The idea that you can correct some nebulous, unquantifiable distortion by including in a benchmark something that is explicitly an export duty makes no sense. It does not make the benchmark "more" competitive; it just makes the benchmark bigger.

Fundamentally, it is not the case that Russian prices would, absent government regulation, match German-border prices. The prices are derived in two different market, with starkly different characteristics.

For instance, Russia has the largest natural gas reserves of any country, approximately 1,688 trillion cubic feet. In contrast, Germany's reserves are around 4.4 trillion cubic feet. So, Germany's reserves are around 0.26% of Russia's. That means the supply in each country is starkly different. Quite apart from the question of price regulation, quantity of supply is one of those fundamental drivers of the market mechanism. Put simply, basic economic theory is that the larger quantities supplied equals lower prices. So, this suggests that Russia's natural gas prices *should* be lower than Germany's.

Likely by virtue of its lower reserves, Germany is a net importer of gas. The U.S. Energy Information Administration indicates that Germany imported 97% of its natural gas supply in 2018, yet natural gas represents 25% of its total primary energy consumption.¹³ So, it is dependent, critically so, on imports of gas for its economy to operate. Dependant consumers tend to have inelastic demand; they will seek to consume the same volume even where prices rise. Germany is dependent on imports whereas Russia has excess quantities to export. This suggests that prices in the German market will be *higher* than in a market (like Russia) where gas is more bountiful and more easily accessed.

¹² Report 565, page 101.

¹³ <https://www.eia.gov/international/analysis/country/DEU>

GLENCORE

So, the idea that prices in Russia should or could be equivalent to German-border prices is inaccurate. It ignores Russia's incredible comparative advantage in the production of gas, which is fundamental to how the Russian market operates. It also includes costs that are not relevant to the Russian market, such as cost associated with transportation to the border and the export duty.

It should also be noted that the Russian gas market *is* competitive. Gazprom accounted for approximately 68% of gas production in Russia in 2019.¹⁴ While this is large, we would note that several Australian markets that the Commission is intimately aware of have participants with greater market share, but no qualms are raised about the operation of their competitive mechanism.¹⁵

Lower prices are not necessarily symptomatic of a fault in the market mechanism. Indeed, our view is that using the German-border price overstates what a non-regulated price in Russia may be. For example, we assume the Commission would accept that the United States has a "competitive market" for gas. The United States also has the fourth largest gas reserves in the world, so it has similar advantages to Russia in terms of gas production. According to the US Energy Information Administration, the average of the daily Henry Hub Natural Gas Spot Prices during the investigation period was USD\$2.09/MMBtu (per million BTU)¹⁶. The Commission is well positioned to compare that natural gas price to the levels it originally calculated should apply in Russia, with export costs, including export duties, backed out. Should the Commission's calculations be of a similar magnitude (or more), they provide a data point confirming the Commission's original calculations have already provided a rational (or conservative) and free market-based outcome meaning no further change can be justified.

Benchmark conclusion

As we have noted, the benchmark is merely a way of testing whether the Minister is required to use an exporter's records in the determination of the costs of production in the country of export.

The benchmark used in Report 565 did this. The price derived in the German market was competitive as export-related costs, including the export duty, were backed out to reach a "benchmark" for the Russian market, which we expect compares well to pricing in similar competitive markets with excess supply, like the USA. We think that the benchmark was overstated for the reasons discussed above but nonetheless was the correct outcome given that the exporters gas costs that "reasonably reflected competitive market costs" was arrived at.

¹⁴ Report 565, page 83.

¹⁵ For example, a quick review of the public record indicate a similar or greater market share for the Australian industries' in A4 copy paper, aluminium zinc coated steel, clear float glass, paint steel strapping and steel reinforcing bar. And of course, in the case of ammonium nitrate, the members of the Australian industry provide approximately 95% of all ammonium nitrate to the Australian market and yet have been found to have been impacted by competitive forces from independent imports

¹⁶ Henry Hub is the natural gas pipeline located in Erath Louisiana. It is the pricing point for natural gas futures on the New York Mercantile Exchange. The prices are based on the actual supply and demand of natural gas as a stand-alone commodity. Price data can be accessed here:

<https://www.eia.gov/dnav/ng/hist/rngwhhdM.htm>

GLENCORE

Failing to deduct the export duty does not lead to a better or more accurate outcome. It will not result in a cost that better represents competitive market costs in Russia. It simply adds customs duties to a price derived in market that does not have Russia's comparative advantage in the production of natural gas. That is neither the correct nor preferable outcome.

The Commission should affirm its original finding.

2 How could the same gas prices impact domestic and export AN prices differently?

Both the Commission and the ADRP are aware of the Panel's findings in DS529 regarding the interpretation and relevance of the term "particular market situation" in Article 2.2 of the Anti-Dumping Agreement.¹⁷

*In our assessment, the phrases "particular market situation" and "permit a proper comparison" function together to establish a condition for disregarding domestic market sales as the basis for normal value. Specifically, that domestic sales "do not permit a proper comparison" must be "because of the particular market situation". If domestic sales do permit a proper comparison, then they cannot be disregarded as the basis for normal value, regardless of the existence of the particular market situation and its effects, whatever those may be.*¹⁸

This is replicated in under the *Customs Act 1901* which notes that a particular market situation is only relevant insofar as it renders sales *not suitable for use in determining a price* under s 269TAC(1). Indeed, Report 565 specifically adopts this standard, and the ADRP endorses it in doing so. Further, the ADRP does not necessarily disagree with the Commission's conclusion regarding the comparability of normal value to export price but indicates a broader consideration should be had regarding that comparability.

Ultimately, if it is accepted that gas prices in Russia are distorted, we fail to see how that distortion could impact the export price and domestic prices such that the latter are not comparable to the former. We do not understand how it could be said that the same cost of gas (as an input for manufacturing ammonium nitrate) could have different effects on the downstream prices in different markets for the ammonium nitrate produced from that gas. Remember, it is not as if Russian ammonium nitrate manufacturers consider their costs are distorted, they are simply the market cost. It is not something they can take advantage of, but simply what the market in the country of export offers them. There is no reason to think prices of like goods in one market would be more impacted by this supposed distortion than prices of like goods in another.

Further, there is a degree of abstraction to this consideration. The cooperative exporters did not export to Australia. The export price is not based on prices to Australia, but, rather, a conglomeration of exports to third countries. These exports likely include sales of fertiliser grade ammonium nitrate, which is not exported to Australia, and which is, generally lower-priced than explosive grade HDAN and significantly lower priced than explosive grade LDAN. So, given that context, we would consider any analysis of differing market conditions between Russia and Australia to be entirely irrelevant to a consideration of whether

¹⁷ *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.*

¹⁸ Panel Report, Australia – Anti-Dumping Measures on A4 Copy Paper, WTO Doc. WT/DS529/R (27 January 2020), at [7.22].

GLENCORE

domestic prices are properly comparable with the export prices as determined in Report 565.

So, again, irrespective of the benchmark adopted, we see no reason why normal values would be able to be constructed under s 269TAC(2)(c). The s 269TAC(1) normal values used in Report 565 reflect actual costs in Russia. They are probative by virtue of that. Shifting to a constructed normal value with substituted out of country gas costs would render the dumping margin meaningless to both the Australian market and the Russian market. It would simply result in a low export price and a high normal value, neither of which is relevant to exports of ammonium nitrate to Australia, nor the broader question of whether the measures should have continued.

3 The recurrence of dumped exports

The reinvestigation request asks the Commission to reconsider whether the recurrence of dumping is likely, should the reinvestigation of the benchmark cause a domino effect that results in new positive dumping margins. The reinvestigation report emphasises that some weight be given to any resultant positive dumping margin.

But of course, dumping margins are not the only consideration in a continuation inquiry, and nor should they be for a reinvestigation of certain findings made during such an inquiry. The operative question is not whether dumping occurred in the inquiry period, but rather, whether it is likely to continue or recur if the measures expire.

To that end, the *Dumping and Subsidy Manual* lists 25 possible avenues of inquiry in assessing the likelihood of a continuation or recurrence of dumping. This list is non-exhaustive, but it illustrates that a dumping margin in and of itself is not determinative of the question posed by s 269ZHG(2). Indeed, there is nothing in the wording of s 269ZHG(2) that requires any dumping margin to be determined.¹⁹

In this case, our view is that dumping margins are of limited utility. It needs to be recalled that cooperative exporters actually did not export anything to Australia during the inquiry period.

It needs to be recalled that, excepting the Australian industry, there has only been one importer of AN from Russia since 2018 and Report 565 found that they were unlikely to import material volumes of AN in the next few years.²⁰ So, in this context, these dumping margins have little relevance to the question of whether the expiry of the measures was likely to lead to the recurrence of injurious dumping.

4 The recurrence of exports considering the further information

We understand that the question of whether exports are likely to continue as a result of the expiry of measures, relates specifically to the finding that they are likely to do so on a “spot sale” basis and that this finding is to be reinvestigated “in light” of “further information” provided by Orica, that the ADRP has had regard to, relating to the launch of new ammonium nitrate capacity by Kemerovo (**the further information**).

¹⁹ This is consistent with Australia’s treaty obligations. For example, the Appellate Body stated that “no obligation is imposed on investigation authorities to calculate or rely on dumping margins in a sunset review” (Appellate Body Report, *US – Corrosion Resistant Steel Sunset Review*, at paragraph 123.).

²⁰ Page 63.

GLENCORE

In Report 565, the Commission found that exports were likely to continue on a spot sale basis. The reasons given for this conclusion were:

- *The Australian market is comprised mostly of LDAN;*
- *LDAN capacity utilisation by Russian ammonium nitrate producers is high and the capability for Russian producers to easily “switch” HDAN production to LDAN production has not been 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.²¹*

We do not understand how the further information upsets any of these findings or would lead to anything but for the affirmation of the original finding. The further information is merely an update of information that was already before the Commissioner, and that was considered in Report 565.²² All the further information appears to detail is that the complex has been launched. This does not appear to be materially different to the circumstances that were considered in Report 565.

Further, the new capacity is not to produce LDAN. Indeed, “non-confidential appendix 4” highlights that “the enterprise is one of the largest producers of nitrogen fertilizers in Russia”. This suggests, consistent with the finding that there is growing domestic demand for HDAN in Russia that the focus of the capacity will be in the production of FGAN, not HDAN nor LDAN.²³

So, there is nothing in the further information that upsets the finding that LDAN capacity utilisation is high. There is nothing in the further information that suggests that HDAN capacity can easily be switched to the production of LDAN. Indeed, the information before the Commissioner is to the extent that it is not.²⁴

But even if this was not the case, what does the expansion mean for the Australian market? Kemerovo is an extremely long distance from any ports. If you consult a map, you will see it is in the heart of Russia and is entirely landlocked. The Eastern ports offer the most efficient transit to Australia; Kemerovo is approximately 5,500 kms from those. The cost of getting

²¹ Report 565, page 63.

²² Report 565, page 54.

²³ Glencore has explained the distinction between these products in several submissions to the Commission and the ADRP.

²⁴ In fact, as per information Glencore submitted during the inquiry, switching production from LDAN to HDAN is not easy. It is both capital and time intensive.

GLENCORE

the product to the port alone means export sales to Australia will likely be so financially unattractive (versus the returns available for domestic sales) that they do not occur.

The further information does not change any of the findings we have extracted above. There is nothing that suggests that future exports to Australia will be anything other than occasional spot sales of HDAN. This was the finding in Report 565 and should be affirmed.

5 The likelihood of the recurrence of injury

The reinvestigation request focuses on instances in the Commission's s 269ZZJ submission to the ADRP, where it has mentioned no-dumping findings in response to the review applications grounds relating to the recurrence of material injury.

These were not necessarily findings that formed the basis of the reviewable decision, so much as they were responses to arguments made by the applicants. So, we will not address them in detail but to say, to the extent the reinvestigation request mentions the landed price of Russian AN to Australia, this needs to be understood in the context of the reservations regarding the analysis expressed in Report 565.²⁵ We have great reservations about any reliance on an undercutting analysis that is likely based predominantly on the price of fertiliser. This tells us nothing about the Australian market, where ammonium nitrate is not generally used as fertiliser.

As a more general proposition, we fail to see how a change of the dumping margins would result in a change to the material injury finding. In fact, the Statement of Essential Facts did find dumping margins for one of the cooperative exporters and the non-cooperative exporters, and still considered the recurrence of material injury was unlikely. Based on the findings in report 565, we agree with that conclusion. Particularly we recall:

- Production of AN in, and export of AN from Russia is primarily focussed on agricultural ammonium nitrate (FGAN). There is no wide usage of ammonium nitrate as fertiliser in Australia.²⁶
- Imports of Russian AN to Australia have historically been of HDAN.²⁷
- LDAN is the product that is primarily used in Australia.²⁸
- Russian capacity utilisation for LDAN production is high.²⁹ We re-iterate here that the new nitric acid capacity at Kemerovo does not impact LDAN production capacity at all.
- There is no evidence to support the proposition that converting capacity from FGAN and HDAN production to LDAN production is easy or likely.³⁰
- Demand for AN in Russian is increasing.³¹

²⁵ Report 565, page 65.

²⁶ Report 565, page 60.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Report 565, page 61.

³⁰ *Ibid.*

³¹ Report 565, page 53.

GLENCORE

- Russian exporters have existing patterns of trade, which are likely facilitated via existing supply agreements with importers in third countries.
- Australia is a significant distance from Russia, so any imports from Russia will incur significant freight costs and the risk of the product deteriorating.³²
- Australian importers cannot simply switch between LDAN and HDAN.
- HDAN is only substitutable with ANsol where an entity has access to a solution tank and an emulsion plant.³³
- While the sources of imports of AN to Australia may change in relation to the imposition of measures, the overall market share has remained static.³⁴
- Sales of AN within Australia are generally made pursuant to ongoing supply agreements that span several years, during which the suppliers are required to lock-in supply volumes.³⁵

All of which suggests that recurrence of injury, even if positive dumping margins were established, is unlikely.

The Australian industry supplies over 95% of the ammonium nitrate sold in the Australian market; only 5% of sales in the market are spot sales. So, the bulk of the Australian industry's sales are already locked-in contractually in terms of quantity and pricing mechanism. This, in effect, means that the Australian industry is shielded from the immediate impact of the expiry of measures. After-all, importers cannot just muscle in on an established contractual relationship. They would actually need to win a contract to start supplying Russian AN outside of spot sales and so overcome the issues highlighted in the dot points above with certainty for a three-to-five-year period. This does not appear easy or likely and rather, appears to be unlikely.

Imports are already a feature of the Australian market. A small feature, yes, but an ongoing one. Report 565 indicates that there have been imports from Chile, China, Indonesia, Lithuania, Sweden, Thailand, the United Kingdom, Ukraine, and Vietnam. We fail to see why any continuation of imports from Russia would be likely to be more injurious than these. In fact, the evidence indicates that any increase of imports from Russia would be at the expense of imports from these other countries, not sales of the Australian industry.

We fail to understand the Australian industry's concern regarding Russian AN, which has been imported as a product that they do not produce, which is only substitutable with their own product in limited circumstances, and which forms a minority of the Australian market. We see no reason to consider the expiry of the measures would result in a recurrence of material injury.

Accordingly, we submit the Commissioner should affirm his original finding, that he is not satisfied that the recurrence of material injury is a likely consequence of the expiry of measures.

³² Report 565, page 64.

³³ Report 565, page 58.

³⁴ Report 565, page 61.

³⁵ Report 565, page 56.

GLENCORE

Conclusion

Thank you for your consideration of this submission.

We consider that the reviewable decision is the correct and preferable decision. We consider the findings that formed the basis for the reviewable decision, and which are subject to the reinvestigation, were correct and should be affirmed.

Yours sincerely



Darren Oliver

Glencore Coal Assets Australia Pty Ltd