PUBLIC RECORD

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 (Cth) - PART XVB

ANTI-DUMPING COMMISSION
PRELIMINARY REINVESTIGATION REPORT FOR THE ANTI-DUMPING REVIEW PANEL

REINVESTIGATION INTO CERTAIN FINDINGS IN REPORT NO. 565

AMMONIUM NITRATE EXPORTED TO AUSTRALIA FROM THE RUSSIAN FEDERATION

1 July 2022

CONTENTS

ABBREVIATIONS

ABF	Australian Border Force
the Act	*Customs Act 1901*
ADC	Anti-Dumping Commission
ADRP	Anti-Dumping Review Panel
Applicants	CSBP Limited, Dyno Nobel Asia Pacific Pty Ltd, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd
bcm	billions of cubic meters
BWM	Business World Magazine
CIT	corporate income tax
the commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
CSBP	CSBP Limited
CTM	cost to make
CTMS	cost to make and sell
DS529	World Trade Organization Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper,* WTO Doc WT/DS529/R (4 December 2019)
Dyno Nobel	Dyno Nobel Asia Pacific Pty Ltd
EIA	U.S.A. Energy Information Administration
EPR	electronic public record on the commission's website
FOB	free on board
the former Minister	the then Minister for Industry, Energy and Emissions Reduction
Gazprom	PJSC Gazprom
GET	Russian gas export tax
Glencore	Glencore Coal Assets Australia Pty Ltd and Mount Isa Mines
GOR	Government of Russia
HDAN	high density ammonium nitrate
LDAN	low density ammonium nitrate
LNG	liquefied natural gas
mcm	millions of cubic meters
mmBTU	metric million British thermal units
NAK Azot	JSC Novomoskovsky Azot
Nevinka	JSC Nevinnomyssky Azot
OCOT	ordinary course of trade
OECD	Organisation for Economic Co-operation and Development
Orica Australia	Orica Australia Pty Ltd
the Regulation	*Customs (International Obligations) Regulation 2015*
REP 312	*Anti-Dumping Commission Report No. 312*
REP 565	*Anti-Dumping Commission Report No. 565*
Resolution 754	*Resolution of the Government of the Russian Federation number 754*

Resolution 859	*Resolution of the Government of the Russian Federation number 859*
RUB	Russian Ruble
Russia	Russian Federation
SG&A	selling, general and administration
SPIMEX	Saint Petersburg International Mercantile Exchange
TDI	Trade Data International Pty Ltd
U.S.A.	United States of America
VAT	value added tax
WTO	World Trade Organization

1 SUMMARY

1.1 Introduction

On 17 September 2021, the Anti-Dumping Review Panel (ADRP) requested that the Commissioner of the Anti-Dumping Commission (the Commissioner) undertake a reinvestigation of certain findings arising from *Anti-Dumping Commission Report No. 565* (REP 565).[1] After considering the findings in REP 565, the then Minister for Industry, Energy and Emissions Reduction (the former Minister) decided not to secure the continuation of the anti-dumping measures applying to ammonium nitrate exported to Australia from the Russian Federation (Russia).[2]

This report sets out the preliminary findings of the Commissioner in relation to the reinvestigation request. The preliminary findings are:

Finding one – Findings relating to the continuation or recurrence of dumping

On reinvestigation, the Anti-Dumping Commission (the commission) finds that an adjustment to the German gas benchmark for the Russian gas export tax (GET)[3] is still required. The adjustment is required to ensure that the benchmark is relevant to establishing what would be the competitive gas price in the Russian domestic market.

The commission's enquiries in relation to the nature and circumstances of the GET have determined that:

- The GET is an export tax, which the Government of Russia (GOR) imposes on exports of natural gas. The GET is not applied to domestic sales of natural gas in Russia.
- The GET is not an unusual type of tax in Russia.
- Whilst the GOR exerts significant influence on Gazprom, the commission considers that the GET is not operating as a *sui generis* 'tax' or payment by a majority government-owned entity to itself.
- The evidence before the commission does not support the applicants' 3 claims for why the GET should not be deducted from the German benchmark price.
- The evidence is that the GET has had the effect of increasing gas prices in Germany.

Consequently, the commission finds that an adjustment is required to adjust for the effect of the GET on the German benchmark gas price. To determine the adjustment required, the commission has used a partial equilibrium model to estimate the effect of the GET on German gas prices. This analysis established that a downwards adjustment of 28.4% to the benchmark is required to account for the effect of the GET on German gas prices. The commission has consequently revised the gas benchmark after amending the GET downwards adjustment from 30% to 28.4% of the border price. The commission's analysis and findings in relation to the GET adjustment are in Chapter 3 of this report.

In reinvestigating the proper comparison finding, the commission's further analysis supports a continued finding that a particular market situation existed in the domestic market for ammonium nitrate in Russia during the inquiry period.

---

[1] Electronic Public Record (EPR 565), document number 50.

[2] ADRP (2021), Letter to the Commissioner regarding reinvestigation, 17 September 2021, on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_ammonium_nitrate_-_request_for_reinvestigation.pdf.

[3] References to gas or natural gas in this preliminary report refer to piped natural gas, unless specifically stated otherwise.

In accordance with the reinvestigation request, the commission has compared the revised gas benchmark with the EuroChem exporters' verified gas costs. This examination has found that the revised benchmark was, at differing times of the inquiry period, above or below the exporters' gas costs. On average, one of the exporter's gas costs were marginally below the benchmark and the other exporter's gas costs were above the benchmark.

In accordance with the reinvestigation request, the commission has revised its proper comparison assessment. For the reasons specified in Chapter 4, the commission now considers that sales in the domestic Russian market are not suitable for determining normal values for the exporters under section 269TAC(1) of the *Customs Act 1901* (the Act).[4]

Having found that sales in the domestic Russian market are not suitable for determining normal values, the commission has determined normal values in accordance with section 269TAC(2). For the reasons specified in Chapter 4, the commission further considers it is appropriate to adjust gas costs in the exporters' records by reference to a gas benchmark. The commission has consequently adjusted the exporters' gas costs and revised the dumping margins found in REP 565. Table 1 lists the revised dumping margins.

Exporter	Dumping Margin
JSC Novomoskovsky Azot	-1.2%
JSC Nevinnomyssky Azot	-8.8%
Uncooperative and all other exporters	2.3%

Table 1: Revised dumping margins

The commission has re-examined its finding on whether expiration of the measures would likely lead to exports of Russian ammonium nitrate being exported to Australia at dumped prices. Based on analysis of the revised dumping margins and other findings in REP 565, the commission remains not satisfied that expiration of the measures would likely lead to exports of Russian ammonium nitrate to Australia at dumped prices.

In accordance with the ADRP's request, the commission has re-examined its finding on the likelihood of exports recurring if the measures were to expire. On reinvestigation, the commission considers that Russian exports of ammonium nitrate are likely to recur at some stage in the future in the absence of measures. The commission anticipates that in the absence of measures some importers, at some stage in the future, may seek to switch import sources to Russia. However, Russian imports are likely to constitute significantly less than 5% of the Australian market. The commission finds that the further information regarding the Kemerovo plant expansion does not change this finding.

The commission's findings in relation to the likelihood of future dumping and exports are contained in Chapter 5 of this report.

Finding two – Findings relating to the continuation or recurrence of injury

On reinvestigation, the commission continues to find that it is not 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 material injury that the anti-dumping measures are intended to prevent. In the context of the findings made in REP 565 and the revised dumping margins, the commission is not satisfied any injury caused to Australian industry would likely be due to dumping. The commission also finds that the further information regarding the Kemerovo plant expansion does not change this finding.

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

The commission's findings in relation to the likelihood of future material injury are contained in Chapter 6 of this report.

Consequently, the Commissioner remains not 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 and the material injury that the anti-dumping measures is intended to prevent.

1.2 Background to reinvestigation

1.2.1 Reviewable decision

On 20 August 2020, the Commissioner initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of ammonium nitrate exported to Australia from the Russian Federation was justified.

Following the recommendations of the Commissioner in REP 565, on 20 May 2021 the former Minister declared that, pursuant to section 269ZHG(1)(a), he had decided not to secure the continuation of anti-dumping measures relating to ammonium nitrate exported to Australia from the Russian Federation.

The commission published the public notice of the reviewable decision on 23 May 2021.[5] The measures expired on 24 May 2021.

1.2.2 Review of the Minister's decision

Following the Minister's decision, the ADRP accepted applications for review from:

- CSBP Limited (CSBP)
- Dyno Nobel Asia Pacific Pty Ltd (Dyno Nobel)
- Orica Australia Pty Ltd (Orica Australia)
- Queensland Nitrates Pty Ltd (Queensland Nitrates).

The ADRP initiated its review of the decision through public notice on 19 July 2021 (ADRP Review No. 2021/134).[6]

On 15 July 2021, in a conference with the ADRP member, Orica Australia and Dyno Nobel (representing the Australian industry) jointly submitted to the ADRP 'further information' comprising a press release that had not been before the commission or the Minister in respect of continuation inquiry 565. That information concerned the proposed expansion of a plant in the Russian Federation that produces ammonium nitrate (the Kemerovo expansion).

A number of 'interested parties' to the ADRP review submitted their concerns that the information furnished to the ADRP was not 'relevant information' within the meaning set out in Division 9 of Part XVB of the Act.[7] Therefore, the commission could not have considered it, and it should not fall within the scope of review. The 'further information' essentially being considered on a *de novo* basis.

On 24 August 2021, the ADRP accepted the 'further information' and requested that it be re-examined by the commission in respect of Russian capacity and capacity utilisation. The ADRP member explained that the information was 'related to' the 'relevant information' within the meaning set out in section 269ZZHA(2)(a) and it could, therefore, be taken into account (interested parties having been afforded the opportunity to comment on it, and it having been received within 30 days of the review's initiation).

---

[5] EPR 565, document number 51.

[6] Notice under section 269ZZI at ADRP Review No. 2021/134.

[7] Refer to, in particular, the submission to the ADRP on behalf of EuroChem Group AG dated 14 September 2021.

The ADRP member asked the commission to reconsider Russian capacity utilisation and its relevance (if any) to the related findings and conclusions of this reinvestigation, with specific reference to the Kemerovo plant expansion (discussed further below).

On 17 September 2021, the ADRP requested the Commissioner reinvestigate certain findings in REP 565.[8] In particular, these findings were that the Commissioner was not satisfied that:

- Expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of dumping (finding one – 'the continuation or recurrence of dumping finding').
- The expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of injury (finding two - 'the continuation or recurrence of injury finding').

In relation to finding one set out in REP 565, the ADRP requested the commission to:

- Reinvestigate the methodology used to ascertain normal values and the resulting effect on the dumping margins of the Russian exporters. Specifically, the ADRP requested a reinvestigation of the deduction made for the GET from the identified gas benchmark. This deduction was included as part of the consideration of what adjustments were necessary to account for different conditions in the country of export to reflect what a competitive cost would be.
- Having reassessed the appropriateness of the deduction of the GET, re-compare the reinvestigated competitive benchmark against the exporter's actual gas costs to assess whether the exporter's domestic and export prices are likely to have been distorted by the market situation. In addition, the commission was requested to ensure that a comprehensive examination of whether a 'proper comparison' of the domestic and the export price was permitted under section 269TAC(1) was completed.

Depending on the reinvestigation findings above, if satisfied that the market situation does, in fact, prevent a proper comparison for the purposes of section 269TAC(1), the commission was asked to:

- Ascertain the exporters' normal values under section 269TAC(2) and recalculate the dumping margins for the relevant exporters accordingly.
- Re-examine the finding that the Commissioner is not 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 (to the extent that the reinvestigation of the normal value methodology results in any change in the dumping margins of the exporters, including uncooperative exporters).
- Re-examine the finding that the Commissioner is satisfied that exports of ammonium nitrate are likely to continue or recur on a spot sale basis, which forms approximately 5% of sales in the Australian market (to the extent that the reinvestigation of the normal value methodology results in an increase to the dumping margins of the exporters).
- Reconsider Russian capacity utilisation and its relevance (if any) to the related findings and conclusions, with specific reference to a press release relating to the Kemerovo plant expansion ('further information' provided after the conclusion of the inquiry) and other specific comments made in response to that 'further information'.

[8] ADRP (2021), Letter to the Commissioner regarding reinvestigation, 17 September 2021, on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_ammonium_nitrate_-_request_for_reinvestigation.pdf.

In relation to finding two, the ADRP requested the commission to:

- Reinvestigate the finding that the Commissioner is not satisfied that the expiration of the anti-dumping measure would lead, or would be likely to lead, to a continuation or recurrence of injury (to the extent that the reinvestigated methodology results in an increase in the dumping margins of the exporters).
- Reconsider Russian capacity utilisation and its relevance (if any) to the potential likelihood of the continuation or recurrence of injury, with specific reference to the press release relating to the Kemerovo expansion (new information) and other comments made in response to this new information.

Further details of the ADRP's reinvestigation request are included in relevant sections of this preliminary report.

1.3 Next steps

The commission invites interested parties to make submissions in response to the Commissioner's preliminary findings as set out in this report. Submissions received will inform the preparation of the final reinvestigation report that the Commissioner will provide to the ADRP.

Submissions are due no later than **15 July 2022**. The commission's preference is to receive submissions by email to investigations2@adcommission.gov.au. Interested parties may also address submissions to:

The Director, Investigations Unit 2
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2600

Interested parties claiming that information contained in their submissions is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests
- satisfy the Commissioner that there is no way such a summary could allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked 'OFFICIAL: SENSITIVE'. Interested parties must lodge a non-confidential version of their submission, clearly marked 'PUBLIC RECORD'.

2 CONDUCT OF REINVESTIGATION

2.1 Approach to reinvestigation

The reinvestigation has been conducted in accordance with section 269ZZL(2). In conducting the reinvestigation, the commission has considered:

- the grounds accepted for review (as the ADRP published under section 269ZZI)
- the ADRP's reasons for requesting the reinvestigation
- relevant information contained in the applications to the ADRP for the review of the then Minister's decision received from Australian industry members
- additional information the commission requested from certain parties
- information from a conference between the commission and the ADRP in relation to the reinvestigation request[9]
- the further information provided with the reinvestigation request and specified in the reinvestigation request relating to the Kemerovo plant expansion
- submissions received from interested parties prior to the publication of this preliminary report and in response to the commission's file note inviting submissions[10]
- other information where directly specified in this preliminary report.

The commission has assisted the Commissioner in undertaking the reinvestigation, pursuant to the commission's function specified in section 269SMD.

2.2 Conduct of the reinvestigation

For the purposes of the reinvestigation, the commission invited interested parties to make submissions in relation to the matters subject to reinvestigation. Table 2 lists submissions received prior to the publication of this preliminary report that included public record versions.

EPR number	Received from	Date published on EPR
53	Orica Australia	24 January 2022
54	Government of Russia (GOR)	28 January 2022
55	CSBP, Dyno Nobel Asia Pacific, Orica Australia and Queensland Nitrates	31 January 2022
56	JSC Novomoskovsky Azot and JSC Nevinnomyssky Azot	31 January 2022
57	Glencore Coal Assets Australia Pty Ltd and Mount Isa Mines (Glencore)	31 January 2022

Table 2: Submissions received prior to this preliminary report

Public record versions of these submissions are available on the commission's electronic public record (EPR) for this case at: www.adcommission.gov.au.

The commission also received a confidential submission from CSBP in support of Orica Australia's submission. CSBP's submission did not provide any additional information other than that provided in Orica Australia's submission.

[9] ADRP conference summary on the ADRP's website at https://industry.govcms.gov.au/sites/default/files/adrp/2021_134_ammonium_nitrate_-_conference_summary.pdf.
[10] EPR 565, document number 52.

The commission requested a conference with the ADRP in relation to the reinvestigation request. The conference took place on 20 December 2021. A summary of the conference is available on the ADRP's website.[11]

The commission also sought further information from the GOR and Russian producer, SBU AZOT, in relation to the expansion of the Kemerovo manufacturing plant capacity.[12] A copy of the GOR's response to the commission's enquiries is available on the EPR.[13] SBU AZOT did not respond to the commission's inquiries.

The commission sought further confidential contractual information from 2 interested parties. Both interested parties provided responses to the requested information.

In conducting the reinvestigation, the commission has sought or obtained information from various sources including published research. References to this information are contained in this report. None of the authors cited in this report are, or have been, engaged or involved at any time in this reinvestigation. The opinions of all authors cited are their own and do not necessarily represent the views of the Australian Government.

The ADRP requested the Commissioner provide a report on the result of its reinvestigation by 5 January 2022. The ADRP subsequently granted the Commissioner with extensions of time to provide the reinvestigation report.[14] The reinvestigation report is currently due by 19 July 2022.[15]

2.3 Preliminary reinvestigation report

This report sets out the preliminary findings of the Commissioner in response to the reinvestigation request from the ADRP. This report provides an opportunity for interested parties to comment on the proposed findings and for the commission to consider those submissions prior to providing the ADRP with the reinvestigation report.

[11] Refer to https://www.industry.gov.au/sites/default/files/adrp/2021_134_ammonium_nitrate_-_conference_summary.pdf.

[12] The commission granted an extension of time to the GOR to provide a response.

[13] EPR 565, document number 54.

[14] Refer to the commission's extension request on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_reinvestigation_134_-_commissioner_letter.pdf.

[15] EPR 565, document number 52.

3 FINDING ONE: RUSSIAN GAS EXPORT TAX ADJUSTMENT TO THE GAS BENCHMARK

3.1 Preliminary findings

The commission has reinvestigated whether the gas benchmark price requires adjustment for the GET to ensure that the benchmark is relevant to what would be the competitive gas price in the Russian domestic market. On reinvestigation, the commission's preliminary findings in relation to this adjustment are set out below:

- The GET is an export tax, which the GOR imposes on exports of natural gas. The GET rate for exports of natural gas to Germany is 30%. The GET does not apply to domestic sales of natural gas in Russia. PJSC Gazprom (Gazprom) remits the GET to the GOR (Section 3.4).
- The GET is not an unusual type of tax in Russia. Russian export taxes apply across a broad range of goods and the use of export taxes, particularly in relation to primary resources, is common in Russia. The application of export taxes is also common in other jurisdictions. The rate of the tax, whilst comparatively high, is not unusual for Russian export taxes (Section 3.5).
- Whilst the GOR exerts significant influence on Gazprom with its 50.23% shareholding and representation on the board of Gazprom, the evidence does not indicate that the GOR sets or dictates the export prices that Gazprom achieves on sales of natural gas in Germany. The evidence before the commission indicates that Gazprom has significant non-GOR ownership and is a profit seeking corporate entity. The commission considers that Gazprom, when determining prices on export sales of natural gas, will seek to maximise its profit. Gazprom appears to treat the GET as an external impost, not as additional profit or a sellers' mark-up in its pricing decisions. Consequently, the commission considers that the GET is not operating as a *sui generis* 'tax' or payment by a government-owned majority entity to itself (Section 3.6).
- The evidence before the commission does not support the applicants' 3 claims or reasons for why the German benchmark price should not have the GET deducted (Section 3.7).
- Evidence indicates that the GET has had the likely effect of increasing gas prices in Germany. Consequently, to account for different conditions in the country of export where the tax does not apply, the commission considers that an adjustment is necessary for the GET. However, the basis for the adjustment to the benchmark should be the impact of the export tax on prices in Germany, not the rate of the tax (Section 3.8).
- The commission has preliminarily determined that a downwards adjustment of 28.4% should be made to the benchmark price of the natural gas at the Russian border. The commission determined this adjustment value using a partial equilibrium model that estimated the effect on German prices of the GET, using relevant data (Section 3.8).

3.2 Grounds of review and reinvestigation request

3.2.1 ADRP reinvestigation request in relation to the determination of normal values and dumping margins

The ADRP requested that the Commissioner reinvestigate the methodology of the ascertainment of normal values and the resulting effect on the dumping margins of the Russian exporters.[16]

In the reinvestigation request, the ADRP noted that:

- 'The particular focus of this reinvestigation relates to the deduction made by the [commission] for the GET to the identified benchmark for natural gas, as part of its adjustments to "ensure that the gas benchmark is relevant to what would be the competitive gas price in the Russian domestic market."'[17]

In relation to reassessing the decision to deduct the GET, the ADRP noted that:

- The commission had 'appropriately considered whether adjustments were necessary to account for different conditions in the country of export to reflect what a competitive cost would be (looking at differences such as prices occurring at different times, differing physical characteristics, differing delivery costs or differing taxes).'[18]

The ADRP also made the following observations in relation to the adjustment and emphasised their importance to this reinvestigation:

- It was important for the commission to 'carefully examine the facts and circumstances surrounding each adjustment claimed, to determine if the adjustment is appropriate and justified in the particular circumstances'.[19]
- The member 'question[ed] why in determining whether to deduct the GET it was necessary to have regard to whether [the] export tax form[ed] part of the distortive impact caused by the GOR and which constitute[d] the particular market situation' when the commission's stated consideration 'was whether adjustments [were] necessary to account for different conditions in the country of export to reflect what a competitive cost would be'.[20]
- 'The object of using the benchmark, as stated by the ADC, is to assess the scale of the market situation's effect on Russia's domestic prices for ammonium nitrate as compared to its effect on export prices'.[21]
- It was 'particularly significant to examine the specific nature and circumstances of the imposition of the Gas Export Tax, to determine whether it is a usual type of tax that applies to exporters, both domestically and in other gas producing countries, and indeed if it [was] a "tax" that is contemplated and appropriate as an adjustment, irrespective of how it is described or categorized by the exporters'.[22]
- The '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),

---

[16] ADRP (2021), Letter to the Commissioner regarding reinvestigation, 17 September 2021, p. 2, on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_ammonium_nitrate_-_request_for_reinvestigation.pdf.
[17] Ibid, p. 4.
[18] Ibid, p. 5.
[19] Ibid, p. 6.
[20] Ibid, p. 5.
[21] Ibid.
[22] Ibid, p. 6.

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 export (Russia) so as to reflect what a competitive cost would be in Russia'.[23]

- That the following claims from the applicants for the review 'had merit' and 'were worthy of further analysis'[24]:
    - '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)'[25]
    - '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'[26]
    - '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'.[27]

3.2.2 Conference with ADRP

On 20 December 2021, the commission attended a conference with the ADRP to obtain further information and clarification relating to the ADRP's reinvestigation request.

The member advised 'that it was appropriate for the ADC to make adjustments to the "competitive benchmark" in the context of the ADC's own unique selected methodology, to reflect differences in the country of export'.[28]

The member clarified that when they 'referred to "usual type of tax" [the member] was contemplating a typical tax, such as a [goods and services tax] or [value added tax (VAT)], imposed generally on various other products, or categories of products, in the country of export. If there were no other products or group of products subject to such a tax in the country of export, [the member] considered that it might be appropriate for the analysis to examine whether it was usual for such an export tax to apply to other similar (fuel-related) products exported from other fuel - producing countries.'[29]

The member advised that they 'found it somewhat anomalous that a major "cost" [being the 30 per cent GET] that increased the price of Russian natural gas to a level that amounted to a competitive market price when offered to customers in Germany, was subsequently deducted from that "competitive benchmark" as an adjustment. This appeared, in effect, to revert the "competitive benchmark" price back to what the price of natural gas was on the Russian domestic market (which price had been found to be

---

[23] Ibid, p. 7.

[24] Ibid.

[25] In the applicants' applications to the ADRP, this claim is referenced as: '*Further, 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).'*

[26] In the applicants' applications to the ADRP, this claim is referenced as*: 'Gazprom's prices net of that "tax" are not the product of competitive market conditions. The appropriate benchmark is the price at which gas is sold into a competitive market.'*

[27] In the applicants' applications to the ADRP, this claim is referenced as; '*The "export tax" is consistent with Australia's Rent Resource Tax and 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*.'

[28] ADRP conference summary, p. 6, on the ADRP's website at https://industry.govcms.gov.au/sites/default/files/adrp/2021_134_ammonium_nitrate_-_conference_summary.pdf.

[29] Ibid, p. 7.

distorted, in accordance with the particular market situation finding). This appeared to [the member] to detract from the adjusted price still being a "competitive benchmark."'[30]

The member also pointed out that 'the mere referral to the GET as an "export tax" does not necessarily define it as such, and [the member] considered it relevant for the ADC to more closely examine the real nature of the GET in its analysis. [The member] pointed out that in such an examination, it should be borne in mind that Gazprom, the monopoly exporter of natural gas from Russia, was a government-owned entity. Since a "tax" is collected by the government, a *sui generis* "tax" or payment by a government-owned entity (that has an export monopoly) to the government could appear to be more like a payment to itself or an additional profit, rather than a cost incurred.' This in turn contributed to the member 'questioning whether the 30 per cent GET is an appropriate adjustment to make to the external competitive benchmark price was particularly when the adjusted price was similar to the original price in the country of export (which was found to be distorted, per the particular market situation finding)'. The member pointed out that it was 'an unusual situation where the country of origin of the "external benchmark" used in the methodology was also the country of export of the product and the country of the particular market situation.'[31]

The member clarified that when they 'referred to the examination of whether the "export tax applies to exporters, both domestically and in other gas producing countries", the domestic market that [the member] was referring to is the Russian domestic market.'[32]

The member advised 'why [they] considered it relevant for the ADC to examine the actual nature of the GET when deciding whether the adjustment is appropriate.'[33]

3.3 Reassessment of the deduction of the GET from competitive benchmark

For the purposes of reassessing the GET adjustment to the benchmark, the commission has considered:

- The nature and circumstances relating to the imposition of the GET
- Whether the GET is a usual tax
- The relationship between the GOR, Gazprom and the imposition of the GET
- The applicants' 3 stated claims for not deducting the GET from the benchmark price
- Whether an adjustment for the GET is necessary to account for different conditions in the country of export to reflect what a competitive cost would be in Russia.

Sections 3.4 to 3.8 consider each of these matters separately.

3.4 Nature and circumstances of the imposition of the GET

The ADRP noted in the reinvestigation request that it is 'particularly significant to examine the specific nature and circumstances of the imposition of the Gas Export Tax'.

The commission's inquiries indicate that the current 30% GET was implemented through *Resolution of the Government of the Russian Federation number 754* (Resolution 754) in

[30] Ibid.
[31] Ibid, p. 8.
[32] Ibid.
[33] Ibid, p. 9.

August 2013.[34] The regulations were further updated through *Resolution of the Government of the Russian Federation number 705* (Resolution 705) in July 2014 and *Resolution of the Government of the Russian Federation number 859* (Resolution 859) in August 2014.[35]

The commission understands that these resolutions operate to apply export customs duties on a range of goods, including natural gas, exported from Russia.[36] The OECD defines export duties as 'general or specific taxes on goods or services that become payable when the goods leave the economic territory or when the services are delivered to non-residents; profits of export monopolies and taxes resulting from multiple exchange rates are excluded'.[37] The GET, as applied through the specified resolutions, is consistent with the OCED's definition of an export tax.

Despite the passing of the above resolutions in 2013 and 2014, the commission understands that the GET rate of 30% has remained unchanged since 2001. The rate increased from 5% to 30% in 2001.[38]

Submissions from both Glencore and EuroChem exporters[39] detailed their understanding of the relevant Russian government regulations establishing the imposition of the GET in relation to the export of natural gas from Russia.[40,41] Both submissions are consistent with the commission's understanding. No other parties provided information either confirming or disputing the imposition of the 30% GET on exports of natural gas from Russia to Germany during the inquiry period.

To validate that the GET was in place and that the GOR enforced the recovery of the GET during inquiry period, the commission examined the financial and annual reports of Gazprom for 2019 and 2020. The financial statements indicate that Gazprom remitted customs duty and excise tax to the GOR during the 2019[42] and 2020[43] calendar years. These financial statements further specify that the GET rate that applied to gas exports

---

[34] Refer to http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102357670&backlink=1&&nd=102167466, (last accessed and downloaded on 1 March 2022). Translated using Google Translate.

[35] Refer to http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102356437&backlink=1&&nd=102357670, (last accessed on 1 March 2022). Translated using Google Translate.

[36] Resolution 754 specifies that the purpose of the resolution was to 'bring the rates of export customs duties in line with the obligations of the Russian Federation after its accession to the World Trade Organization and in accordance with Article 3 of the Law of the Russian Federation'. And that the 'resolution approved attached rates of export customs duties on goods exported from the Russian Federation outside the states-participants of the agreements on the Customs Union'. Resolution 754 applied export taxes across a large and broad range of goods. Resolutions 705 and 859 re-specify an export tariff rate of 30% for tariff code 2711.21.000.0, described as 'natural gas'. Resolutions 859 and 705, as with Resolution 754, applied and/or amended export taxes across a large and broad range of goods.

[37] Refer to https://stats.oecd.org/glossary/detail.asp?ID=910, (last accessed 10 March 2022).

[38] Staff Working Document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, European Commission, 2020, p. 240.

[39] EuroChem exporters is the collective reference to EuroChem Group exporters, JSC Novomoskovsky Azot and JSC Nevinnomyssky Azot.

[40] EPR 565, document numbers 57 and 56.

[41] Glencore stated that Gazprom's audited reports referenced Regulation 754, specified a rate of 30% and referenced the payment of RUB653,035 million in customs duty during 2019. The commission notes that the referenced RUB653,035 million is in reference to reported sales whereas an amount of RUB790,087 million is reported in relation to cash payments. The commission understands that the difference in these figures results from the differing basis on which the customs duty payments are recognised in the audited report. The EuroChem exporters referenced the Russian customs code and budget code in relation to the operation and the collection of the GET.

[42] PJSC Gazprom Financial Report for 2019, p. 137. The net cash flow statement indicates that it paid RUB790,087 million in customs duties.

[43] PJSC Gazprom Financial Report for 2020, p. 140. The net cash flow statement indicates that it paid RUB472,031 million in customs duties.

during these periods was 30%.[44] The commission has been unable to identify any evidence that the GOR discounted or refunded Gazprom's payments of the GET.

Based on the analysis of submissions, the relevant Russian regulations and information from Gazprom, the commission is satisfied that export sales of natural gas from Russia to Germany were subject to an export tax of 30% during the inquiry period. Examination of the relevant regulations indicate that this tax is only relevant to export sales of natural gas. No information before the commission indicates that domestic sales of gas incur this tax or an equivalent tax. Consequently, the commission is also satisfied that domestic sales of natural gas are not subject to the GET.

3.5 Is the GET a usual type of tax and is the rate of tax unusual?

In conducting its examination of the GET, the ADRP noted that the commission must determine whether the GET is 'a usual type of tax that applies to exporters, both domestically and in other gas producing countries', as well as if it is a 'tax' at all for the purpose of any proposed adjustment.[45]

In conducting the inquiry outlined above, the commission has considered export duties generally, the application of export duties within the Russian domestic tax system, and the taxation schemes of other gas producing countries.

3.5.1 International practices in regard to export taxes/duties

Taking a global view as to the imposition of export duties and taxes can inform how 'usual' their application is. A 2003 World Trade Organization (WTO) discussion paper found that about one third of WTO members impose some kind of export duty, mostly on natural resources.[46,47] A subsequent OECD report found that WTO members' imposition of export duties had increased to more than half of all members by 2009, with 65 of 128 WTO members applying export duties between 2003 and 2009.[48]

The commission understands that a comparable proportion of WTO members imposed export duties during the inquiry period. Namely, data from the World Bank shows that 47 countries reported tax revenue from taxes on exports between 2017 and 2019.[49,50,51,52] Therefore, the commission is satisfied that Russia's imposition of export taxes is not, in and of itself, unusual in a global context.

---

[44] PJSC Gazprom Financial Report for 2019, p. 97 and PJSC Gazprom Financial Report for 2020, p. 96.

[45] ADRP (2021), Letter to the Commissioner regarding reinvestigation, 17 September 2021, p. 6, on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_ammonium_nitrate_-_request_for_reinvestigation.pdf.

[46] Piermartini, R., 2004, The Role of Export Taxes in the Field of Primary Commodities, World Trade Organisation, Geneva, Switzerland, https://www.wto.org/english/res_e/booksp_e/discussion_papers4_e.pdf, (last accessed 8 March 2022).

[47] OECD, 2010, The Economic Impact of Export Restrictions on Raw Materials, OECD Trade Policy Studies, OECD Publishing, pp. 15–16, http://dx.doi.org/10.1787/9789264096448-en, (last accessed 2 March 2022).

[48] Ibid.

[49] World Bank, https://data.worldbank.org/indicator/GC.TAX.EXPT.CN?name_desc=false&type=points, (last accessed 1 March 2022).

[50] World Bank, https://data.worldbank.org/indicator/GC.TAX.EXPT.ZS?name_desc=false&type=points, (last accessed 1 March 2022).

[51] Note: World Bank Data is from IMF Government Finance Statistics Yearbook which defines 'taxes on exports' as 'all levies on goods being exported out of the country or services being delivered to non-residents by residents' World Bank, https://tcdata360.worldbank.org/indicators/GC.TAX.EXPT.ZS?country=BRA&indicator=1998&viz=line_chart&years=1972,2019, (last accessed 11 May 2022).

[52] World Trade Organisation, *Members and Observers*, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm, (last accessed 1 March 2022). Of the 47 countries identified, 41 were WTO members and the remaining 6 were WTO observers.

3.5.2 Export taxes in Russia

Prior to WTO accession in 2012, Russia had binding export duties for over 700 tariff lines.[53] Since accession, Russia has removed export duties for many raw materials, reducing customs duties to 0% for approximately 200 tariff lines in September 2016.[54] However, export duties still apply to many resource-based products such as metals, timber, and agricultural commodities.[55] This is in line with the export duties imposed by other WTO members, which predominately apply to agricultural products, forestry products, fishery products, mineral and metal products, and skin products.[56]

The Russian GET of 30% imposed on natural gas exports is high compared to other Russian energy resources which attract percentage export duties between 5% and 6.5% (in so far as they attract export duties at all).[57,58] However, this does not capture all export taxation of energy resources in Russia. Crude oil is subject to an export duty based on the price of Urals blend on the Mediterranean and Rotterdam markets, which changes every month, and then multiplied by an adjusting coefficient.[59] Export taxation of other petroleum products is at a percentage of this calculated crude oil export duty, ranging from 30% for light petroleum products, motor oil and gasoline, 55% for naphtha, and 100% for fuel oil, bitumen, and other dark petroleum products.[60] Therefore, the application of export duties to energy resources is usual in Russia.

Export duties on oil products are not in percentage terms and not easily converted to such a format. Therefore, when considering the size of the GET on natural gas with respect to export taxation of other energy resources in Russia, a comparative analysis is of limited utility. As such, consideration of the size of Russian export duties imposed on products other than energy resources is required.

While a 30% GET is unique in relation to energy resources, with other products taxed at a lower percentage or not using a percentage rate at all, it is not unusual within Russia's broader export duties regime. Various Russian wood products, for example, were subject to export duties ranging from 5% to 25% in 2019,[61,62] while non-ferrous metals exported from Russia were subject to duties between 7.5% and 20%.[63,64]

---

[53] Baker McKenzie, *Doing Business in Russia 2021: Chapter 9. Customs, Trade and WTO Aspects*, https://resourcehub.bakermckenzie.com/en/resources/doing-business-in-russia/doing-business-in-russia-2021/doing-business-in-russia-2021, (last accessed 2 March 2022).

[54] Ibid.

[55] Staff Working Document: On significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, European Commission Services, 2020, p. 336, https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf, (last accessed 2 March 2022).

[56] Piermartini, R., 2004, The Role of Export Taxes in the Field of Primary Commodities, World Trade Organisation, Geneva, Switzerland, https://www.wto.org/english/res_e/booksp_e/discussion_papers4_e.pdf, (last accessed 1 March 2022).

[57] LNG for instance is not subject to any export duties. Refer to Government Resolution No. 859 of August 27, 2014, *On amendments to the Decree of the Government of the Russian Federation* dated July 25, 2014, Government of the Russian Federation.

[58] EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 585–602.

[59] Adjusting coefficient was introduced in 2019 and set to 0 from 2024 onwards, meaning the crude oil export duty will also be 0 from 2024 onwards; EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 585–602.

[60] EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 585–602.

[61] Government Decree No. 754 of 30 August, 2013.

[62] Staff Working Document: On significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, European Commission Services, 2020, pp. 339–344, https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf, (last accessed 2 March 2022).

[63] Federal law No. 89-FZ of 24 June, 1998 (as amended 25 December, 2018).

[64] Staff Working Document: On significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, European Commission Services, 2020, p. 345, https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf, (last accessed 2 March 2022).

Therefore, in the Russian tax system, the application of a 30% GET on natural gas exports, whilst high, is not unusual in either its form or in the rate applied.

3.5.3 Taxation of natural gas in other gas producing countries

Of the top 20 gas producing countries, the commission reviewed 18 countries in relation to their gas taxation policies. A summary of each country's gas taxation regimes is contained in **Appendix A** and shows a diverse range of taxation schemes applied to natural gas at various rates. While the majority of jurisdictions favour a corporate income tax (CIT) or VAT over an export duty, a GET rate of 30% is broadly consistent with the amount of tax revenue collected by other gas producing countries against natural gas income.

In regard to international tax practices for natural gas, the commission is satisfied that the quantum of the GET is usual with regard to collecting tax revenue against a nation's gas production, but distinct in its operation as a tax on exports.

3.5.4 Findings

After considering export duties generally, the application and quantum of export duties within the Russian tax system, and the taxation schemes of other gas producing countries, the commission is satisfied that the:

- Russia's imposition of export taxes is not unusual
- application of a 30% GET on natural gas exports, whilst high, is not unusual
- quantum of the GET, whilst high, is not unusual within Russia and is usual when considered against the quantum of the taxation schemes of other gas producing countries.

3.6 Consideration of the relationship between the GOR, Gazprom and the imposition of the GET

When assessing whether the GET is a 'tax', the commission has also considered the relationship between the GOR, Gazprom and the imposition of the GET.

The ADRP noted in the reinvestigation request that where a tax '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'. During the subsequent ADRP conference, the member noted that the 'mere referral to the GET as an "export tax" does not necessarily define it as such'. And that '[s]ince a "tax" is collected by the government, a *sui generis* "tax" or payment by a government-owned entity (that has an export monopoly) to the government could appear to be more like a payment to itself or an additional profit, rather than a cost incurred.'

The commission finds it relevant to identify that, while Gazprom is a government-owned entity, in the sense that the GOR holds 50.23% of the company's shares,[65] it is not a wholly government-owned entity. After the privatisation of Gazprom in 1992, the GOR retained shares in the company. Between 2000 and 2004, the GOR held a 38.37% interest

[65] Refer to Gazprom's website, https://www.gazprom.com/investors/stock/, (last accessed 13 January 2021), which specified that 'Russian Government controls over 50% of the Company's shares'. Also refer to p. 206 of PJSC Gazprom Annual Report for 2019 which states '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% and is owned through the full ownership of AO ROSNEFTEGAZ which also holds a 74.55% stake in AO Rosgazifikatsiya'.

in Gazprom.[66] The GOR subsequently took majority ownership of Gazprom in 2005.[67] The GOR does not have a special right to manage Gazprom's affairs (a 'golden share').[68]

In 2001, the GOR imposed the GET's current rate of 30%, which has remained unchanged since. Therefore, the commission considers that there is no direct connection between the initial imposition of the GET, the current rate of the GET and the current ownership structure of Gazprom.

The EuroChem exporters claimed that the GET had been in place before Gazprom had been designated as a piped gas export monopoly in 2006.[69] The EuroChem exporters provided no evidence to support this claim. The commission's enquiries also have not been able to identify any information to verify whether the EuroChem exporters' claim is correct. Subject to provision of evidence, the commission has not included this claim in its assessment.

As stated in the company's Articles of Association, Gazprom is a for-profit organisation with its principal goal being to generate profit.[70] Gazprom's dividend policy and financial statements, which record and prioritise profit (net of taxation such as the GET) further support Gazprom's principal goal to generate profit. With respect to pricing, the Articles of Association make specific reference to the setting of domestic gas settlement prices by the company's Management Committee, but the Articles do not refer to setting export prices.[71]

There is GOR representation on Gazprom's Board of Directors[72] and the GOR likely has significant influence in the operation of Gazprom. However, there is no evidence that the GOR directly influences the pricing decisions of Gazprom with respect to the export of natural gas. The European market is considered to influence Gazprom's export pricing into Germany. While Gazprom is found to have some market power in the European natural gas market, this power is tempered by the existence of competing sources of gas supply to Europe, Gazprom's need to be perceived as a reliable supplier, and the risk of new competitors to the market.[73] It is the commission's view that it is these elements, paired with Gazprom's Articles of Association objective of maximising profits, which predominately influence pricing of Gazprom's natural gas exports from Russia, not direct government control.

The commission's analysis of information contained in Gazprom's annual report and financial statements further identifies that Gazprom treats the GET as an external impost and not as part of the sales price. Specifically, the annual report states that Gazprom treats changes in export duty as an external risk and recognises the revenue from gas sales net of the amount of customs duty paid.[74] Further, the commission has found no evidence to support that the GET remitted by Gazprom to the GOR is a 'payment to itself or an additional profit' to Gazprom or to the GOR.

---

[66] Gazprom (2005), Gazprom in figures 2000-2004.

[67] The commission understands that the further interest in Gazprom was acquired through AO ROSNEFTEGAZ and AO Rosgazifikatsiya during 2005.

[68] Gazprom (2021), Annual Report 2020, p. 209.

[69] EPR 565, document number 56.

[70] Gazprom, 2020, Articles of Association of Joint Stock Company Gazprom, p. 2.

[71] Ibid, p. 30.

[72] Of 11 Board of Directors members, 3 are current Ministers within the Government of Russia and the chair is the government's Special Presidential Representative for Cooperation with Gas Exporting Countries; also refer to Gazprom, 2021, 'Management', https://www.gazprom.com/about/management/, (last accessed 15 February 2022).

[73] OECD, 2010, The Economic Impact of Export Restrictions on Raw Materials, OECD Trade Policy Studies, OECD Publishing, pp. 131–133, http://dx.doi.org/10.1787/9789264096448-en, (last accessed 8 March 2022).

[74] PJSC Gazprom Financial Report for 2019, pp. 97 and 195.

3.6.1 Submissions received

With reference to the relationship between the GOR, Gazprom and the GET, Orica Australia submitted that the GET should be considered a 'targeted levy' as opposed to a tax, which is imposed by the GOR against its 'own agency' Gazprom, and as such is not appropriate for adjustment.[75]

The commission understands a levy to be a temporary tax, collected and used for a specific stated purpose.[76] The GET does not meet either of these criteria. The GET is not a temporary tax, having been in place at the current rate of 30% since 2001.[77] [78] Further, the commission has not identified any evidence of a specific stated purpose for which the GET is used. Therefore, for the purpose of the adjustment, the commission finds that the GET is a tax and not a 'levy'.

In relation to Orica Australia's assertion that Gazprom is the GOR's 'own agency', the applicants submitted no evidence to support this claim. The GET applies to Gazprom in its capacity as an exporter, and Gazprom must remit the GET to the GOR.[79] The imposition of export duties is not unique to Gazprom, with Russia using export duties extensively across resource-based products.[80] Further, Gazprom, while majority owned by the GOR, still has a significant portion of non-GOR shareholders, is a corporation incorporated under Russia's corporation laws and cannot be considered as an 'agency' solely owned and answerable to the GOR.[81]

The EuroChem exporters submitted that Gazprom remits the tax raised from the GET to Russia's equivalent of consolidated tax revenue. They claimed that the GET is credited in full to the federal budget.[82] The EuroChem exporters also submitted that the GET applies to all exports of natural gas, and, while Gazprom is the only exporter of piped gas, there is no evidence to suggest that this is the reason the GET applies solely to Gazprom.

3.6.2 Findings

The commission's analysis of the information before it indicates that the GET is an export duty analogous with other export duties paid by other organisations that export Russian natural resources. There is no evidence that it is a special kind of payment distinct from general tax revenue. Further, there has been no evidence submitted to the commission that these monies are reallocated to Gazprom.

In conclusion, the commission is satisfied that Gazprom is not the GOR's 'own agency' for the purpose of imposing the GET. The commission also finds that the GET is consistent with a cost incurred by Gazprom, which Gazprom treats as an external impost. Further, the

---

[75] EPR 565, document number 53.

[76] Taylor, M. (2013). Is it a levy, or is it a tax, or both? Revenue Law Journal, Volume 22, Issue 1, Article 7, https://doi.org/10.53300/001c.6734, (last accessed 28 September 2021).

[77] Government Decree No. 706 of 2 November 2001, 'on Partial Amendments to the Decree of the Russian Government No. 798 of 12 July 1999".

[78] European Commission Services, 2020, 'Staff Working Document: On significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations', European Commission, pp. 339–344, https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf, (last accessed 2 March 2022).

[79] Government Decree No. 754 of 30 August 2013.

[80] Staff Working Document: On significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, European Commission Services, 2020, p. 336, https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf, (last accessed 2 March 2022).

[81] Refer to https://www.gazprom.com/investors/stock/, (last accessed 13 January 2021), Gazprom's website specified that 'Russian Government controls over 50% of the Company's shares'. Refer to p. 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% and is owned through the full ownership of AO ROSNEFTEGAZ which also holds a 74.55% stake in AO Rosgazifikatsiya'.

[82] EPR 565, document number 56.

commission finds no evidence to suggest that the GET is unusual with respect to the Russian tax system and/or reflects a *sui generis* tax. The commission also finds no evidence to suggest that the GET is 'forgiven' or 'waived' in application in respect of Gazprom.

3.7 The applicants' claims identified in the reinvestigation request

The ADRP has requested that the commission examine the applicants' 3 claims identified in the reinvestigation request. The commission's assessment of each of these claims is set out below.

3.7.1 The GET 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)

The commission's understanding of the applicants' claim is that the GET should be considered as a seller's 'mark-up' given that the seller, Gazprom, is majority government-owned and holds a monopoly on the export of natural gas from Russia.

The commission considers that for such an argument to be sustainable, it would be necessary to demonstrate that:

- the GOR was making the export pricing decisions of Gazprom (as the recipient of the GET and a portion of dividends paid), or
- Gazprom was in receipt of the economic benefit from the imposition of the GET, which operates effectively as a mark-up in the hands of Gazprom.

The EuroChem exporters and Glencore made submissions in relation to this claim.[83] Glencore stated that the logic of the applicants' claim was faulty. Glencore stated that this claim incorrectly equated Gazprom with the GOR. Glencore noted that, whilst the GOR controlled 50.23% of shares, overseas parties held a significant portion of the other shares. Glencore asserted that these parties were clearly not part of the GOR. Glencore further stated that the GET was a legitimate duty imposed by the GOR and that Gazprom was not part of the GOR. The EuroChem exporters submitted that the GOR does not funnel the GET back to Gazprom. The EuroChem exporters further submitted that Gazprom was a corporate entity with significant private ownership that operated as a private corporation. They further claimed that adding the export tax as additional revenue for Gazprom was 'untenable'.

As specified in Section 3.6, the commission has not been able to identify information that indicates that the GOR is setting or controlling Gazprom's export pricing decisions to support a conclusion that the GOR treats the GET as a mark-up by the seller.

Information before the commission indicates that Gazprom is not retaining or receiving any benefit from the imposition of the GET. Gazprom has published net cash flow statements that indicate that it remitted RUB790,087 million in customs duties during 2019 and RUB472,031 million in 2020.[84] The cash flow statements do not identify any refund or remittance of these customs duties back to Gazprom. The information before the commission indicates that Gazprom treats the GET as an external impost or cost and that 'sales are recognised net of the amount of customs duties'.[85]

---

[83] EPR 565, document numbers 56 and 57.

[84] PJSC Gazprom Financial Report for 2019, p. 137 and PJSC Gazprom Financial Report for 2020, p. 140. The specified figure relates to cash payments, which is different to the revenue recognition based payments.

[85] Gazprom (2020), Annual Financial statements 2020, Note 5.6 – Customs duties. Note: Gazprom uses the term '*customs duty* to reflect the GET.

In conclusion, the evidence before the commission indicates that Gazprom, as a supplier to the German market, treats the GET as an external impost and not as a seller mark-up. Further, there is no evidence of the GOR setting or controlling Gazprom's German export pricing or that Gazprom receives any benefit from the imposition of the GET.

Consequently, the commission considers that it is not appropriate to treat the GET as a mark-up by the seller.

3.7.2 Gazprom's prices net of the GET are not the product of competitive market conditions and the appropriate benchmark is the price at which gas is sold into a competitive market

The commission received submissions from both Glencore and the EuroChem exporters in relation to the above claim by the applicants.[86]

Glencore submitted that this claim was an oversimplification and that, in the context of section 269TAC(2)(c)(i), 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. Glencore submitted that a cost into another market, which included the GET, did not result in a more accurate outcome.

The EuroChem exporters submitted that the claim rested on whether the adjustment was necessary to ensure that the 'work back price' was a proper benchmark. As the domestic price (in Russia) was not subject to the GET, and the export tax was not a contributing factor (to the market situation), the EuroChem exporters submitted that the fair comparison requirement dictated an adjustment for the GET was required. The EuroChem exporters argued that not adjusting for the GET would render the benchmark inflated and not appropriate for its stated purpose.

Whilst the commission notes Glencore's and the EuroChem exporters' submissions in relation to the necessity to make adjustments to reflect a price or cost in Russia, the commission considers that the applicants' claim concerns whether the price in Germany reflects the competitive market price (inclusive or exclusive of the GET).

The commission, for the reasons set out in REP 565, considers the German market to be a market suitable for determining a competitive market price for natural gas in Russia. The commission considers that the German gas market is a competitive market, of which Gazprom is one of the suppliers of natural gas. The commission is satisfied that German consumers are making purchasing decisions based on a price that is inclusive of the tax, given that pricing quoted in Germany is necessarily inclusive of the tax. However, as discussed in Section 3.7.1, evidence before the commission indicates that Gazprom treats the GET as an external impost, which it remits to the GOR. Consequently, the commission considers that Gazprom is making supply-pricing decisions based on a price that is net of the GET. Pricing negotiations, either on a net or gross basis, ultimately have Gazprom considering the price it gets to keep (which is net) rather than the price it collects (which is gross). Ultimately, the competitive price in Germany is a result of the interplay of these purchase and supply decisions.

To clarify, the purpose of making an adjustment for the GET is not to identify a market price net of the GET in Germany, but rather to adjust the German benchmark price to reflect what the competitive price would be in Russia.

[86] EPR 565, document numbers 56 and 57.

3.7.3 The GET 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

The commission considers that this claim from Australian industry contains 2 elements, namely:

- the GET should be considered as a levy to correct the Russian gas price to an equivalent competitive gas price
- the GET compensates the GOR for the export of its natural resources.

The commission also notes the ADRP member's observation[87] that they considered it to be 'anomalous' that the GET, which increased the price of Russian natural gas to a level that amounted to a competitive market price when offered to customers in Germany, was subsequently deducted from that 'competitive benchmark' as an adjustment. The member indicated that this appeared to revert the 'competitive benchmark' price back to what the price of natural gas was on the Russian domestic market.

Submissions received

The EuroChem exporters submitted that the reframing of the export tax was 'irrelevant, unnecessary, and unstainable'.[88] They further claimed that there was no evidence to support the claim that the tax was a levy.

Glencore submitted that the assertion was without any support given that GET is a proper and legally imposed duty.[89] Glencore further stated that the idea that including the GET corrected a 'nebulous, unquantifiable distortion' made no sense. Glencore further asserted that inclusion of the GET did not make the benchmark more competitive, it just made it larger.

Orica Australia submitted that the commission should consider the GET as a price correction mechanism that prevented the sale of artificially low priced gas outside of Russia at the beneficial prices its domestic users receive.[90] Orica Australia further contended that deducting the GET removed the mechanism that converts the artificially suppressed Russian gas prices to prices approximating an internationally competitive level. Orica Australia claimed that deducting the GET resulted in the benchmark being subject to the same distortions as the Russian domestic prices.

The commission notes that Orica Australia's submission appears to contradict the claim that the German market is a competitive market. Orica Australia seems to be claiming that the GOR has sought to intervene in its export markets through imposing an export tax to increase the export prices to what it considers to be a competitive market gas price or to a price that gives its domestic industry an advantage. This submission may be indicating that the GOR's imposition of the export tax is distorting German gas prices.

Purpose or intent of the GET

The commission has been unable to identify any information to establish what the GOR's intention was in imposing the GET. However, the commission notes that the imposition of the GET occurred as part of the implementation of multiple export taxes on a broad range of goods (refer to Section 3.4).

---

[87] ADRP conference summary, p. 7, on the ADRP's website at https://industry.govcms.gov.au/sites/default/files/adrp/2021_134_ammonium_nitrate_-_conference_summary.pdf.
[88] EPR 565, document number 56.
[89] EPR 565, document number 57.
[90] EPR 565, document number 53.

The commission is unable to validate the applicants' claims that the intention of the tax was either to compensate Russia for the export of its natural resources or to correct an artificially low Russian domestic price.

Further, it is not clear to the commission how the GOR's intentions in imposing the GET are relevant to assessing the need to adjust the German gas price for the GET so that the benchmark reflects what the competitive price would be in Russia.

Has the GET had the effect of correcting the distorted gas prices?

As previously noted in REP 565, the commission has observed a fall in the average German natural gas prices between continuation inquiry 312 and continuation inquiry 565. The commission estimates that the average gas price was approximately 53% lower in continuation inquiry 565 compared to continuation inquiry 312. Figure 1 illustrates the price reduction.

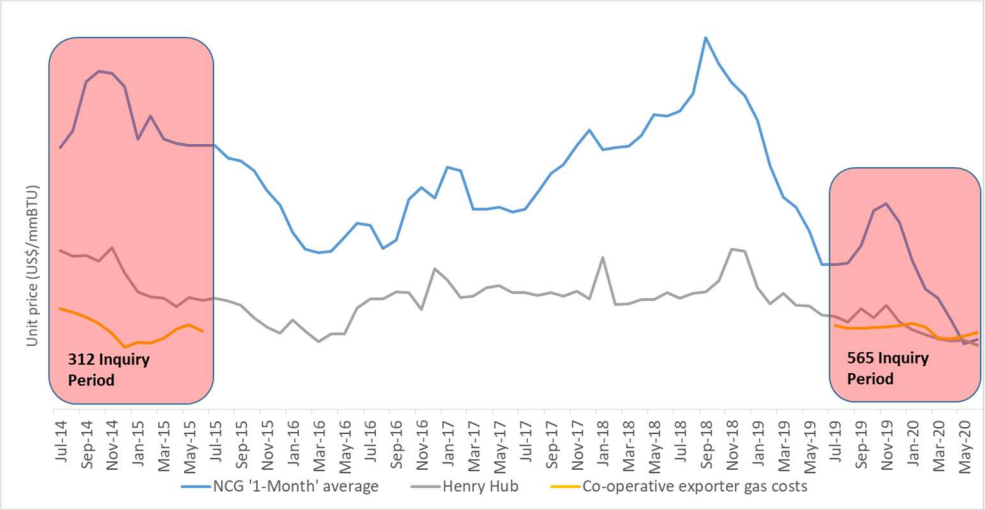

Figure 1: Gas benchmark prices 2014 to 2020

Figure 1 also demonstrates a closer alignment of German prices, U.S.A. Henry Hub gas prices and the cooperating exporters unadjusted gas costs during the 565 inquiry period compared to the previous inquiry period. This is indicative of a closer alignment of gas prices in Europe, U.S.A. and Russia during the inquiry period.

Noting the ADRP member's observations and Australian industry's claims, the commission sought to test whether the application of the 30% GET had the effect of correcting the market distortion. To conduct this assessment, the commission examined both the effect of the GET during the inquiry period and the historical effect of the GET.

Impact during the inquiry period

Gas prices in Germany increased during the first half of the inquiry period and fell during the second half of the inquiry period, which the commission observed was a consistent pattern in the previous 12-month period. The commission understands that the cause of the 2020 fall in gas prices in Europe, including in Germany, was a combination of factors including seasonal influences (winter vs. summer demand), growth in solar and hydropower generation, excess gas storage, more mild temperatures and COVID-19 induced nationwide lockdowns that depressed natural gas consumption.[91] Ultimately, these fluctuations in gas prices had an impact on the benchmark during the inquiry period relative to the regulated prices paid in the Russian domestic market.

[91] Refer to analysis at Section 4.4.3.

The commission developed 2 benchmarks, one with the GET deduction and one without. Figures 2 and 3 illustrate the relationship between the benchmarks and the exporters' actual gas costs.

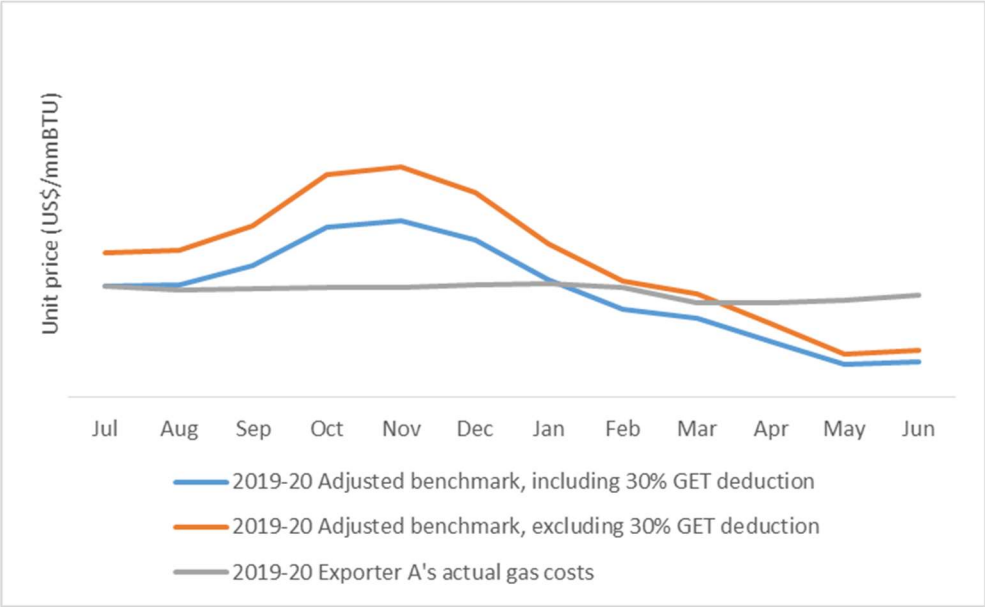

Figure 2: Exporter A – Comparison between benchmarks and costs

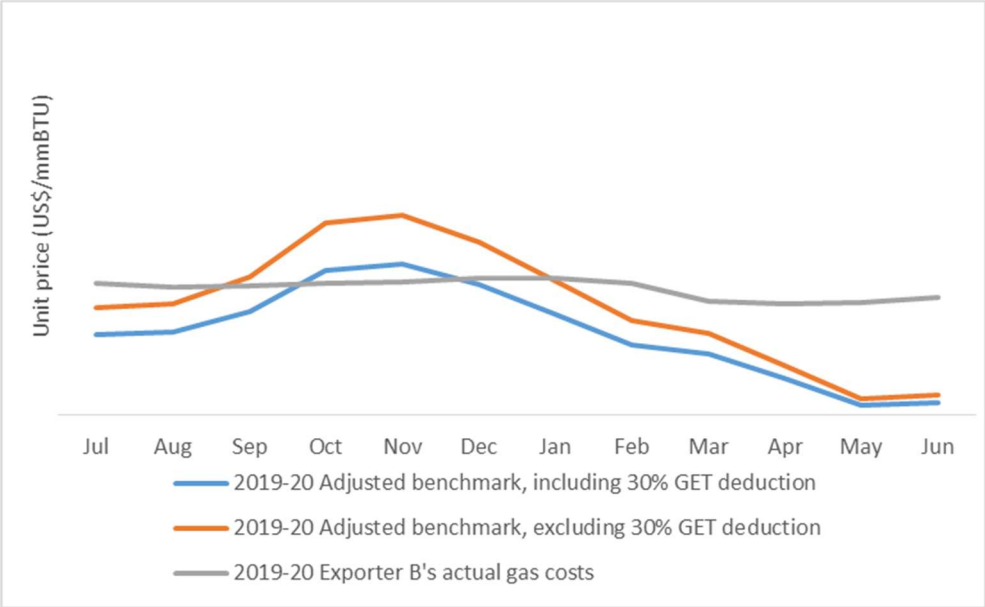

Figure 3: Exporter B – Comparison between benchmarks and costs

The figures illustrate that the benchmarks, before and after deducting the GET, were both above and below the exporters' actual gas costs incurred over the inquiry period. Given that the benchmark prices were both above and below the gas prices paid by the exporters, the commission considers that these benchmark prices are evidence that the GET is not acting as a levy correcting the market distortion.

The analysis supporting these figures is contained in **Confidential Attachment 1.**

Historical impact of GET on the benchmark

To assess the historical impact of the GET adjustment, the commission assessed the impact of the GET adjustment on gas prices between July 2014 and June 2020.

To complete this analysis, the commission used historical German NCG gas prices between 2014 and 2015, and performed the same adjustments made in the inquiry including deducting the 30% GET. For comparison, the commission used the EuroChem exporters' verified gas costs during the inquiry period and adjusted these costs for the average changes in Gazprom's prices to industrial domestic customers for each year between 2014 and 2020.[92] Figures 4 and 5 illustrate the commission's analysis.

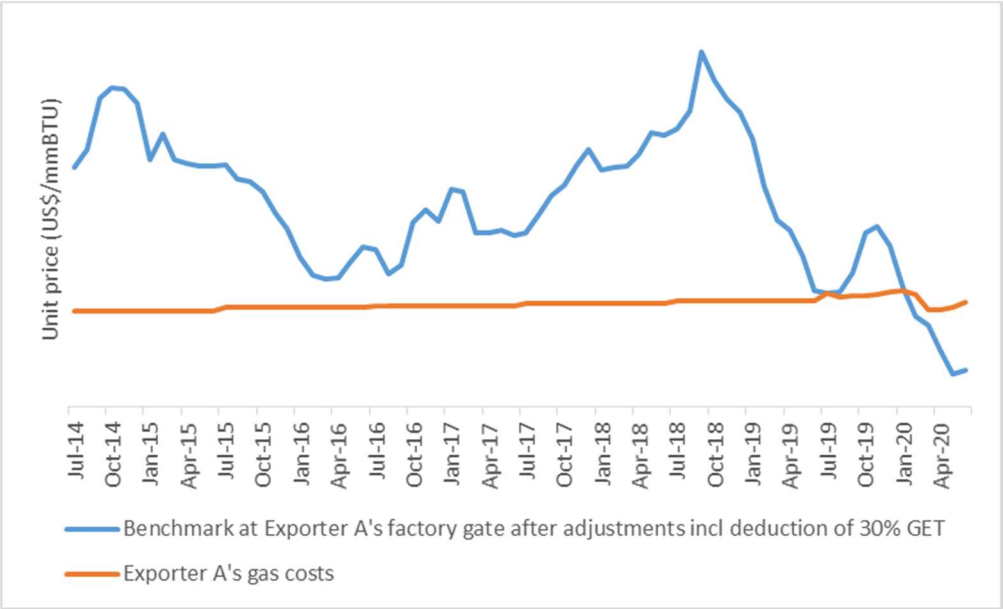

Figure 4: Comparison of 2014/15 to 2019/20 benchmark price after adjustments including deducting 30% GET to exporter A's gas costs

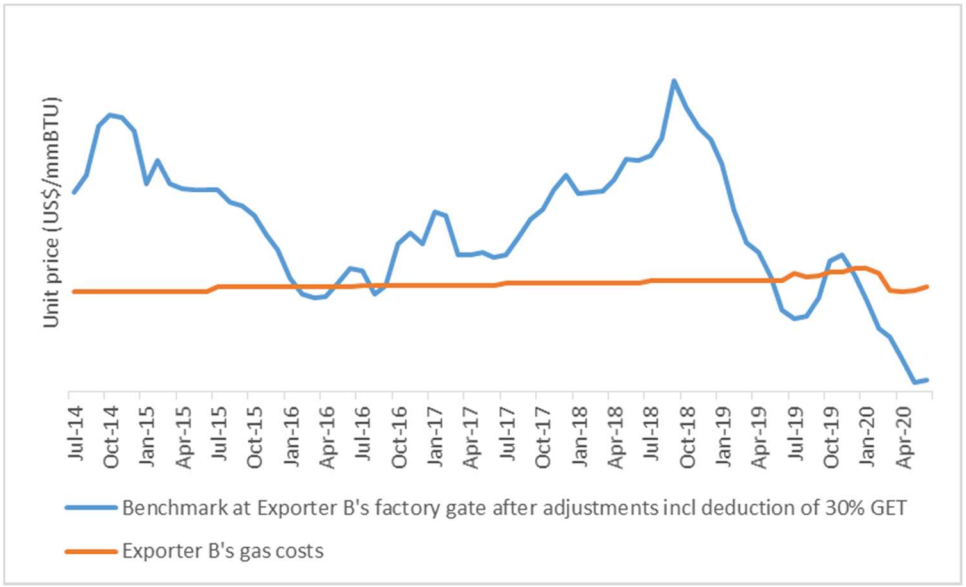

Figure 5: Comparison of 2014/15 to 2019/20 benchmark price after adjustments including deducting 30% GET to exporter B's gas costs

As illustrated in Figures 4 and 5, this analysis identifies that the exporters' estimated gas costs, after deducting the GET, were materially below the average competitive price established for the Russian domestic market in each year between 2014/15 and 2018/19. The overall relative difference has reduced between 2014/15 and 2018/19, with some fluctuations between periods. This difference was not evident during the inquiry period.

[92] The change in domestic gas prices between 2019/20 and 2014/15 was based on changes in average pricing to industrial customers disclosed in Gazprom's annual reports between 2015 and 2020.

The commission is satisfied that this analysis is indicative of the GET not historically acting as a levy that brings the Russian domestic price to an equivalent competitive market gas price. The closer alignment in the inquiry period of European prices to Russian and U.S.A. prices may create the impression of the GET equalling the price distortion. However, analysis over a longer period indicates that this is not the case.

The commission is satisfied that the above analysis does not support a conclusion that the GET acts as a levy that corrects the artificially low Russian gas price to an equivalent competitive market gas price.

The commission's analysis is contained in **Confidential Attachment 1**.

3.8 Is an adjustment for the GET necessary to account for different conditions in the country of export?

For the reasons specified in REP 565, the commission considers that Germany is the appropriate market for establishing a competitive benchmark price for piped natural gas. In order to establish a relevant equivalent competitive benchmark price in Russia, it is necessary to account for different conditions between the relevant markets in Germany and Russia to reflect what a competitive cost would be in Russia.

Glencore submitted that the German and Russian markets had starkly different characteristics.[93] Russia had substantially larger gas reserves and, consequently, the conditions of supply were different, with Germany being a net importer of gas. Glencore claimed that dependent customers tended to have inelastic demand. Glencore submitted that Russia's comparative advantage in gas production was fundamental in how the Russian market operated and that the German market included costs not relevant to the Russian domestic market, including transport costs and the GET. Glencore further claimed that the U.S.A. was a competitive gas market and had similar comparative advantages to that of Russia.

Glencore claimed that if the commission were to compare the U.S.A. Henry Hub prices to the commission's adjusted benchmark price, the benchmark would be similar to the U.S.A. Henry Hub price. The commission considers it would not be appropriate to make the adjustments made to the German benchmark to the U.S.A. Henry Hub price for the purposes of comparing the U.S.A. Henry Hub prices to either Russian or German prices. The commission, for the reasons specified in REP 565, continues to consider that Germany is the appropriate market for establishing a competitive benchmark price for piped natural gas, after making relevant adjustments.

Orica Australia submitted that the benchmark selected by the commission was a hub price for natural gas suppliers from the United Kingdom, Norway and Russia, which is determined based on the suppliers' competing prices into the gas distribution network in Germany.[94] Orica Australia claimed that this was a sound indicator of Russian gas prices when in competition with gas produced in other countries, and therefore the price that such gas would command in the Russian domestic market absent the distortions found to have existed. Orica Australia submitted that, whilst the GET was not a feature of the Russian domestic market, it was irrelevant to the question of whether the commission ought to adjust the benchmark for the GET. Orica Australia further submitted that the point of using a benchmark was to find the price paid in a competitive market, and use that as a point of comparison with the market that is being analysed. Orica Australia also claimed that the

[93] EPR 565, document number 57.

[94] EPR 565, document number 53.

'particular vagaries of the market' being analysed cannot be allowed to affect the selection of the benchmark, as that distorts the comparison.

It is unclear to the commission what Orica Australia's 'particular vagaries of the market' statement means. As stated, the purpose of the commission in making adjustments is to ensure that the benchmark price reflects what a competitive price would be in Russia.

Orica Australia also claimed that the commission did not make a deduction for the GET in continuation inquiry 312 and it was hard to reconcile the reasons for deduction in this instance.[95,96]

The commission addressed this concern of Orica Australia in both REP 565 and in its submission to the ADRP. REP 312 noted that the German border price used as a benchmark was inclusive of transport costs and taxes and that an adjustment was necessary. In REP 312, the commission deducted from the benchmark a cost of export for Russian gas to the German border of US$3.50 per metric million British thermal units (mmBTU). The basis of this deduction was an Oxford Institute for Energy Studies estimate. The purpose of the deduction was to bring the German border price back to a Russian gas wellhead price, which is the same 'netback' methodology, applied in this inquiry.[97] REP 312 did not consider any further granular information in relation to the nature of these export costs, nor did the Oxford Institute for Energy Studies report provide further details of the nature of the US$3.50 per mmBTU export cost. The commission considers that it has more detailed, contemporaneous and relevant information to assess the adjustments required to the benchmark in this inquiry. Further, the US$3.50 per mmBTU export cost deducted in continuation inquiry 312 was larger than the deductions made in REP 565, which were inclusive of the GET.

The commission considers that, whilst the German market is an appropriate benchmark for determining a competitive market, it is essential to consider what adjustments are necessary to account for the different conditions in Russia to reflect what the competitive cost would be in Russia. The GET is a condition of the German gas market in relation to imports from Russia. The GET is not a condition of the Russian domestic gas market. The commission considers that it is necessary to make appropriate adjustments to the external benchmark in order to reflect what the domestic price would be in the exporting country.

For the purposes of this reinvestigation, the commission's reassessment of these adjustments is limited to the consideration of what adjustment, if any, is required in relation to the imposition of the GET.

Export taxes imposed by a large exporting country generally can have the effect of increasing prices in importing countries. In a study published by the WTO, which analysed the effects of an export tax imposed by a country with some market power, the WTO identified that export taxes resulted in the contraction of the supply exported and a higher world price.[98]

Various studies using partial equilibrium analysis have estimated the impact of export taxes on world prices.[99] These studies have principally related to export taxes on primary

---

[95] Ibid.

[96] CSBP also made a short submission in support of Orica Australia's submission. CSBP did not provide consent to publish their submission on the public record.

[97] In both inquiries, the commission further adjusted the calculated wellhead prices to reflect a price at the factory gate of each cooperating exporter.

[98] World Trade Organisation (2011), Natural Resources and Non-Cooperative Trade Policy, p. 14.

[99] Two examples, among others, are:

commodities and, whilst not directly relevant to natural gas exports and the particular impact of the GET, they illustrate that export taxes have the effect of increasing world prices in circumstances where the exporting country is a large exporter of those goods. An example is a study completed in relation to the impact of export taxes applied to soybeans exported from Argentina. This study found that the removal of the export tax's dominant effect was to reduce world prices. This was due to the inelastic nature of demand for soybeans. The study found that the removal of a 23.5% export tax on soybeans would reduce world import prices by 14.7%.[100]

The commission further notes that the OECD, in an analysis of the economic impact of export restrictions on raw materials, examined the impact of Russian export restrictions on export sales of natural gas to Europe.[101] The article concluded that Gazprom maximises its export prices by charging prices that are higher than Russian domestic prices and that export restrictions, in the form of exclusive export rights and export duties, contributed to higher prices.

Whilst facing competition from other sources that supply the German gas market, Russia is a significant supplier of gas to Germany and accounts for up to about 40% of the supply into Germany.[102] Consequently, the commission is satisfied that Russian gas supply has a material impact on gas prices in Germany and that the imposition of the GET on exports of Russian natural gas to Germany had the effect of increasing natural gas prices in Germany. Due to the interaction between supply and demand, the increase in the gas price will not be equal to the export tax, but will be less than the export tax.

Therefore, the commission considers it is necessary to assess the effect of the GET on prices in the German market and adjust the German benchmark price for the effect of the tax on German prices, given that the tax is not payable in the Russian domestic market.

The commission analysed the effect of the GET on prices in the German market using a partial equilibrium model. Using 2019 data, the commission estimated the effect of the GET on equilibrium prices following the introduction of the tax to be 28.4%. The estimated equilibrium model produced by the commission is in **Appendix B**.

3.9 Conclusion

To account for different conditions in the country of export, the commission considers that an adjustment is necessary for the GET. However, the basis of this adjustment should reflect the impact of the export tax on prices in Germany, not on the rate of the tax.

The commission has preliminarily determined that the benchmark price of natural gas at the German border requires a downwards adjustment of 28.4%. The commission

---

- Bouët, A., Estrades, C. and Laborde Debucquet, D., Differential Export Taxes along the Oilseeds Value Chain: A Partial Equilibrium Analysis, International Food Policy Research Institute Discussion Paper 01236, December 2012, https://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/127341/filename/127552.pdf, (last accessed 7 April 2022).
- Deese, W. and Reeder, J., USTC (2007), Export Taxes on Agricultural Products: Recent History and Economic Modeling of Soybean Export Taxes in Argentina, https://www.usitc.gov/publications/332/journals/export_taxes_model_soybeans.pdf, (last accessed 7 April 2022).

[100] Ibid.

[101] OECD, 2010, The Economic Impact of Export Restrictions on Raw Materials, OECD Trade Policy Studies, OECD Publishing, p. 138, http://dx.doi.org/10.1787/9789264096448-en, (last accessed 8 March 2022).

[102] Excerpt from article '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."', https://www.cleanenergywire.org/factsheets/germanys-dependence-imported-fossil-fuels, (last accessed 21 February 2021).

determined this adjustment value using a partial equilibrium model that estimated the effect on German prices of the GET using relevant data.

4 FINDING ONE: NORMAL VALUES AND DUMPING MARGINS

4.1 Preliminary findings

In accordance with the ADRP's reinvestigation request, the commission has reinvestigated its findings in REP 565 in relation to the particular market situation finding, the gas benchmark comparison and the proper comparison assessment. This re-examination has resulted in a reassessment of normal values and the dumping margins determined in REP 565.

On reinvestigation, the commission preliminarily finds that:

- Particular market situation assessment (Section 4.4)
    - Having regard to further information before the commission during the reinvestigation, the commission continues to find that a particular market situation existed in the domestic market for ammonium nitrate in Russia for the inquiry period.
    - The commission now finds that the continuing gas price conditions in the domestic market impose both an artificial price ceiling and an artificial price floor on the price of natural gas in Russia.
    - The commission examined the impact of the regulation of gas prices on the resultant ammonium nitrate prices in Russia during the inquiry period. This examination indicates gas prices were at differing times either artificially lower or higher than they would have otherwise been.
- Comparison of the revised benchmark to the exporters' costs (Section 4.5)
    - In accordance with the reinvestigation request, and after amending the GET adjustment to arrive at an in-country Russian benchmark cost, the commission has re-compared the benchmark against the EuroChem exporters' actual gas costs incurred during the inquiry period.
    - This comparison has found that for both exporters, the benchmark gas price was above and below their verified gas costs during different periods of the inquiry period. The extent that gas costs were above or below the benchmark varied between the exporters. On average, during the inquiry period, one exporter's gas costs were marginally below the benchmark and for the other exporter they were above the benchmark.
- Re-examination of whether the market situation prevents a proper comparison (Section 4.6)
    - In accordance with the reinvestigation request, the commission has re-examined whether the market situation prevents a proper comparison under section 269TAC(1). The commission's analysis indicates that the relationship between price and cost, and the prevailing conditions of competition in Russia are different in comparison to the relationship between price and cost and the prevailing conditions of competition in Australia, which is an update to the finding made in REP 565.
    - In the Russian market, the effect of the particular market situation on the domestic sales prices does not result in any advantages or disadvantages between market participants, being Russian producers. In other words, while there may be competition between Russian producers based on manufacturing efficiencies and other factors, the particular market situation nonetheless modifies the conditions of competition in a consistent manner for all market participants.
    - In the Australian market, Australian industry and other producers exporting ammonium nitrate to Australia do not face the effects that manifest from the GOR-induced distorted gas prices in Russia. Non-Russian suppliers of

ammonium nitrate face significant volatility in their gas input costs compared to Russian producers, which results in higher pricing and cost risks. The relationships between price and cost in the Australian market are therefore different from those in the Russian market.

- Consequently, the commission considers that sales in the Russian market are not suitable for determining a normal value for the exporters pursuant to section 269TAC(1) because the price of such sales do not permit a proper comparison with the export price of the goods exported to Australia.

Having found that sales in the domestic Russian market are not suitable for determining normal values, the commission has determined normal values in accordance with section 269TAC(2). The commission has listed its preliminary revised dumping margins in Table 3.

Exporter	Dumping Margin
NAK Azot	-1.2%
Nevinka	-8.8%
Uncooperative and all other exporters	2.3%

Table 3: Revised dumping margins

Section 4.7 provides further details of the commission's re-determination of the dumping margins.

4.2 Reinvestigation request relating to the reassessment of normal values and dumping margins

The ADRP requested the commission, after reassessing the appropriateness of the GET adjustment, to:

- 'proceed to compare the reinvestigated benchmark, against the actual gas costs incurred by the exporters to assess whether the exporters' domestic and export prices are likely to have been distorted by the market situation, and, if so, whether the market situation prevents a proper comparison under s.269TAC(1) of the Act.'[103]
- In the event that the commission 'finds that the exporters' domestic sales do not permit a proper comparison with the export price for the purposes of s.269TAC(1) of the Act, the ADC should ascertain normal value under s.269TAC(2) of the Act and recalculate the dumping margins of the relevant exporters accordingly'.[104]

The ADRP member further noted in the reinvestigation request that:

- There was a contradiction between the factual findings in the commission's particular market situation finding that 'the resultant price of ammonium nitrate in Russia in the inquiry period was artificially lower than would have otherwise been' compared to the commission's proper comparison assessment which did not demonstrate that the market situation was having a substantial effect on domestic prices.[105]
- In REP 565, the commission 'considered that the approach it undertook in its assessment of whether sales are "suitable" for the purposes of s.269TAC(1) of the Act' was 'consistent with Australia's obligations under the ADA and the WTO Panel's interpretation of the obligations set out in the Panel Report' in World Trade

[103] ADRP (2021), Letter to the Commissioner regarding reinvestigation, 17 September 2021, p. 2, on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_ammonium_nitrate_-_request_for_reinvestigation.pdf., p. 7.
[104] Ibid, p. 9.
[105] Ibid, p. 8.

Organization Panel Report, Australia – Anti-Dumping Measures on A4 Copy Paper, WTO Doc WT/DS529/R (4 December 2019) (DS529). The member 'consider[ed] this to be a sound approach'. The member referred the commission to 'relevant passages in the Panel Report, addressing the requirement to examine whether sales in the exporting country's market do not "permit a proper comparison" because of "the particular market situation"'.[106]

- The commission's proper comparison assessment in REP 565 was ultimately a very brief analysis. After the reassessment of the deduction of the GET, the member requested the commission to undertake a (more) 'comprehensive examination of whether "a proper comparison" of the domestic and the export price is permitted, for the purpose of s.269TAC(1) of the Act'. The member requested that the assessment should be completed, in 'accordance with its stated methodology in REP 565 and as informed by the various findings in *Australia - Anti-Dumping Measures on A4 Copy Paper'*.[107]
- The commission should 'ensure that it does a comprehensive examination of whether "a proper comparison" of the domestic and the export price is permitted, for the purpose of s.269TAC(1) of the Act. It should assess whether the domestic and export prices can be properly compared, focusing on how the particular market situation affects that comparison, in accordance with its stated methodology in REP 565 and as informed by the various findings in *Australia - Anti-Dumping Measures on A4 Copy Paper*.'[108]

4.3 Conference with ADRP

In relation to the establishment of normal values, the ADRP member advised, during the conference held on 20 December 2021, that:

- The member found that 'considering the relative effect of the market situation on both domestic and export sales' was 'most relevant' with reference to DS529. The member 'pointed out that according to the WTO A4 Copy Paper case, even if distorted input prices (resulting from the particular market situation) are the same for both domestic and export prices of the product, an analysis is required of the effects on those markets, respectively, including an analysis of the competitive market conditions of the product in the export market (being Australia).'[109]
- 'Although the proposed full methodology for this analysis was set out in detail in REP 565, there was no actual analysis of the effect of the particular market situation on the export prices of ammonium nitrate (in the Australian market) because of the ADC's finding that the market situation was not having a substantial effect on domestic prices in Russia.[110]
- The member 'considered it relevant to complete the analysis of how the export prices of ammonium nitrate were affected by the particular market situation, taking into account the competitive conditions for ammonium nitrate in the Australian market, irrespective of the finding relating to the adjustment to the benchmark for the GET'.[111]

---

[106] Ibid, p. 8.
[107] Ibid, pp. 8–9.
[108] Ibid, p. 9.
[109] Ibid, p. 11.
[110] Ibid.
[111] Ibid.

4.4 Particular market situation

The commission has updated its particular market situation finding in REP 565 in light of the reinvestigation request and submissions received.

The commission continues to find that a particular market situation existed in respect of the domestic market for ammonium nitrate in Russia for the inquiry period. The commission, however, has updated its finding from REP 565 to find that the continuing conditions for gas prices in the Russian domestic market have effectively imposed both a price ceiling and a price floor on the price of natural gas in Russia.

The commission's re-examination of the impact/influence of the indirect regulation of gas prices on the resultant ammonium nitrate prices in Russia during the inquiry period indicates that gas prices in Russia resulted in distortions to ammonium nitrate prices. These distortions artificially raised and lowered ammonium nitrate prices at different points across the inquiry period.

Sections 4.4.1 to 4.4.4 detail the commission's re-examination of the particular market situation findings.

4.4.1 Particular market situation findings in REP 565

The commission's findings in REP 565 in relation to the GOR's influence in respect of the natural gas prices included findings that:

- 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.
- The regulation of Gazprom prices had resulted in the establishment of an artificial price ceiling in the Russian domestic market for natural gas, which prevented the largest producer and supplier of gas in Russia from pricing above this ceiling, despite being free to charge higher and more profitable prices for the gas it exports.
- The commission considered that the evidence that Gazprom is able to achieve higher profits from export sales compared to its domestic sales was indicative of Gazprom being restricted in its ability to achieve higher or equivalent profits on its domestic sales by increasing domestic prices above the regulated tariffs. The commission found that, for the 2019 calendar year, Gazprom was able to achieve gross profits of between 25% and 28% on export sales. These gross profits were substantially in excess of the 5% gross profit achieved on domestic sales.
- Whilst private suppliers and producers supply a proportion of the domestic market, the establishment of a price ceiling for Gazprom effectively operated as a benchmark or upward price limit in the Russian domestic market which the private suppliers and producers would be reluctant to exceed. The export ban on piped natural gas by these private suppliers and producers further exacerbated the pressure to find sales volumes in the domestic market by undercutting Gazprom's regulated prices.
- The operation of the Saint Petersburg International Mercantile Exchange (SPIMEX) allowed exchange-based gas trading within the Russian domestic market; however, volumes traded on SPIMEX were small and considered immaterial in effect by the commission.
- Gas is the primary raw material used in the production of both ammonia and nitric acid, representing about 75% of the ammonia's production costs and about 10% of nitric acid's production costs. Ammonia and nitric acid are the key inputs into the production of ammonium nitrate. Confidential information provided by the EuroChem exporters, which described the factors influencing their pricing decisions,

also supports the view that the cost to manufacture and the cost of raw materials are considerations when making pricing decisions.

- 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.
- The resultant price of ammonium nitrate during the inquiry period in Russia was the 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 it 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.

4.4.2 Submissions to reinvestigation

The EuroChem exporters submitted that they continue to oppose the commission's determination that a particular market situation existed with respect to ammonium nitrate in Russia during the inquiry period.[112] In relation to the Russian ammonium nitrate market and the competitive nature of the costs within the industry, the EuroChem exporters submitted that a large volume of information has been provided to the commission. The EuroChem exporters also referenced the EuroChem-Brattle Report provided to the commission.[113] The EuroChem exporters claimed that the EuroChem-Brattle report evidenced the profitability and commerciality of Gazprom's supply to the EuroChem exporters, the relativity of Gazprom and independent suppliers' prices and the emergence of data from the SPIMEX gas exchange evidencing lower prices than the regulated tariffs.

The commission notes that the EuroChem exporters raised these claims in the continuation inquiry. REP 565 considered these claims, and it is not necessary to re-examine them in this reinvestigation.

Glencore submitted that the Russian gas market was competitive, with Gazprom accounting for 68% of gas production in 2019 and that lower prices are not necessarily symptomatic of fault in a market mechanism. Glencore stated that the use of a German border price overstated what a non-regulated price in Russia would be.[114]

The commission considers that Glencore's statement about market share and lower prices is an oversimplification of the particular market situation finding in REP 565. The commission considers that Glencore's observations do not support its claim that the Russian domestic price is a competitive price.

Orica Australia, in the context of the GET adjustment, submitted that if the commission correctly approached the benchmark price it would emerge that there are significant distortions to Russia's domestic gas prices, and as a result, normal values cannot be determined based on Russian domestic sales.[115] The commission considered Orica Australia's submissions in relation to the GET in Chapter 3 of this report.

4.4.3 Further analysis for purposes of reinvestigation

In REP 565, the commission noted that it was unable to complete the Gazprom price and profit analysis for the second half of the inquiry period, as Gazprom had not yet published

---

[112] EPR 565, document number 56
[113] EPR 565, documents 9 and 10
[114] EPR 565, document number 57
[115] EPR 565, document number 53

its 2020 audited reports. The commission further noted that the selected German benchmark price had declined during the second half of the inquiry period, (i.e. the first 6 months of 2020). The commission considered that this reduction in the German gas prices during 2020 was likely to have affected the reported export profitability and export pricing for Gazprom. However, given the lack of audited results, the commission was unable to reach any substantive conclusion on the impact of the reduction in German gas prices on Gazprom during the first 6 months of 2020.[116]

Given that Gazprom's annual report and financial statements for 2020 are now available, the commission has considered this information in its market situation analysis as part of the ADRP's reinvestigation request. The particular market situation findings in REP 565 are also relevant to the analysis below.

The commission notes that Gazprom's 2020 annual report made the following observations in relation to the European gas markets for the first 6 months of 2020, which formed part of the inquiry period:[117]

- Far-away countries, including Europe, were a traditional export market offering high profit margins for the Group. The challenges of 2020 had a negative impact on the European economy, but Gazprom retained a third of the European market.
- The European gas market was highly volatile in 2020, with gas prices hitting all-time lows in the first 6 months of 2020.
- In the first 6 months of 2020, gas prices and demand slipped amid high volumes of gas in underground storage, higher liquefied natural gas (LNG) supply, and unprecedentedly warm winter in Europe. At the same time, gas producers did not adjust supply volumes, which increased surplus on the European gas markets even further and led to gas prices collapsing at European hubs. By May, the price was 4 times lower than at the beginning of 2020.
- According to preliminary estimates, 'total natural gas consumption in European far away countries in 2020 decreased 2.8% year-on-year to 544.0 bcm [billions of cubic metres] due to warmer winter and fight against COVID-19 spread. The decline was led by power generation, due to growth in solar and hydropower generation, and industry, including due to restrictions that reduced economic activity.'

In relation to the Russian domestic market, Gazprom's 2020 annual report observed that '[i]n 2020, gas consumption in Russia totalled 460.5 bcm, 4.3% down year-on-year. The decline was mostly driven by warmer weather in autumn and winter of 2019/2020 (air temperature in Q1 2020 averaged at –2.5°C, which is 3.0°C higher than 2015–2019 average) as well as lower industrial production due to the COVID-19 pandemic and lockdowns.'[118]

The commission updated its Gazprom price and profitability analysis, completed in REP 565, to reflect Gazprom's report results during 2020. Figures 6 and 7 reflect the commission's analysis.

---

[116] EPR 565, document number 50, p. 87.
[117] Ibid, p. 59.
[118] Ibid, p. 63.

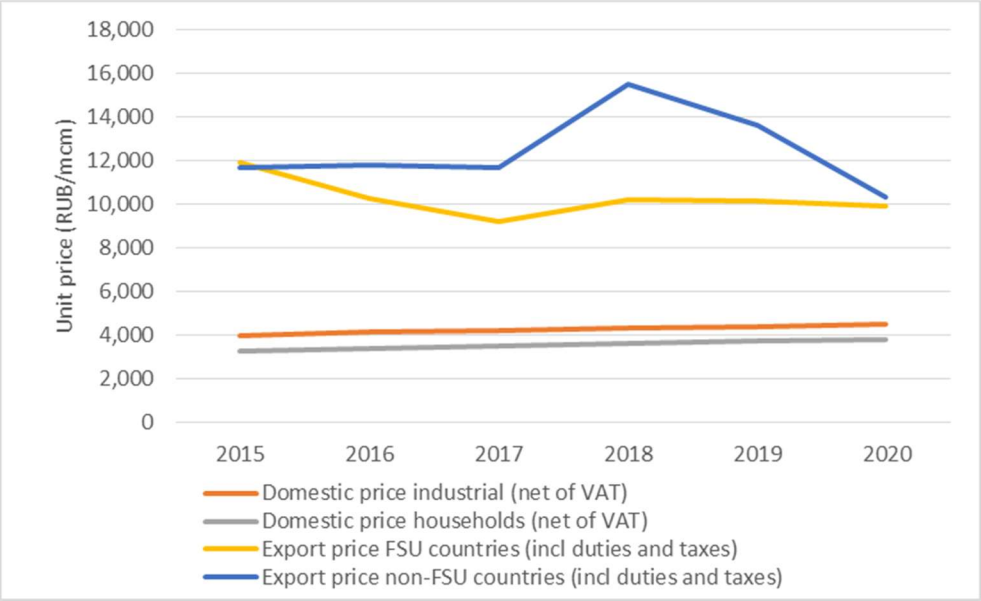

Figure 6: Comparison of Gazprom's reported export and domestic pricing 2015 to 2020

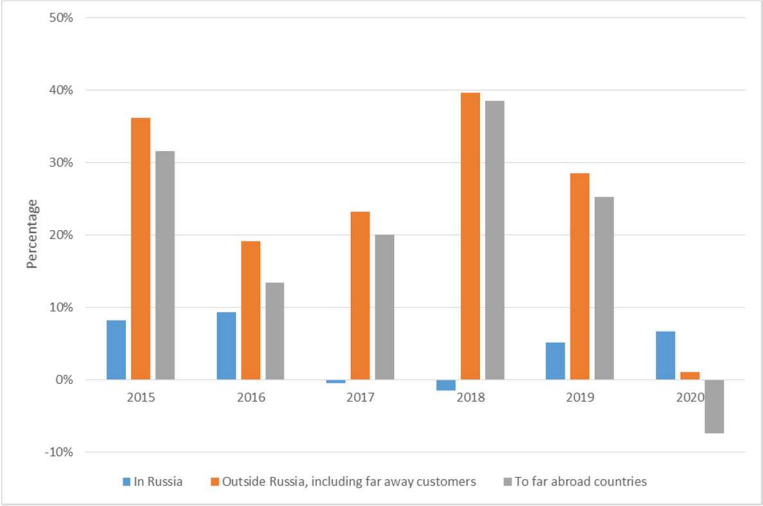

Figure 7: Comparison of Gazprom's reported export and domestic gross profits (after transport costs) 2015 to 2020[119]

Figure 6 demonstrates that during 2020, Gazprom's weighted average export prices fell whereas domestic prices increased. Consistent with these price movements, Figure 7 shows that the gross profits, after transport costs for domestic sales increased but fell for export sales. Gross profit, after transport costs, for export sales to far-away countries fell to the point where Gazprom sustained losses on these sales. The commission notes that far-away countries include European countries.

The commission considers that the observed Gazprom price and gross profit movements during 2020 are supportive of the commission's findings that the GOR's domestic price regulation and other interventions in the Russian domestic gas market have significantly distorted domestic natural gas prices. In a competitive market, the commission considers that a fall in demand will result in a fall in the equilibrium price in the market. This is consistent with Gazprom's reported 2.8% fall in European demand during 2020 and the

[119] Far-away countries include foreign countries other than former Soviet Union (FSU) countries, comprising the geographic segment Europe and other countries as defined in PJSC Gazprom's IFRS consolidated financial statements. Former Soviet Union countries reflect former Soviet Union republics, except for the Russian Federation. Refer to Gazprom 2020 Annual Report, p. 236.

corresponding fall in the reported prices and profitability for export sales to far-away countries. Conversely, in the Russian domestic market, where Gazprom observed an even greater fall in domestic demand of 4.3%, domestic prices and profitability actually increased. The commission understands that Gazprom's profit increase during 2020 for domestic sales was in part the result of a 3% increase in the GOR regulated price in August 2020.

The commission further examined the reported 2020 results for private Russian gas producer PAO Novatek. The commission noted PAO Novatek's following comments in relation to its 2020 piped natural gas sales in Russia and its exports of LNG.

> *'The Group's natural gas prices in Russia are strongly influenced by the prices set by the Federal Anti-Monopoly Service, a federal executive agency of the Russian Federation that carries out governmental regulation of prices and tariffs for products and services of natural monopolies in energy, utilities and transportation (the "Regulator"), as well as present market conditions.*
>
> *In 2019, wholesale natural gas prices for sales to all customer categories (excluding residential customers) on the domestic market were increased by the Regulator by 1.4% effective 1 July 2019 and remained unchanged through the end of July 2020. The wholesale prices increased by 3.0% effective 1 August 2020.'*[120]
>
> *'The Group's natural gas prices [for sales of LNG] on international markets are influenced by many factors, such as the balance between supply and demand fundamentals, weather, the geography of sales, and the delivery terms to name a few. The Group sells LNG on international markets under short- and long-term contracts with prices based on the prices for natural gas at major natural gas hubs and on benchmark crude oil prices.'*[121]
>
> *'Revenues from natural gas sales represent our revenues from natural gas sales in the Russian Federation (to end customers and wholesale traders), and revenues from LNG sales to international and domestic markets, as well as revenues from sales of regasified LNG to customers in Europe.*
>
> *In 2020, our total revenues from natural gas sales decreased by RR 55,804 million, or 13.5%, compared to 2019 primarily due to a decrease in LNG sales volumes and lower gas prices on international markets. The decrease in our LNG sales volumes was due to a decrease in LNG purchases from our joint venture Yamal LNG resulting from an increase in the share of Yamal LNG direct sales under long-term contracts and the corresponding decrease in LNG spot sales to shareholders, including the Group. The impact of these factors was partially offset by an increase in sales prices and volumes in the Russian domestic market.'*[122]
>
> *'Natural gas volumes sold on the domestic market increased by 1.6% due to the launch of additional production facilities.'*[123]

PAO Novatek's comments indicate that, despite falling prices internationally for its LNG sales, it experienced increased prices in the domestic market for piped natural gas. PAO Novatek further reported that prices set by the GOR strongly influence its domestic prices. The commission considers that this further demonstrates the influence that the GOR's regulation of Gazprom's domestic prices has on the prices achieved by private gas suppliers in the Russian domestic market.

The commission's further analysis of Gazprom's profit and selling prices is included at **Attachment 3.**

---

[120] PAO Novatek, 2020, 'Management Discussion and Analysis of Financial Condition and Results of Operation for the year ended 31 December 2020', p. 11.
[121] Ibid.
[122] Ibid, p. 29.
[123] Ibid, p. 23.

4.4.4 Reinvestigation of particular market situation findings

After considering the reported 2020 results of Gazprom and PAO Novatek and the findings made in REP 565, the commission continues to consider that the GOR exerts significant influence over the Russian natural gas industry through its price regulation and creation of a mandated Gazprom export monopoly on piped natural gas.

During periods of increasing or high demand for natural gas in the Russian domestic market, the GOR-mandated Gazprom gas tariffs effectively operate as a price ceiling for natural gas prices in Russia.

During periods where there is a decline in demand for natural gas in the domestic market, the mandated Gazprom gas tariffs effectively operate as a price floor, which prevent prices from falling. This is inconsistent with expectations in a competitive market experiencing a reduction in demand. This price floor effect was evidenced in the comparison of the competitive benchmark to the actual gas costs for NAK Azot and Nevinka (refer to Section 4.5). This comparison illustrated that, unlike the significant drop in the competitive benchmark prices between December 2019 and June 2020, NAK Azot and Nevinka's gas prices remained relatively stable. This is despite a significant decline in gas demand in Russia for the same period.

Having considered the further information in relation to 2020, the commission considers that:

- During periods of increasing or high demand in the Russian gas market, the continuing gas price regulation in the domestic market has effectively imposed a price ceiling on the price of natural gas in Russia.
- In times of declining demand, the gas price regulation effectively operates as a price floor, preventing Russian domestic gas prices from falling further when there have been reductions in demand.
- Gas continues to be the primary raw material cost in the production of ammonium nitrate and the cost to manufacture and the cost of raw materials are factors in pricing decisions for ammonium nitrate.
- During the inquiry period between July 2019 and December 2019, the commission considers the price ceiling had the effect of allowing ammonium nitrate producers, at times, to supply more ammonium nitrate at each possible price point than they otherwise would have.
- During the period between January 2020 and June 2020, where the Russian demand for natural gas declined, the regulation of gas prices effectively operated as a price floor, which prevented producers' gas prices from materially falling. During this period, Russian ammonium nitrate producers were unable to take advantage of what would have otherwise been lower gas prices in the Russian domestic market in the absence of the GOR's interventions.
- The resultant ammonium nitrate price in Russia during the inquiry period was the result of interactions between those selling, and those buying, ammonium nitrate in Russia. At times, and subject to the individual circumstances of each exporter, the resultant ammonium nitrate price in Russia during the inquiry period was either artificially lower or higher than it would have otherwise been due to the programs and policies of the GOR.

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.

4.5 Recalculation of the benchmark and comparison of the revised benchmark to the exporters' gas costs

Having amended the GET, as an adjustment to the original benchmark, the commission has re-compared the reinvestigated benchmark, against the actual gas costs incurred by the EuroChem exporters during the inquiry period. This comparison has found that for both exporters, the benchmark gas price was above and below their verified gas costs at differing times of the inquiry period. The extent that gas costs were above or below the benchmark varied between exporters. On average during the inquiry period, one exporter's gas costs were marginally below the benchmark and for the other exporter they were above the benchmark. The commission's analysis is below.

In REP 565, the commission adjusted the selected German benchmark price to ensure that the German benchmark reflected a competitive price for natural gas in the Russian domestic market. The benchmark was:

- 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 the GET at the Russian border
- adjusted to remove other relevant export costs and export transport costs
- adjusted back to an equivalent 'netback price' that is comparable to the price paid by the Russian exporters at their relevant factories.

The adjustment for export costs in REP 565 included a 30% deduction from the gas export price at the Russian border for the GET payable.

For the purpose of the reinvestigation, the commission has adopted the same adjustments as in REP 565. However, the GET adjustment is now a deduction of 28.4% instead of 30%. The revised deduction reflecting the estimated impact of the GET on gas prices (refer to Chapter 3 of this preliminary report).

The commission compared the competitive benchmark, after making the adjustments, to NAK Azot's and Nevinka's actual gas costs. The commission completed a comparison on both a monthly and a whole-of-inquiry-period basis. This analysis identified that:

- For one of the exporters, their actual costs were below the benchmark for 6 months, in close alignment with the benchmark for one month and above the benchmark for 5 months. On an average basis, this exporter's gas costs were marginally below the average benchmark price for the inquiry period. The period during which the exporter's costs were below the benchmark was during the 2020 period of the inquiry.
- For the other exporter, their actual costs were above the benchmark for 10 months of the inquiry period and below the benchmark for 2 months. On an average basis, this exporter's gas costs were above the benchmark for the inquiry period.

Figures 8 and 9 illustrate the commission's comparison of the benchmark and the exporters' actual gas costs.

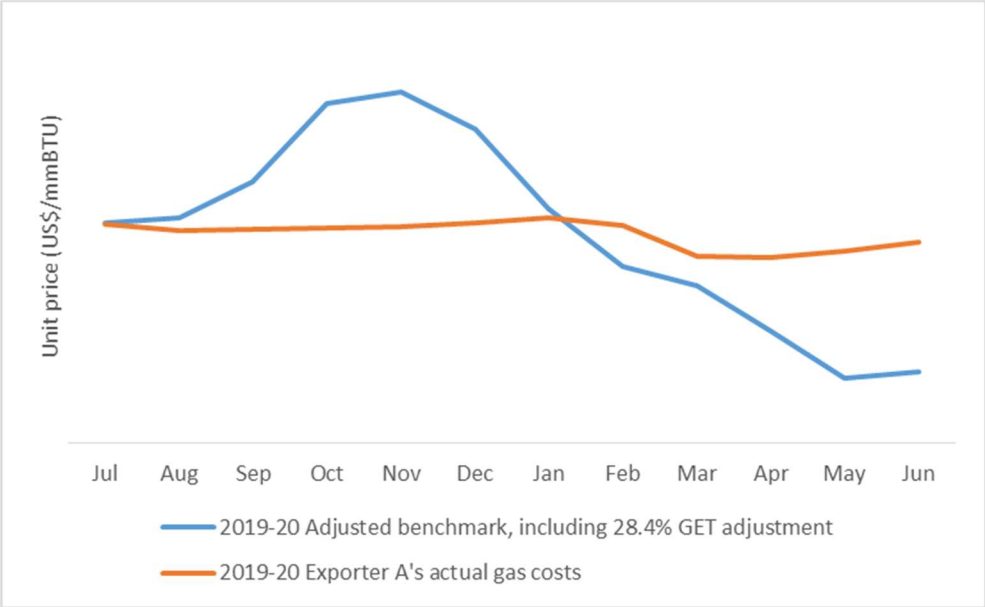

Figure 8: Comparison of Exporter A's actual gas costs against the benchmark

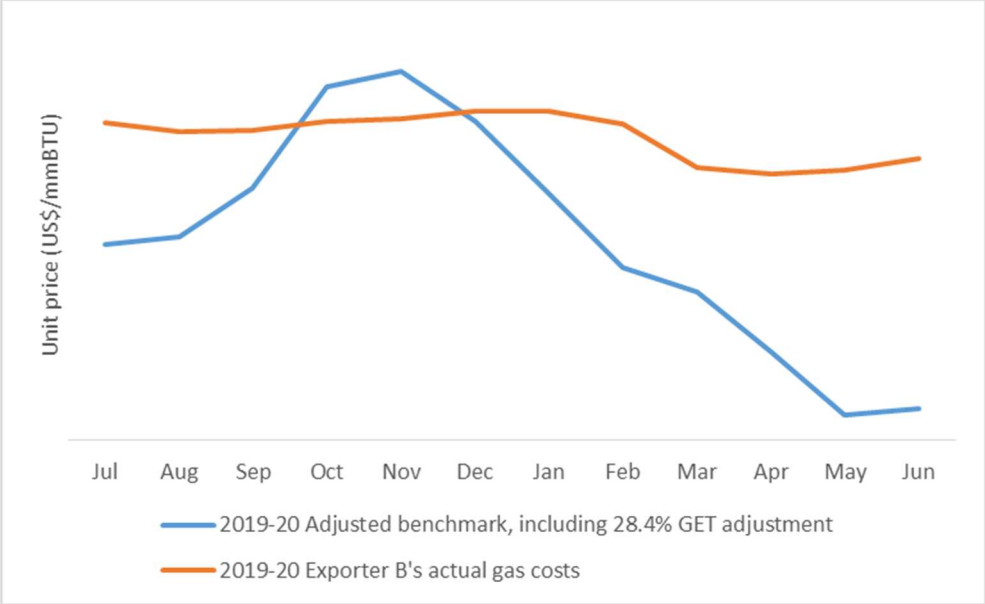

Figure 9: Comparison of Exporter B's actual gas costs against the benchmark

The commission's analysis is contained in **Confidential Attachment 1**.

4.6 Suitability of using domestic sales in determining a normal value under section 269TAC(1)

In accordance with the reinvestigation request, the commission has re-examined whether the market situation prevents a proper comparison under section 269TAC(1).

The commission's analysis indicates that the relationships between price and cost, and the prevailing conditions of competition in Russia are different in comparison to the relationships between price and cost, and the prevailing conditions of competition in Australia.

The effect of the particular market situation on the domestic sales prices in Russia does not result in any advantages or disadvantages between market participants, being Russian producers. In other words, while there may be competition between Russian producers based on manufacturing efficiencies and other factors, the particular market situation

nonetheless modifies the conditions of competition in a consistent manner for all market participants.

In the Australian market, Australian industry and other producers exporting ammonium nitrate to Australia do not face the same effects from regulated gas prices as Russian producers. Non-Russian suppliers of ammonium nitrate face significantly more volatility in their gas input costs compared to Russian producers. Consequently, they face higher pricing and cost risks.

Consequently, the commission considers that sales in the domestic Russian market are not suitable for determining a normal value for the exporters pursuant to section 269TAC(1), because the prices of such sales do not permit a proper comparison with the export prices of the goods exported to Australia.

The commission's re-examination of whether the market situation prevents a proper comparison under section 269TAC(1) is detailed in sections 4.6.1 to 4.6.8.

4.6.1 Applicable legislation

The normal value is determined in accordance with section 269TAC.

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).

4.6.2 The commission's approach to assessing the suitability of using domestic sales in determining a normal value under section 269TAC(2)

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 market of the country of export, sales of like goods in that market are not suitable for determining a price under section 269TAC(1).

As a particular market situation has been found in respect of the domestic market for ammonium nitrate in Russia for the inquiry period, the commission has examined whether goods in that market are suitable for determining exporters' normal values under section 269TAC(1).

The ADRP in its reinvestigation request noted that the commission should complete this assessment in accordance with the stated methodology in REP 565 and as informed by various referenced findings in DS529.[124]

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 domestic sales and export sales. If domestic and export sales are not equally impacted by

[124] In the reinvestigation request the ADRP member referenced paras 7.74 – 7.76; 7.80 – 7.81; 7.87; 7.89 -7.90 of DS529 in *Australia - Anti-Dumping Measures on A4 Copy Paper*.

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*[125] and the WTO Panel's interpretation of the obligations set out in DS529.

In the event that the commission finds the market situation is likely to have distorted the exporters' prices, 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
- 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'[126]
- a *qualitative* assessment of prices, to 'focus on how the particular market situation affects that comparison.'[127]

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.[128]

4.6.3 Submissions received in relation to the commission's approach to determining normal values

The GOR submitted[129], in the context of reconsidering natural gas costs and the commission's particular market situation assessment, that:

- The applicants had appeared to disregard Articles 2.1 and 2.2 of the ADA and that this would ultimately lead to an invalid conclusion that future exports would be at dumped prices
- Various WTO Panel findings and Appellate body determinations had found the use of surrogate input prices in calculating the cost of production to be inconsistent with articles 2.2 and 11.3 of the ADA[130]

---

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

[126] DS529 – para. 7.75.

[127] DS529 – para. 7.75.

[128] DS529 – para. 7.76.

[129] EPR 565, document number 54.

[130] The GOR referenced 'disputes concerning EU anti-dumping measures on biodiesel from Argentina and Indonesia, Ukrainian anti-dumping measures on ammonium nitrate from Russia, EU cost methodologies and certain anti-dumping measures on imports from Russia'.

- Dumping was a result of the pricing behaviour of individual exporters and that costs of input materials were beyond the control of the producers and had nothing to do with pricing behaviour
- The GOR had serious concerns in relation to the WTO Panel decision in DS529. The GOR advised that it had, at the WTO meeting at which the WTO adopted the Panel's report, submitted that the DS529 Panel had deviated from customary rules of interpretation of public international law and, therefore, its interpretations and reasoning were legally flawed.

The GOR further cautioned the commission against calculating normal values based on out of country benchmarks and against making determinations based on what the GOR described as 'flawed interpretations.'[131]

The commission acknowledges the GOR's concerns 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 those findings in the methodology applied in this reinvestigation.

Orica Australia, referencing the ADRP's observations and the findings in DS529, stated that it considers that ammonium nitrate export prices cannot be properly compared with domestic ammonium nitrate prices that are subject to government influence, as the GOR distortions affect the selling prices in different ways, such that the prices in the 2 markets are different.[132]

The EuroChem exporters, whilst noting the commission's findings in relation to GOR's continuing pricing influence through price regulation and export restrictions for non-Gazprom producers, submitted that the existence of the market situation did not dictate the rejection of domestic sales for determining normal values.[133] According to the EuroChem submission, any such decision was subject to section 269TAC(2)(a) and whether the situation in the market 'is such' that the commission arrives at the conclusion that sales in that market are not suitable for determining normal values. They further submitted that a particular market situation finding could be independent of the assessment under section 269TAC(2)(a).

Glencore submitted that the ADRP did not necessarily disagree with the commission's assessment in REP 565, but the ADRP considered that the commission should make a broader assessment.[134] Glencore further submitted that the phrases 'particular market situation' and 'permit a proper comparison' functioned together to establish a condition for disregarding domestic prices to establish normal values. Glencore submitted that this assessment was 'replicated' under the Act.

Glencore further submitted that they failed to see how a distortion in gas prices in Russia could influence export prices and normal values in such a way to find that they were not comparable. Noting that the gas costs for export and domestic prices were the same, they could not understand how they could have different effects. Glencore further noted that there was a degree of abstraction in this assessment given that the EuroChem exporters did not export to Australia during the inquiry period. Glencore claimed that any assessment using prices to third countries to assess the impact in Australia and Russia of the market situation was irrelevant to the assessment of whether domestic sale prices were properly comparable to export prices. Glencore claimed that any move to using a constructed

---

[131] EPR 565, document number 54.
[132] EPR 565, document number 53.
[133] EPR 565, document number 56.
[134] EPR 565, document number 57.

normal value under 269TAC(2)(c) would render the dumping margin more meaningless to the Australian market.

The commission has considered the submissions from EuroChem exporters, Glencore and Orica Australia. The commission considers its approach in relation to its assessment of proper comparison, as detailed below, is consistent both with the Act and with the findings in DS529. In relation to using third country sales data to assess the impact in the Australian market, the commission considers that its approach is reasonable in the absence of relevant Russian export data for the Australian market. **Appendix D** further discusses the commission's approach to using third country data.

4.6.4 Particular market situation – the commission's assessment of the scale of the impact on ammonium nitrate prices

As set out in Section 4.4 of this preliminary report, it is the commission's view that a particular market situation existed in the domestic market for ammonium nitrate in Russia for the inquiry period.

The commission has therefore compared each exporter's actual costs against the benchmark to assess whether the particular market situation is likely to have distorted the exporter's prices and, if so, whether the particular market situation prevents a proper comparison. The commission's assessment and determination of a competitive benchmark is contained in Section 4.5.

The commission finds that, for the inquiry period, the particular market situation had the effect of acting as both:

- A 'price ceiling' during a portion of the inquiry period where gas prices incurred by the cooperative exporters were lower than the competitive benchmark price. Figures 8 and 9 reflect the size and materiality of this difference, which varied between exporters.
- A 'price floor' during a portion of the inquiry period where gas prices incurred by the cooperative exporters were higher than the competitive benchmark price. Figures 8 and 9 reflect the size and materiality of this difference, which varied between exporters.

As natural gas accounts for a significant portion of manufacturing costs, the commission anticipates that distortions in these costs will have a direct impact on prices of ammonium nitrate manufactured in Russia.

4.6.5 Examination of relationship between price and cost – Russia

The commission understands that natural gas is a significant raw material cost in the production of ammonium nitrate and therefore considered the relationship between the cost of natural gas and ammonium nitrate prices. In terms of costs, Figure 10 shows the medium-term trend of natural gas prices for various global gas hubs, including the SPIMEX hub in Russia, as well as the prices paid by cooperating exporters for this inquiry and continuation inquiry 312.[135] The volatility in natural gas prices shown in Germany (Gaspool and NCG), Australia (STTM Sydney) and the U.S.A. (Henry Hub) contrasts markedly with the relatively stable gas prices in Russia (SPIMEX, Exporters A, B and C).

The commission considers this natural gas price stability reflects, in part, the regulation of Gazprom's domestic prices. Natural gas prices directly influence costs for producers of ammonium nitrate. The commission considers that the costs arising from negotiating, purchasing, forecasting and hedging natural gas costs would be lower in a natural gas

[135] Confidential Attachment 5 – Proper comparison analysis – Gas profits.

market with stable prices and higher in a market with volatile prices. Due to the cost stability, as demonstrated in Figure 10, the commission considers Russian producers of ammonium nitrate benefit from lower commercial risks compared to producers in other countries that experience higher gas cost volatility.

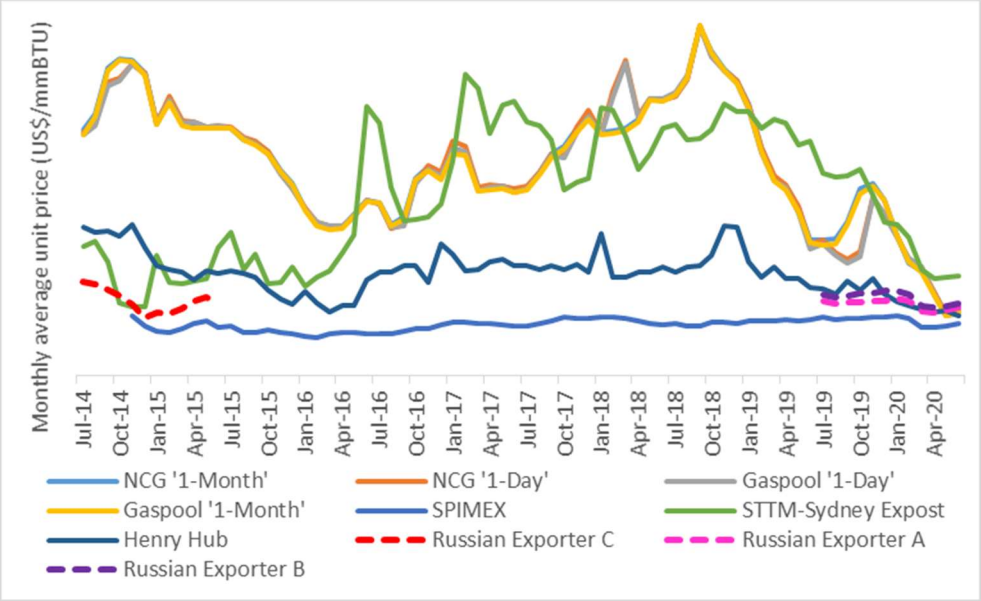

Figure 10: Monthly gas price trend across global gas hubs

The commission considers price volatility of a significant raw material input has an effect on selling prices of ammonium nitrate. Russian producers of ammonium nitrate face more stable natural gas costs than producers of ammonium nitrate in other markets, including Australia. The reduction of risks associated with forecasting and hedging input costs allows Russian producers to negotiate and secure future ammonium nitrate selling prices and production with more certainty. Additionally, an examination of the reported 2020 results for private gas producer PAO Novatek confirmed that producers have short- and medium-term awareness of the Russian regulator's price regulation plans.[136] Given this information is publically available, the commission considers that ammonium nitrate producers in Russia also have short- and medium-term awareness of the Russian regulator's price regulation plans, leading to a reduction of risks regarding costs and an ability to set ammonium nitrate prices with more certainty. In the absence of price regulation, the commission is not aware of such future price certainty for natural gas costs being made available to producers of ammonium nitrate in other markets, including Australia. Therefore, Russian producers of ammonium nitrate are able to secure future ammonium nitrate selling prices and production with more certainty than producers in other markets, because they have lower risks in terms of input cost volatility.

During the inquiry, EuroChem exporters stated that the cost to make (CTM) for ammonium nitrate is the same for export and domestic sales.[137] Based on this, the commission concludes that natural gas raw material costs affected the CTM for both domestic and exported goods equally. During verification, the commission found that the EuroChem exporters used the same facilities, raw material inputs and manufacturing processes to manufacture ammonium nitrate sold into the Russian domestic market as that exported to

[136] PAO Novatek, 2020, 'Management Discussion and Analysis of Financial Condition and Results of Operation for the year ended 31 December 2020', p. 11.
[137] EPR 565, document numbers 6 and 7.

various countries during the inquiry period, with natural gas accounting for a majority of the total CTM.[138]

The commission compared the domestic prices for models common to both Russian producers. An analysis of these domestic prices shows that the unit prices of ammonium nitrate are closely aligned, with little overall price variance.[139] The commission considers, based on this analysis, Russian ammonium nitrate producers have benefited through access to stable natural gas prices and any advantage in pricing of one competitor over another arising from the particular market situation is competed away.

The commission considers the price effect of the particular market situation in the Australian ammonium nitrate market to be materially different. Australian ammonium nitrate market participants do not have access to the benefit of stable natural gas prices, in the manner Russian market participants do. As such, one of the effects of the particular market situation is that, in terms of pricing, Russian producers of ammonium nitrate benefit from a competitive advantage in the Australian market.

As neither NAK Azot nor Nevinka exported the goods to Australia during the inquiry period, the commission estimated unit export landed prices for each, using each exporter's third country sales data, along with unit ocean freight and unit insurance costs incurred by one of the Australian industry producers that imported Russian ammonium nitrate. The estimated export landed prices did not differentiate between low density (LDAN) and high density (HDAN) ammonium nitrate and assumes that the price exported to other countries is the same price that Russian exporters would export to Australia. The commission compared the Russian domestic prices, adjusted to include ocean freight and insurance costs, with the estimated export landed prices and found that estimated export landed prices were higher than the domestic prices for 10 of the 12 months analysed. The commission has no information to indicate that would have changed had they exported to Australia during the inquiry period.

The commission also compared the estimated export landed prices for both Russian producers with Orica Australia's unit selling prices[140] and foreign-produced ammonium nitrate imported to Australia using Australian Border Force (ABF) data over the inquiry period.[141] Again, the estimated landed export prices did not differentiate between LDAN and HDAN. The commission also assumed that the export price for other countries is the same price that Russian exporters would export to Australia. The commission excluded importations from Australian industry and countries subject to measures. Figure 11 demonstrates estimated Russian export prices, which were amongst the lowest when compared to countries exporting ammonium nitrate to Australia and Orica Australia.

---

[138] Confidential Attachment 4 – Proper comparison analysis – CTMS.

[139] Confidential Attachment 6 – Proper comparison analysis – Prices and profits.

[140] The commission only included prices from Orica Australia as 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. The commission did not have relevant price and cost data for Dyno Nobel as it did not provided a response to the exporter questionnaire.

[141] Confidential Attachment 6 – Proper Comparison analysis – Prices and profits.

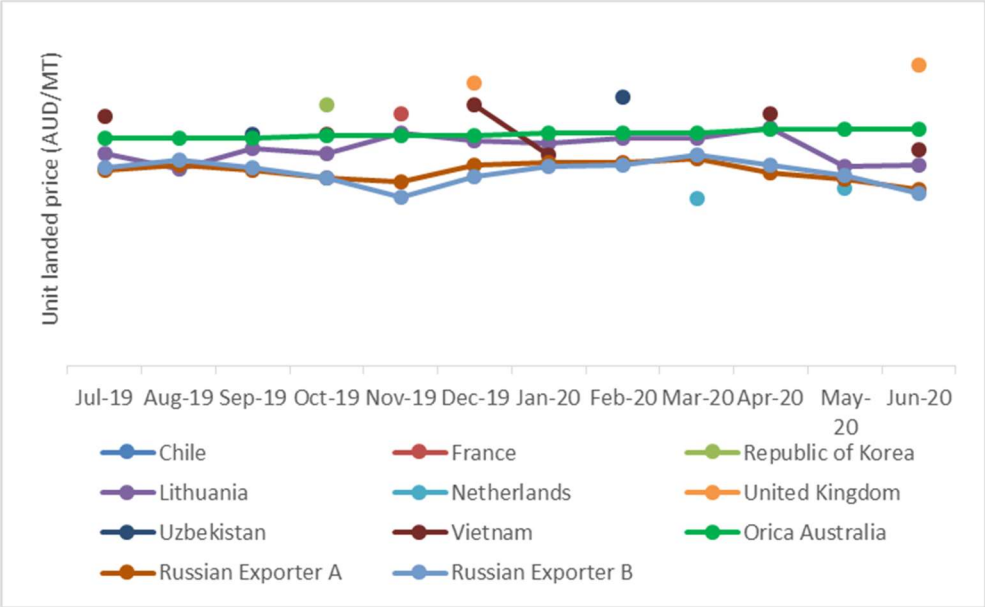

Figure 11: Comparison of unit export landed prices, excluding imports from Australian industry and countries subject to measures

The commission considers that this difference in pricing compared to domestic and foreign (non-Russian) produced ammonium nitrate is, in part, attributable to the particular market situation in Russia. The commission considers that, if not for the stability in natural gas costs, Russian exporters would have more likely set their prices higher for the first half of the inquiry period which would have been more consistent with the prevailing market price of ammonium nitrate in Australia.

Analysis of the profit margins achieved in the Russian domestic market shows that Russian producers achieved strong margins on domestic sales.[142] In contrast, the profits achieved in export markets are significantly higher than the profits achieved in the Russian domestic market for both exporters. The commission has no information to indicate that would have changed had Russian producers exported to Australia during the inquiry period.

The commission also analysed the proportion of sales from the EuroChem exporters by volume sold that were profitable on the Russian domestic and export markets. Analysis showed that for both exporters a similar proportion of sales by volume were profitable for domestic and export sales.

4.6.6 Examination of conditions of competition in Australia and Russia

Appendix C of this preliminary report provides the commission's detailed assessment of the conditions of competition in Australia and Russia.

In summary, the commission finds that both the Australian and Russian markets for ammonium nitrate are competitive. Domestic producers predominantly supply each market. Imports into Australia, whilst not a significant portion of the Australian market, account for a larger portion of the market than do imports into the Russian market. Russia exports a larger portion of its annual production than Australia. In the Australian market, end users of ammonium nitrate are predominately in the mining sector, whereas in the Russian market end users are mostly in the agricultural sector. Australia and Russia both consider ammonium nitrate to be a hazardous commodity. Ammonium nitrate in both

[142] Ibid.

markets is subject to varying degrees of regulation, particularly in relation to its storage and transport.

As detailed in Section 4.6.5, the commission considers that the Russian producers supplying ammonium nitrate to the Russian domestic and export markets operate under market conditions that differ from those in other countries, including in Australia. Specifically, the particular market situation in Russia reduces the pricing risks associated with negotiating, purchasing, forecasting and hedging natural gas costs in the production of ammonium nitrate due to the GOR regulations mandating natural gas prices for Gazprom.

4.6.7 Conclusion

The commission's analysis indicates that the relationship between price and cost, and the prevailing conditions of competition in Russia are different in comparison to the relationship between price and cost and the prevailing conditions of competition in Australia.

The commission, based on the evidence and analysis undertaken in Section 4.6.5, considers Russian ammonium nitrate producers have benefited through access to stable natural gas prices. Since all producers in Russia obtain this benefit, any advantage in pricing of one competitor over another arising from the particular market situation is competed away in the Russian domestic market. Thus, the particular market situation does not create a competitive pricing advantage in the domestic market, including for NAK Azot and Nevinka. Therefore, the commission considers that the particular market situation has a net neutral effect on the prevailing conditions of competition and that it does not create a competitive pricing advantage in the domestic ammonium nitrate market. However, the commission considers the effect of the particular market situation has given Russian exporters a competitive pricing advantage not available to other producers, such as those from Australia and other countries. In turn, the particular market situation affects the prevailing conditions of competition in the Australian market in a way that is different to the effect on the prevailing conditions of competition in the Russian domestic market.

Specifically, the effect of the particular market situation in Russia is that a price ceiling and price floor effectively operate for natural gas costs incurred by Russian producers of ammonium nitrate. The GOR mandates a regulated price for gas sold by the primary supplier of natural gas in Russia, Gazprom. Whilst there are private suppliers of gas and a gas exchange, SPIMAX, operating in the Russian domestic gas market, regulated prices mandated by the GOR for Gazprom influence the gas prices on the exchange, and the prices offered by the private suppliers. Due to the effective operation of the price ceiling and floor, the gas costs faced by producers are largely consistent, stable and predictable over extended periods. Consequently, producers are facing limited volatility in the cost of the primary raw material input into the production of ammonium nitrate. This reduces producers' risks in relation to managing costs and determining prices.

The effect of the particular market situation on the domestic sales prices in Russia does not result in any advantages or disadvantages between market participants, being Russian producers. In other words, while there may be competition between Russian producers based on manufacturing efficiencies and other factors, the particular market situation nonetheless modifies the conditions of competition in a consistent manner for all market participants in Russia.

Australian industry and other producers exporting ammonium nitrate to Australia do not face the effects that manifest from the regulated gas prices in Russia. Non-Russian suppliers of ammonium nitrate face significantly more volatility in their gas input costs compared to Russian producers. Consequently, they face higher pricing and cost risks.

Consequently, the relationship between price and costs in the Australian market is different to the Russian market.

In other words, the effect of the particular market situation on export price is to modify the conditions of competition in Australia to the benefit of Russian exporters. This benefit manifests as more certainty (or less risk) in pricing that potentially undercuts the prevailing level of competitive pricing in Australia, to the detriment of all other market participants in that market.

Thus, the relative effect of the particular market situation on domestic and export prices is different in the relevant markets. Consequently, the commission considers that the evidence discussed in this Chapter indicates that sales in the domestic Russian market are not suitable for determining a normal value for the exporters under section 269TAC(1), because the price of such sales do not permit a proper comparison with the export price of the goods exported to Australia.

4.7 Reassessment of dumping margins

4.7.1 Variable factors – NAK Azot

4.7.1.1 Normal value

The commission is satisfied that, pursuant to section 269TAC(2)(a)(ii), because of the situation in the domestic market for the goods in Russia, sales in that market are not suitable for use in determining a normal value under section 269TAC(1). This is on the basis that those prices would not permit a proper comparison with the export price for the purposes of determining the dumping margin.

Accordingly, the commission has calculated a normal value under section 269TAC(2)(c)[143] using the sum of the following:

- The domestic cost of production of the goods in Russia, which was calculated using the CTM for NAK Azot, with its gas costs for producing ammonia and nitric acid, the key ingredients of ammonia nitrate, adjusted by reference to the gas benchmark.
- Selling, general and administration (SG&A) costs, on the assumption that the goods, instead of being exported, were sold for home consumption in the OCOT in the country of export based on the company's records, in accordance with section 44(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation).
- An amount for profit based on data relating to the production and sale of like goods on the domestic market in accordance with section 45(2) of the Regulation.

CTM reflecting the cost of production in Russia

The commission has assessed the raw material input costs in the CTM for NAK Azot. The commission is satisfied that NAK Azot kept its records relating to the goods in accordance with the relevant GAAP[144] and that, after adjusting certain costs[145], the records reasonably reflect the costs associated with the production and sale of the goods (that is, the costs actually incurred by NAK Azot).

However, the commission was not satisfied that NAK Azot's costs reasonably reflect competitive market costs associated with the production of like goods, due to the influence of the GOR in the domestic Russia market for gas. Specifically, the commission considers

---

[143] Under section 269TAC(3A), the Minister is not required to consider working out the normal value of goods under section 269TAC(2)(d) before working out the normal value of goods under section 269TAC(2)(c).

[144] Generally Accepted Accounting Principles.

[145] Refer to verification report relation to Nevinka. EPR 565, document number 33.

that gas costs in Russia, which make up a major proportion of the total cost of production of the goods, are distorted by the GOR influence and do not reasonably reflect competitive market costs associated with the production or manufacture of the goods. As a result, section 43(2) of the Regulation, which requires the commission to use a producer's records to determine the cost of production of goods in the country of export where those records reasonably reflect competitive market costs, is not enlivened.

Accordingly, the overall question remains as to the most appropriate value for the cost of production of ammonium nitrate in Russia under section 269TAC(2)(c)(i). In this case, the commission considers it is not appropriate to rely on the gas costs in NAK Azot's records to determine the cost of production of ammonium nitrate in Russia, because to do so would reintroduce the factors that warranted the commission's decision to construct the normal value in the first place. We recall, in that regard, that our particular market situation finding above pertained to gas costs in Russia. The commission considers it appropriate to adjust gas costs in NAK Azot's records by reference to a gas benchmark cost for gas. In doing so, we seek to identify a proxy for what gas prices in Russia would be absent the particular market situation. As set out further below, we selected a gas benchmark cost specifically tailored and adapted to reflect conditions in the domestic Russian market. The commissioner will consider any information provided in response to this preliminary report, including regarding any comparative advantages or disadvantages, on the appropriate level of adjustment to gas benchmark cost used instead of NAK Azot's records.

As discussed in REP 565, NAK Azot presented the commission with revised cost information after the verification of its cost data.[146] NAK Azot advised that certain costs had been included in error in the data presented to the commission. The commission declined to accept this revision for the reasons specified in REP 565. For the purpose of the revised normal calculations in this report, the commission has continued not using the revised costs presented by NAK Azot. The commission considers that the use of the revised costs would not materially lower the normal value determined in this reinvestigation.

The commission consequently worked out the amount for the cost of production in NAK Azot's normal value under section 269TAC(2)(c) using this adjusted cost for gas and the costs for other items as set out in NAK Azot's records.

Appendix D provides further details of this calculation.

SG&A costs

In accordance with section 44(2) of the Regulation, the commission has calculated an amount for SG&A based on NAK Azot's records for its domestic SG&A costs, as tested by the commission.

An amount for profit

The commission found that NAK Azot made a profit based on the production and domestic sales of like goods that were 'arms length' and in the OCOT. Therefore, the commission determined an amount of the profit in accordance with section 45(2) of the Regulation, using data relating to the production and sale of like goods by NAK Azot in the OCOT.

4.7.1.2 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).

---

[146] REP 565, p. 44.

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 commission obtained Russian export data 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 2021 Report* purchased by the commission. The commission's comparison of the TDI data confirmed that it was consistent with the data in the report. On this basis, the commission considered the data 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 ascertain positively that these sales comprised arms length transactions.

Based on this assessment, the commission considered it preferable to use the TDI data for the purposes of establishing an export price for NAK Azot.

4.7.1.3 Adjustments to normal value

The commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with section 269TAC(9). The commission considers the adjustments in Table 4 are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
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 4: Adjustments to NAK Azot's normal value[147]

4.7.1.4 Dumping margin

The commission has calculated a dumping margin in respect of NAK Azot for the inquiry period. The dumping margin is **negative 1.2%.**

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

4.7.2 Variable factors – Nevinka

4.7.2.1 Normal value

The commission is satisfied that, pursuant to section 269TAC(2)(a)(ii), because of the situation in the domestic market for the goods in Russia, sales in that market are not suitable for use in determining a normal value under section 269TAC(1). This is on the basis that those prices would not permit a proper comparison with the export price for the purposes of determining the dumping margin.

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

Accordingly, the commission has calculated a normal value under section 269TAC(2)(c)[148] using the sum of the following:

- The domestic cost of production of the goods in Russia, which was calculated using the CTM for Nevinka, with its gas costs for producing ammonia and nitric acid, the key ingredients of ammonia nitrate, adjusted by reference to the gas benchmark.
- SG&A on the assumption that the goods, instead of being exported, were sold for home consumption in the OCOT in the country of export based on the company's records in accordance with section 44(2) of the Regulation.
- An amount for profit based on data relating to the production and sale of like goods on the domestic market in accordance with section 45(2) of the Regulation.

CTM reflecting the cost of production in Russia

The commission has assessed the raw material input costs in the CTM for Nevinka. The commission is satisfied that Nevinka kept its records relating to the goods in accordance with the relevant GAAP[149] and that, after adjusting certain costs[150], the records reasonably reflect the costs associated with the production and sale of the goods (that is, the costs actually incurred by Nevinka).

However, the commission was not satisfied that Nevinka's costs reasonably reflect competitive market costs associated with the production of like goods, due to the influence of the GOR in the domestic Russia market for gas. Specifically, the commission considers that gas costs in Russia, which make up a major proportion of the total cost of production of the goods, are distorted by the GOR influence and do not reasonably reflect competitive market costs associated with the production or manufacture of the goods. As a result, section 43(2) of the Regulation, which requires the commission to use a producer's records to determine the cost of production of goods in the country of export where those records reasonably reflect competitive market costs, is not enlivened.

Accordingly, the overall question remains as to the most appropriate value for the cost of production of ammonium nitrate in Russia under section 269TAC(2)(c)(i). In this case, the commission considers it is not appropriate to rely on the gas costs in Nevinka's records to determine the cost of production of ammonium nitrate in Russia, because to do so would reintroduce the factors that warranted the commission's decision to construct the normal value in the first place. We recall, in that regard, that our particular market situation finding above pertained to gas costs in Russia. The commission considers it appropriate to adjust gas costs in Nevinka's records by reference to a gas benchmark cost for gas. In doing so, we seek to identify a proxy for what gas prices in Russia would be absent the particular market situation. As set out further below, we selected a gas benchmark cost specifically tailored and adapted to reflect conditions in the domestic Russian market. The commissioner will consider any information provided in response to this preliminary report, including regarding any comparative advantages or disadvantages, on the appropriate level of adjustment to gas benchmark cost used instead of Nevinka's records.

The commission consequently worked out the amount for the cost of production in Nevinka's normal value under section 269TAC(2)(c) using this adjusted cost for gas and the costs for other items as set out in Nevinka's records.

APPENDIX D: provides further details of this calculation.

---

[148] Under section 269(3A), the Minister is not required to consider working out the normal value of goods under section 269TAC(2)(d) before working out the normal value of goods under section 269TAC(2)(c).

[149] Generally Accepted Accounting Principles.

[150] Refer to verification report relation to Nevinka. EPR 565, document number 33.

SG&A costs

In accordance with section 44(2) of the Regulation, the commission has calculated an amount for SG&A based on Nevinka's records for its domestic SG&A costs, as tested by the commission.

An amount for profit

The commission found that Nevinka made a profit based on the production and domestic sales of like goods that were 'arms length' and in the OCOT. Therefore, the commission determined an amount of the profit in accordance with section 45(2) of the Regulation using data relating to the production and sale of like goods by Nevinka in the OCOT.

4.7.2.2 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 relied on data obtained from TDI. The commission obtained third country exports by all Russian exporters to countries that Nevinka exported to during the inquiry period. For the reasons outlined in REP 565 and in Section 4.7.1.2 of this report, the commission considered this data reliable and relevant to the goods under consideration in this inquiry.

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 ascertain positively that these sales were arms length transactions.

Based on the above assessment, the commission considered it preferable to use the TDI data for the purposes of establishing an export price for Nevinka.

4.7.2.3 Adjustments to normal value

The commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with section 269TAC(9). The commission considers the adjustments in Table 5 are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
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 5: Adjustments to Nevinka's normal value[151]

4.7.2.4 Dumping margin

The commission has calculated a revised dumping margin in respect of Nevinka for the inquiry period. The dumping margin is **negative 8.8%**.

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

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

4.7.3 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. For exporters that did not cooperate with the inquiry, the commission has received no evidence that would warrant an adjustment to the uncooperative and all other exporters dumping margin.

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.

The margin for uncooperative and all other exporters from Russia is **2.3%**.

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

5 FINDING ONE: LIKELIHOOD OF DUMPING CONTINUING OR RECURRING

5.1 Preliminary findings

On reinvestigation, the commission preliminarily finds that:

- The commission is not satisfied that expiration of the measures would likely lead to Russian ammonium nitrate being exported to Australia at dumped prices. Analysis of the revised dumping margins and the findings made in REP 565 indicate that any future exports into Australia are likely to be in small volumes and unlikely to be sold at dumped prices, should the measures expire.
- The commission considers that Russian exports of ammonium nitrate will likely recur in small volumes in the absence of measures at some stage in the future. The commission anticipates that, in the absence of measures, some importers may seek at some stage in the future to switch supply sources and import ammonium nitrate from Russia.
- However, for the reasons set out in REP 565 and this report, imports are likely to constitute significantly less than 5% of the Australian market and the evidence assessed in this reinvestigation indicates that the cooperative exporters' future exports, if any, are unlikely to be dumped. The evidence also suggests that uncooperative exports are unlikely to be at dumped prices.
- The commission finds that the further information regarding the Kemerovo plant expansion is relevant but not sufficient to alter the commission's determination that dumping is unlikely to continue or recur.

5.2 Reinvestigation request relating to the reassessment of likelihood of dumping continuing or recurring

The ADRP requested the commission to reinvestigate, 'to the extent that the reinvestigation of the normal value methodology results in any change in the dumping margins of the exporter[s] (including those of the uncooperative exporters), the finding that the Commissioner is not 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, should also be reinvestigated.'[152]

The ADRP member noted that the respective findings in continuation inquiry 312, where a positive dumping margin was found, and continuation inquiry 565, where both exporters had negative margins, indicated 'the weight the commission placed on positive dumping margins in reaching the required level of satisfaction that dumping would continue or recur'.[153]

The member also requested that 'to the extent that the reinvestigation of the normal value methodology (discussed above) results in an increase in the dumping margins of the exporters (including the uncooperative exporters) … [the commission should] … re-examine its finding on the likelihood of exports recurring should the measures be removed.'[154] The member noted that in REP 565 the commission was satisfied that

---

[152] ADRP (2021), Letter to the Commissioner regarding reinvestigation, 17 September 2021, on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_ammonium_nitrate_-_request_for_reinvestigation.pdf, p. 9.

[153] Ibid, p. 10.

[154] Ibid.

exports of ammonium nitrate are only likely to continue or recur on a spot sale basis, which forms approximately 5% of sales in the Australian market.[155]

The member also requested the commission 're-examine Russian production capacity and capacity utilisation in light of certain "further information"' relating to 'the launch of new ammonium nitrate capacity by Kemerovo on 31 May 2021'. The member requested the commission to 'consider this information and its relevance to the commission's related findings and conclusions'. The member also requested the commission to consider certain information Glencore and the EuroChem exporters provided in relation the Kemerovo plant expansion during their respective conferences with the ADRP held on 14 September 2021.[156]

5.3 Legislative framework and the commission's approach

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. The ADRP has supported this view, and noted that the commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur.[157] However, facts must nevertheless be the basis for the commission's conclusions and recommendation.[158]

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.[159] The commission's view is that the relevance of each factor varies depending on the nature of the goods and the market of sale. 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.

5.4 Is dumping likely to continue or recur?

In accordance with ADRP's reinvestigation request, the commission has re-examined the 'likelihood of dumping continuing or recurring should the measures be removed' to the 'extent that the reinvestigation of the normal value methodology results in any change in the dumping margins of the exporter(s) (including those of the uncooperative exporters).'

Having considered the revised dumping margins specified in Chapter 4 and the change in relation to the methodology to determining dumping margins, the commission continues to consider that the evidence that future exports are likely to be dumped has diminished. The commission continues to consider that the measures may expire without risk of material injury to the Australian industry ensuing.

---

155 Ibid.
156 Ibid, p. 11.
157 ADRP Report No. 44 (Clear float glass).
158 Ibid.
159 Pages 175 to 176.

5.4.1 Findings in REP 565

In REP 565 the commission was not satisfied that the expiration of the measures would likely lead to a continuation of, or a recurrence of, the dumping that the anti-dumping measure was intended to prevent. The following findings were the basis for this conclusion:[160]

- The inquiry found that neither of the EuroChem exporters exported ammonium nitrate during the inquiry period.
- Further, the EuroChem exporters were found to have negative dumping margins, meaning if they did export to Australia during the inquiry period it would not have been at dumped prices.
- The dumping rate for uncooperative and all other exporters reduced from 14% to 2.8%. While future exports from uncooperative exporters may be dumped, the commission found it was not likely, as required by section 269ZHF(2).
- The small volume of goods exported to Australia during the inquiry period were from a non-cooperative exporter at a price above the measures floor price, and did not attract dumping duties upon importation.
- Further, since continuation inquiry 312 there was no review or duty assessment completed with respect to ammonium nitrate exported from Russia, and as such no history of dumping since continuation inquiry 312.

5.4.2 Reassessment of the likelihood of dumping

Revised dumping margins

As specified in Chapter 4, the commission has revised the dumping margins determined in REP 565. The revision of dumping margins has resulted in the dumping margins for:

- NAK Azot reducing from negative 0.9% to negative 1.2%
- Nevinka reducing from negative 0.1% to negative 8.8%
- Uncooperative and all other exporters reducing from 2.8% to 2.3%.

Assessing the impact of COVID-19

To establish the normal values under section 269(2), the commission, in part, relied on adjusting the exporters' gas costs by reference to a German gas benchmark price. Given that the COVID-19 pandemic commenced during the inquiry period, the commission has examined the impact of COVID-19 on German gas prices during the inquiry period as part of its assessment of likelihood of future dumping.

The commission considers that any impact of COVID-19 on German gas prices occurred after January 2020.[161] To assess the impact, the commission reviewed pricing for the 12 months prior to the inquiry period, a period unaffected by COVID-19. Figure 12 illustrates the pricing for this earlier 12-month period in relation to the inquiry period.

---

[160] EPR 565, document number 50, pp. 50–52.

[161] The first case of COVID in Germany was identified on 27 January 2020 and the German government commenced imposing strict restrictions in early March 2020. Refer to https://www.deutschland.de/sites/default/files/inline-images/Corona%20in%20GER%20Timeline%20Infographic%20%286%29%20%281%29.png, (last accessed 3 June 2022).

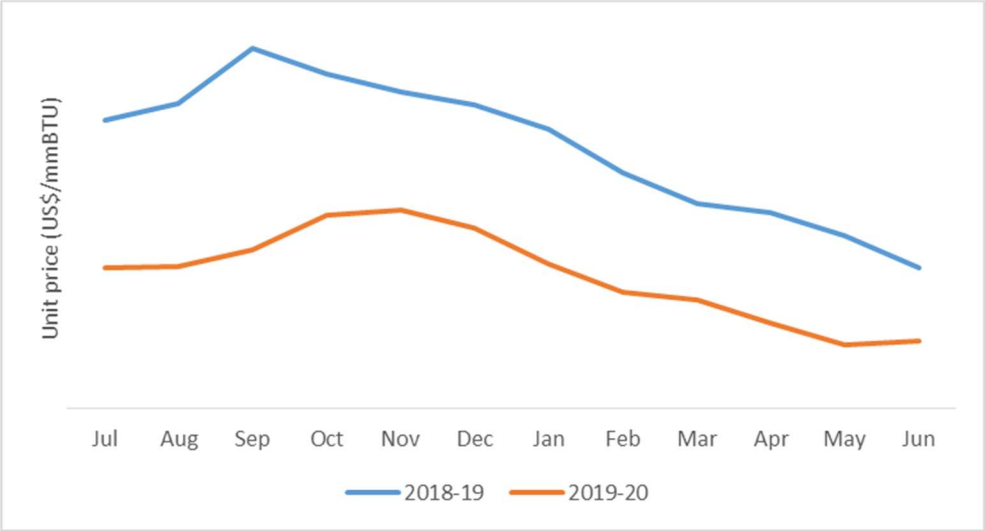

Figure 12: Comparison of NCG 1-month ahead gas prices between June 2018 to July 2019 and the inquiry period (June 2019 to July 2020)

The commission notes that gas prices were lower during inquiry period compared to the same corresponding months during the 2018/19 period, including for the period not affected by the COVID-19 pandemic.[162] The commission also notes that gas prices during the inquiry period and the 2018/19 period followed a similar trend, with gas prices tending to fall during the first half of the calendar year and rising during the second half of the calendar year. The commission understands that this pattern likely reflects the influence of weather and seasonal demand conditions on prices.

The commission also notes that the relative fall in prices in the January to June 2020 period were larger than the comparative falls in the January to June 2019 period. Whilst multiple factors influence price movements, the commission considers that the differences between the periods in the degree of the decline in the February to June periods likely reflects the impact of COVID-19 on gas prices. Figure 13 illustrates this trend.

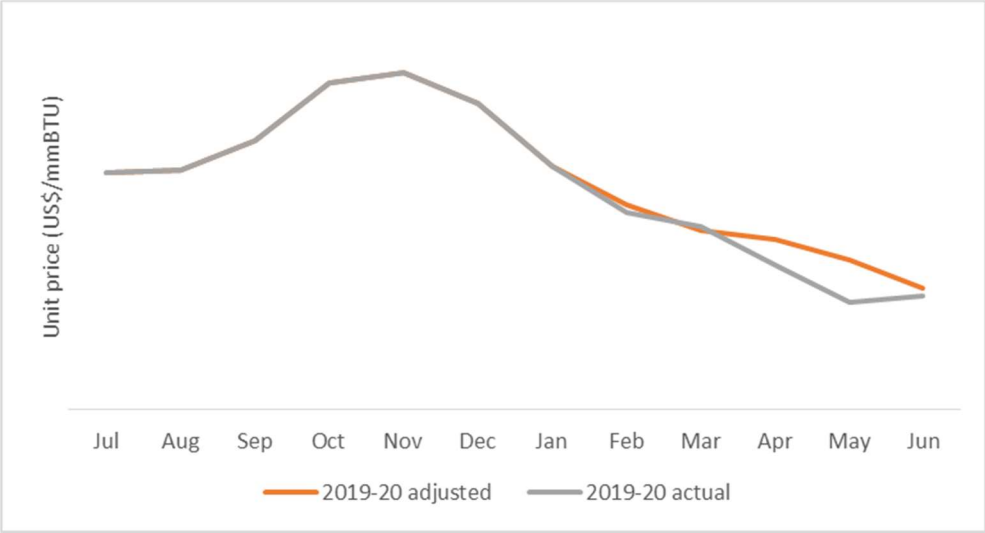

Figure 13: Comparison of actual NCG 1-month ahead gas prices for the inquiry period (June 2019 to July 2020) with adjusted price movements based on the February to July period

[162] NCG 1-month ahead prices were, on average 47% lower during between June 2019 and January 2020 compared the corresponding earlier 2018/19 period. Pricing for the period between February and June 2020 was 54% lower than the corresponding 2019 period.

The commission notes that the greater decline in gas prices between March and May 2020 corresponds with the first series of COVID-19 restrictions imposed by the German Government and the fall in the output and turnover of German industry during the same period. The commission also notes that the increase in prices in June 2020 corresponds with the commencement of a recovery in the output and turnover of Germany industry and the easing of the first series of COVID-19 restrictions in Germany.[163]

The commission's analysis of the COVID-19 impact on German gas prices is included at **Confidential Attachment 7.**

For the purpose of the likelihood of future dumping assessment, the commission adjusted the gas benchmark prices to remove the estimated COVID-19 impact. Using the COVID-19 adjusted gas prices, the dumping margins determined were:

- NAK Azot negative 0.5%
- Nevinka negative 8.2%
- Uncooperative and all other exporters positive 2.9%

The commission's calculations of the COVID-19 adjusted dumping margins are included at **Confidential Appendices 4 to 6**.

Likelihood of dumping – Cooperating exporters

The commission remains satisfied that the evidence concerning the variable factors of the cooperative exporters during the inquiry period remains informative and their dumping margins continue to be negative rather than positive. Dumping margins calculated under section 269TAC(1) in REP 565 were negative. As specified in Chapter 4 of this report, dumping margins for the cooperative exporters remain negative when calculated under section 269TAC(2). After adjusting for the estimated impact of COVID-19 on benchmark German gas prices, the dumping margins calculated under 269TAC(2) remain negative for the cooperating exporters.

Although the variable factors need not be determinative, having regard for the negative dumping margins of the cooperative exporters and the other reasons specified in REP 565, the commission continues to consider that the evidence suggests that future exports are not likely to be dumped causing injury to Australian industry, should the measures be allowed to expire.

Likelihood of dumping – Uncooperative exporters

Consideration of the method for determining the uncooperative rate of dumping is relevant to assessing its weight in the likelihood of dumping assessment.[164] 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 and the lowest weighted average export price. This rate of dumping does not relate to any

---

[163] For the purposes of this analysis, the commission examined a reported timeline of the German government response to the COVID pandemic. A copy of the timeline is available at https://www.deutschland.de/sites/default/files/inline-images/Corona%20in%20GER%20Timeline%20Infographic%20%286%29%20%281%29.png, (last accessed 3 June 2022). For purpose of analysing the impact of COVID in relation to German production, the commission examined information on the Federal Statistical Office of Germany in relation to the impact of COVID-19. This information is available at https://www.destatis.de/EN/Themes/Cross-Section/Corona/Economy/context-economy.html#doc396814bodyText6, (last accessed 6 June 2022).

[164] The applicants in their applications stated 'It does, however, suggest that exports from any Russian producer other than NAK Azot and Nevinka (ie, most of the Russian AN industry) to Australia would be dumped at a non-trivial margin (2.8%)'

specific exporter and the scale of that margin does not indicate that those goods were actually at dumped prices. Consequently, the uncooperative dumping margin demonstrates the highest level of risk that that could ensue if the measures are removed, although it is arguably limited in relation to assessing the actual likelihood of dumping.

The commission considers that the uncooperative rate would be relevant to the single importation during the inquiry period.[165] The exporter of this shipment did not cooperate with the inquiry. This importation reflected 0.21% of the Australian market during the inquiry period.

Whilst this exporter did not cooperate with the inquiry, the commission received verified information from the importer, including source documents evidencing the free on board (FOB) price paid by the importer for this importation. Based on this FOB export price and the uncooperative exporter's normal value, the evidence before the commission indicates that this importation was not at dumped prices.

The commission's assessment

Overall, and having regard to the:

- relevant findings in REP 565,
- negative dumping margins of the cooperative exporters,
- uncooperative dumping margin, and
- FOB export price and the uncooperative exporter's normal value, (the evidence before the commission indicates that the sole importation was not at a dumped price),

the commission considers there is sufficient evidence before it to be satisfied that future exports are unlikely to be dumped should the measures be allowed to expire.

5.5 Are exports likely to continue or recur?

In accordance with ADRP's reinvestigation request, the commission has re-examined the likelihood of future exports. The commission's examination has focused on the ADRP's requests in relation to:

- the commission's finding that exports of ammonium nitrate are likely only to continue or recur on a spot sale basis, which formed approximately 5% of sales in the Australian market
- Russian production capacity utilisation in light of certain 'further information' relating to launch of new ammonium nitrate capacity launched by Kemerovo.

The applicants submitted[166] that in REP 565 the commission did not provide an explanation to support the commission's view that injury would be limited to spot sales. The applicants stated that they had provided considerable evidence to the commission of the increased and increasing capacity expansions for ammonium nitrate in Russia and that Russia is the largest exporter of ammonium nitrate globally. The applicants further considered the commission's view was not reconcilable with the additional Kemerovo expansion information that they provided in conference.

5.5.1 Findings in REP 565

In REP 565, after not being satisfied that the expiration of measures was likely to lead to a continuation or recurrence of dumping, the commission went on to consider the likelihood

---

[165] The applicants in their applications stated that 'No data was provided by producers who had actually exported to Australia during the relevant period.'

[166] EPR 565, document number 55.

of exports continuing or recurring should measures be allowed to expire. When making its finding, the commission had regard to the production capacity and capacity utilisation of Russian ammonium nitrate producers. In REP 565, the commission was satisfied that exports of ammonium nitrate from Russia were likely to continue or recur on a spot sale basis, which forms approximately 5% of the Australian market. This was based on the following findings in REP 565:[167]

- The Australian market is comprised mostly of LDAN.
- LDAN capacity utilisation by Russian ammonium producers is high, if not close to full capacity, and the capability for Russian producers to 'switch' easily HDAN production to LDAN production has not been demonstrated.
- The emulsion portion of the market forms the minority of sales within the ammonium nitrate market in Australia, and importers of HDAN for emulsion require a solution tank to 'melt' the HDAN for emulsion production. Consequently, 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.
- 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.

5.5.2 Examination of certain 'further information' regarding the new production capacity at the Kemerovo plant

Further information provided to the ADRP

The ADRP requested the commission to examine certain further information Orica Australia provided in its 13 July 2021 submission to the ADRP.

This further information, which was subsequent to the Minister's decision, related to a Russian exporter's expansion of its ammonium nitrate facilities. Orica Australia submitted that SBU AZOT had announced the completion of its expanded nitric acid facility and provided a Business World Magazine (BWM) article as evidence. The BWM article noted that the new complex had capacity to produce 500 tonnes per day of nitric acid. The article specified that with the new complex, the company intended to increase its output of ammonium nitrate.

Orica Australia, noting that the commission in REP 565 had foreshadowed the expansion, submitted that this announcement confirmed the threat of the reality of this capacity coming to global markets. Orica Australia noted that the Kemerovo facility was a noted exporter from Eastern Europe. Orica Australia claimed that the eastern location provided an economic advantage over other Russian producers in western Russia. Orica Australia claimed that this economic advantage would result in a higher dumping margin.

Orica Australia submitted that the extra capacity was in addition to the 400K 'tepa' capacity noted by the European Commission in its continuation inquiry and the expansions identified in their submission of 25 March 2020.

In the context of Orica Australia's claimed ability and practice of Russian producers to 'swing capacity' across products, Orica Australia stated that the swing effect meant that more capacity could be created during certain periods of the year, rather than on an

[167] EPR 565, document number 50, p. 63.

average basis. They stated that the plant expansion significantly increased the likelihood of exports to Australia, particularly when other markets had measures in place.

In reference to the ADRP's conferences with Glencore and the EuroChem exporters on 14 September 2021, the commission notes that the following claims in relation to the Kemerovo plant expansion:

- the EuroChem exporters noted that the increased capacity did not relate to them
- Glencore stated that the commission had considered KAO Azot's additional capacity (in the inquiry) and did not consider it supported the Australian industry's call for the continuation of measures.

Assessment of the Kemerovo plant expansion in REP 565

The commission examined the expected expansion of the Kemerovo plant in REP 565. This included examining the information contained in Orica Australia's submission of 25 March 2020 and other information provided by the GOR.

Based on the evidence before the commission at the time, and in the absence of positive evidence to show a link between this increased capacity and the grades of ammonium nitrate used extensively in Australia, the commission found that this increased capacity was unlikely to lead to increased exports to Australia.

Submissions received in relation to the Kemerovo plant expansion further information

Glencore submitted that the Kemerovo plant was an extremely long distance from any ports and was entirely landlocked, with the eastern ports being approximately 5,500 km away. Glencore advised that the cost of getting products to the port would make export sales financially unattractive. Glencore stated that the new nitric acid plant did not affect Russian LDAN production at all.

The commission notes that Orica Australia in its submission to the ADRP stated that the Kemerovo eastern location provided an economic advantage over other Russian producers. Neither Glencore nor Orica Australia have provided relevant evidence to support their respective claims in relation to either the cost of transport or the economic advantage. In the absence of information to support their respective claims, the commission considers both claims are not sufficiently supported with evidence.

Further enquiries made in relation to the Kemerovo plant expansion

The commission has undertaken further inquiries to re-examine the impact of the Kemerovo plant expansion. This included examining publically available information and making further inquiries with the GOR and the plant owner, SBU AZOT.

The commission's examination of publically available information focused on an examination of SBU AZOT's websites, including the Russian language version. This examination identified that the subject additional capacity had been developed primarily to support fertiliser production and that the facility would increase the output of ammonium nitrate production by 20%.[168]

The commission sent the GOR and SBU Azot questionnaires seeking further information in relation to the expansion of the plant. The questionnaires sought information in relation to the types of ammonium nitrate produced, the size of the increase in production capacity

[168] Refer to press release dated 26 May 2021 on Kemerovo website, http://www.sds-azot.ru/ru/press-tsentr/1261-gubernator-kuzbassa-sergej-tsivilev-otkryl-novuyu-ustanovku-ak-500-na-kao-azot, (last accessed 3 February 2022). Translated using Google Translate.

and the ability of the plant to switch between differing grades. SBU Azot did not respond to the questionnaire. The GOR provided a response. The GOR advised that the referenced facilities aimed to increase 'commercial ammonium nitrate' that is fully used by consumers in the Kemerovo regions and in the production of urea ammonia mixture.[169]

The commission also examined whether there had been exports of ammonium nitrate to Australia from the Kemerovo plant subsequent to the expiry of measures and the announcement of the completion of the Kemerovo plant. These inquiries identified that there have been no exports of ammonium nitrate to Australia from any Russian producer (including Kemerovo) since the measures expired on 24 May 2021.[170]

Commission's assessment of further information

The commission does not find that the further information regarding the Kemerovo additional capacity has any more weight than the information previously considered. It is not sufficiently compelling to change the commission's earlier finding with respect to Russian production capacity or capacity utilisation. The further information provided and enquiries conducted continue to support the commission's original finding that the evidence does not demonstrate a link between the increased capacity and the grades of ammonium nitrate used extensively in Australia (LDAN). Consequently, the commission has found that this increased capacity is not likely to lead to increased exports to Australia.

5.5.3 Reinvestigation of the finding on the likelihood of exports continuing or recurring

Composition of the Australian market and capacity utilisation

In REP 565, the commission found that the Australian ammonium nitrate market is mostly comprised of LDAN and that there was high capacity utilisation of LDAN plants in Russia during the inquiry period. During the reinvestigation, the commission identified no evidence to support changing its finding with regard to Russian manufacturers not having the capability to convert excess HDAN production to LDAN production for export to Australia. The commission's examination of the further information regarding the Kemerovo facility expansion found that this expansion did not increase Russian LDAN capacity.

The commission continues to find that Russia has insufficient capacity to increase exports of LDAN substantially to Australia.

Australian ammonium nitrate import market share and spot sales

Table 6 details the estimated proportion of the Australian market supplied by Australian industry production and through imports (Australian industry or other parties imports).

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

Table 6: Table 7 from REP 565: Australia Ammonium Nitrate Market Supply Volume (%)

[169] EPR 565, document number 58.

[170] The commission searched the ABF import database on 27 May 2022. This search did not identify any exports from Russia between 1 August 2019 and 8 April 2022. An immaterial volume of exports from Estonia was observed in September 2021 (5 kg).

Australian industry has supplied between 92.5% and 95% of the Australian market during the 5 years up to and including the inquiry period. As a proportion of total imports, Australian industry has been responsible for between 37% and 60.3% of total ammonium nitrate imports during the 5 years up to and including the inquiry period. The commission understands that Australian industry has imported ammonium nitrate to meet its supply commitments in the Australian market.[171]

Overall, non-Australian industry imports have not exceeded 5% of the Australian ammonium nitrate market in the period examined, with the maximum proportion over the past 5 years being 4.3% in FY 2019. The commission found in REP 565 that the Australian ammonium nitrate industry typically uses long-term supply contracts with guaranteed volumes for the provision of ammonium nitrate. As such, it is the commission's understanding that the Australian ammonium nitrate import market has a large component of spot sales (or sales, in part, to address a shortfall in Australian supply).

Table 7 provides a further breakdown of the sources of the non-Australian industry members' imports.

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Chile	0.00%	0.00%	0.00%	1.75%	0.21%
China	0.68%	0.64%	0.65%	0.61%	0.82%
Lithuania	0.00%	0.00%	0.08%	0.87%	1.25%
Russia	1.47%	0.43%	1.06%	0.25%	0.21%
Sweden	0.05%	0.67%	1.15%	0.69%	0.02%
Vietnam	0.00%	0.00%	0.00%	0.00%	0.98%
All other countries	0.49%	0.56%	0.45%	0.12%	0.01%
Total market share of non-Australian industry imports	**2.70%**	**2.30%**	**3.40%**	**4.30%**	**3.50%**

Table 7: Australian ammonium nitrate market share of non-Australian imports by country (%)[172]

Table 7 illustrates that non-Australian industry imports of ammonium nitrate have varied over time, with importers seeking supply from multiple countries or moving between supply countries, noting that some supply moved away from China, Sweden and Thailand after the implementation of measures resulting from Investigation 473. Over the period analysed, no country captured the entirety of the non-Australian industry import market.

The applicants claim that:

- the commission's findings in REP 565 in regard to spot sales did not provide any explanation or justification in support of this view[173]
- the spot sales finding was based upon the commission's interpretation of the EuroChem exporters' claims regarding its capacity and the GOR's claims regarding high utilisation rates for Russian producers.[174]

Whilst the capacity of the Russian producers to supply LDAN for large ongoing contracts is a relevant limitation on the future capacity to supply, the commission's assessment in REP 565 was, as detailed in the report, primarily based on the trend in imports and other confidential information. The commission formed a view that it is a reasonable assumption

[171] Refer to Australian industry capacity analysis completed in REP 565.
[172] Refer to REP 565 – Confidential Attachment 6 for source data.
[173] EPR 565, document number 55.
[174] Refer to the applicants' respective applications to the ADRP.

that those imports are more likely to be 'spot sales' or purchases to make up a shortfall (as in the case of Australian industry imports).[175]

For further clarification, the commission provides more details of its import analysis.[176] The commission identified primary importers, excluding Australian industry members, who imported from Russia on a semi-regular basis over a 5-year period. None imported continuously over the 5-year period. One of these importers is now unlikely to import ammonium nitrate in the next few years. Of the others, none imported during the inquiry period, with prior year-to-year volumes exhibiting large fluctuations. Two of these 3 importers have imported over a 3-year period at varying volumes. These 3 importers also imported from multiple countries in each year and the volumes between these countries fluctuated significantly year-on-year. The commission considers that this pattern, together with the other evidence in REP 565, reflects spot sales, as opposed to long-term supply contract arrangements.

The commission's view that the Russian import purchases were either on a spot basis or to address a shortfall in Australian industry supply. Australian industry challenges this view.[177] However, it remains unclear to the commission how the Australian industry justifies its own import purchases, if they were for any other reason than to make up a shortfall of supply. The commission considers that the characterisation of sales occurring on a spot basis requires no greater elaboration or explication.[178]

In the context of the imports from all source countries, the commission considers that the overall switching in import supply sources, the varying volumes of supply, and the limited market penetration of imports are all indicative of imports occurring on a spot sale basis rather than on a long-term contract basis. Imports have not been able to capture a significant portion of the Australian market, which is predominately long-term contract based, even though importers will generally seek out cheaper sources.

As summarised in Section 5.5.1, REP 565 analysed various indicia, which support the commission's findings in relation to future importations from Russia. Section 4.3.1 of REP 565 also identifies various characteristics of the Australian market, which likely constrain, to some degree, the capacity to import ammonium nitrate, which further diminishes the likelihood of significant import penetration into the Australian market.[179]

The evidence before the commission does not support the suggestion that exports from Russia will substantially increase in the absence of measures, and will be at dumped prices. The commission notes that the last importation of ammonium nitrate from Russia occurred in August 2019 and that there have been no importations from Russia since then.

The commission's further analysis of importations is included at **Confidential Attachment 2.**

Likelihood of Russian exports

The commission considers the import analysis completed in this preliminary report to be informative in assessing the likelihood of future exports from Russia.

The commission considers that Russian exports of ammonium nitrate will likely recur at some point in the future in the absence of measures. The commission anticipates that in

---

[175] Refer to REP 565, p. 56.

[176] Refer to REP 565 for the commission's analysis and refer to REP 565 – Confidential Attachment 7 for confidential information assessment.

[177] EPR 565, document number 55.

[178] Refer to REP 565 pp. 56, 61 and 63.

[179] Refer to REP 565 pp. 26–28.

the absence of measures some importers may seek at some point in the future to switch import sources and import ammonium nitrate from Russia.

The commission considers that any future imports from Russia are likely to constitute substantially less than 5% of the Australian market for the following reasons:

- The findings made in REP 565, as summarised in Section 5.5.1 of this report.
- Non-Australian industry imports have been historically below 5% of the Australian market for the financial years between July 2015 and June 2020.
- No single country has dominated import supply, with fluctuations in source during the period between July 2015 and June 2020.
- Subsequent to the removal of measures on 24 May 2021, there have been no imports of ammonium nitrate from Russia. The last importation from Russia occurred in August 2019.
- Russia has limited capacity to supply the grade of ammonium nitrate (LDAN) predominately used in the Australian market.
- The key characteristics of the Australian market that likely constrain, to some degree, the capacity to import ammonium nitrate, further diminishes the likelihood of significant import penetration into the Australian market.
- Evidence indicates that the Kemerovo plant expansion does not include an increased capacity to supply the grade of ammonium nitrate predominately used in the Australian market.

Based on the above analysis and the findings made in REP 565, the commission finds that, while non-Australian industry imports of ammonium nitrate from Russia are likely to recur at some point in the future, they are likely to constitute significantly less than 5% of the Australian market.

5.6 Conclusion – Is dumping likely to continue or recur?

For the reasons outlined above and set out in REP 565, the commission is not satisfied that expiration of the measures would likely lead to a continuation or recurrence of dumped Russian ammonium nitrate being exported to Australia.

6 FINDING TWO: LIKELIHOOD OF INJURY CONTINUING OR RECURRING

6.1 Preliminary findings

On reinvestigation, the Commissioner remains not 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 and the material injury that the anti-dumping measure are intended to prevent.

6.2 Ground of review and reinvestigation request

The ADRP has requested the commission to:

- To the extent that the reinvestigation of the normal value methodology results in an increase in the dumping margins of the exporters, the finding that the Commissioner is not satisfied that the expiration of the anti-dumping measures would lead, or would likely lead, to a continuation of, or a recurrence of, injury, should be reinvestigated.[180]
- In so far as Russian production capacity and capacity utilisation is relevant to this finding, re-examine Russian production capacity and capacity utilisation in light of certain 'further information' of Orica Australia.[181] Specifically:
    - re-examine the likelihood of the recurrence of injury finding resulting from the re-examination of Russian capacity and capacity utilisation in light of certain further information relating to the Kemerovo expansion and, in so far as Russian production capacity is relevant
    - take into consideration the responses of Glencore and the EuroChem exporters on the Kemerovo expansion further information provided during their respective conferences on 14 September 2021.

6.3 Findings in REP 565

In REP 565, the commission was not satisfied that the expiration of measures would be likely to lead to a continuation or recurrence of material injury that the anti-dumping measures are intended to prevent. In making its finding, the commission had regard to price injury, volume injury and profit and profitability injury.[182]

6.4 Reinvestigation of finding

The ADRP requested the commission reinvestigate, 'to the extent that reinvestigation of the normal value methodology ….results in an increase in the dumping margins of the exporters', the finding that the Commissioner was not satisfied that the expiration of the anti-dumping measure would lead, or would be likely to lead, to a continuation of, or the recurrence of injury.

In this regard, the commission has examined the impact of the revised dumping margins, the Kemerovo plant expansion, submissions received from interested parties and further information received in relation to a confidential contract examined in REP 565.

---

[180] ADRP (2021), Letter to the Commissioner regarding reinvestigation, 17 September 2021, on the ADRP's website at https://www.industry.gov.au/sites/default/files/adrp/2021_134_-_ammonium_nitrate_-_request_for_reinvestigation.pdf, p. 13.

[181] Ibid.

[182] EPR 565, document number 50, pp. 63–70.

6.4.1 Submissions received

Glencore submitted[183] that the ADRP reinvestigation request mentioned the commission's estimated Russian landed price analysis. Glencore submitted that the commission's estimated Russian landed price and undercutting analysis in REP 565 was likely based predominantly on the price of fertiliser. Glencore noted that ammonium nitrate is not generally used as fertiliser in the Australian market and, as such, Glencore had reservations about relying on the commission's undercutting analysis in REP 565.

Glencore agreed with and provided a summary of certain findings from REP 565. Based on the summary findings, Glencore suggested that the recurrence of material injury was unlikely.

Glencore submitted that the Australian industry was shielded from the immediate impact of the expiration of measures because the bulk of Australian industry's sales were contracted. Glencore suggested that importers would need to persuade end users to switch from established contractual relationships by winning new long-term contracts. Glencore observed that appears unlikely.

Glencore noted that imports from various countries were a feature in the Australia market. Glencore questioned why imports from Russia would be more injurious than imports from these other countries. Glencore observed that an increase in sales from Russian imports would most likely be at the expense of other countries rather than the Australian industry.

Glencore doubted the expiration of the measures would result in a recurrence of material injury. Glencore observed that Russian ammonium nitrate imported into Australia was a grade Australian industry did not usually sell, had limited substitutability and formed a minority of the Australian market.

EuroChem exporters submitted[184] that the ADRP's items for reinvestigation should not alter the commission's findings in REP 565. EuroChem exporters noted that there would continue to be low volumes of Russian imports and that these imports compete for spot sales, which represent 5% of Australian market volume. EuroChem exporters discussed the limitations in the commission's estimated Russian landed price analysis. EuroChem exporters agreed with the commission's finding that it was not satisfied that it is likely that any injury to the Australian industry would be material.

The commission notes that, while Glencore's submission referred to the 'immediate impact of the expiration of measures', the commission's consideration of the likelihood of material injury took a longer term view.

The commission further notes that Glencore's and the EuroChem exporters' submissions support the commission's findings in REP 565. The further information provided in these submissions continue to support the commission's original finding that the expiration of the measures would not be likely to lead to injury to the Australian industry to a material degree.

The applicants submitted[185] that the commission had inadequately or incorrectly examined the future threat of material injury requirement in continuation inquiry 565. The applicants

[183] EPR 565, document number 57.
[184] EPR 565, document number 56.
[185] EPR 565, document number 55.

cited ADRP Review Nos 144[186] and 145[187] and argued that the commission had not properly considered the hypothetical assessment of what may occur should the measures be allowed to expire in REP 565. The applicants questioned whether the commission properly considered the threat of material injury in REP 565.

The commission set out a detailed and comprehensive analysis in Chapter 7 of REP 565 concluding that the commission was 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 fact that the applicant disagreed with the commission's assessment does not entail that the commission 'did not provide any explanation or justifications' (as claimed by the applicant).[188] The commission's view in REP 565 is based on a detailed assessment of the evidence available.

The commission's assessment of the further information provided in this reinvestigation is that, although relevant, it is not sufficient to alter the commission's view that material injury is unlikely to ensue, if the measures expire. The furnishing of a media article promoting the expansion of a plant in Russia replicates claims made in the inquiry earlier without sufficiently explaining why the commission's assessment with respect to capacity and concerns about capacity was flawed or incorrect. However, additional capacity is not, in and of itself, determinative of the likelihood of the recurrence of dumping.

The commission confirms that REP 565 considered whether material injury is likely to continue or recur, as a future-oriented question. This preliminary report has also considered whether material injury is likely to continue or recur.

6.4.2 Impact of revised dumping margins on material injury

The commission considers that the revised dumping margins do not change the material injury finding in REP 565. As outlined in Chapter 4, the commission's reassessment of the dumping margins has resulted in a reduction of all margins. Table 8 contains a list of the revised margins.

Exporter	REP 565 dumping margin	Revised dumping margin
NAK Azot	-0.9%	-1.2%
Nevinka	-0.1%	-8.8%
Uncooperative and all other exporters	2.8%	2.3%

Table 8: Revisions to dumping margins

Given that all dumping margins have reduced due to the amended normal value methodology, the commission considers, in the context of the ADRP request, that the factual circumstances remain unchanged from those found in REP 565.

Accordingly, the commission considers that the revised dumping margins do not alter the original material injury finding in REP 565.

---

[186] Refer to the ADRP's website at: <https://www.industry.gov.au/data-and-publications/anti-dumping-review-panel-current-reviews/consumer-pineapple-exported-from-the-republic-of-the-philippines-and-the-kingdom-of-thailand>.
[187] Refer to the ADRP's website at: <https://www.industry.gov.au/data-and-publications/anti-dumping-review-panel-current-reviews/food-service-and-industrial-pineapple-exported-from-the-republic-of-the-philippines-and-the-kingdom-of-thailand>.
[188] EPR 565, document number 55.

6.4.3 Impact of inquiries in relation to further information relating to the Kemerovo expansion

The commission's examination of the Kemerovo plant expansion further information is set out in Section 5.5.2 of this report.

The further information provided and the commission's further enquiries continue to support the commission's original finding that the evidence does not demonstrate a link between the increased capacity and the grades of ammonium nitrate used extensively in Australia. Consequently, the commission continues to find that this increased capacity is unlikely to lead to increased exports to Australia.

The commission has further examined exports of ammonium nitrate from Russia subsequent to the expiry of the measures. These inquiries identified that there have been no exports of ammonium nitrate to Australia since the measures expired on 24 May 2021. This includes from both the Kemerovo plant or from any other producer in Russia.[189] The last importation from Russia occurred in August 2019.

6.4.4 Confidential contract

The commission sought and obtained further information in relation to a contract examined in REP 565. The commission's assessment of this further information has not materially altered the commission's findings made in REP 565 in relation to this contract. The commission's assessment of the further information is contained in **Confidential Attachment 8.**

6.5 Conclusion – Is material injury likely to continue or recur?

The ADRP requested that 'to the extent that the reinvestigation of the normal value methodology…results in an increase in the dumping margins of the exporters, the finding that the Commissioner is not satisfied that the expiration of the anti-dumping measures would lead, or would likely lead, to a continuation of, or a recurrence of, injury, should be reinvestigated'.

As found in REP 565, the commission remains not satisfied that the expiration of the measures would be likely to lead to material injury to the Australian industry. Furthermore, as contemplated by this reinvestigation report, even if a small volume of unexamined exports were to be dumped, on the balance of probability, material injury to the Australian industry is unlikely.

[189] The commission searched the ABF import database on 27 May 2022. This search did not identify any exports from Russia between 1 August 2019 and 8 April 2022. An immaterial volume of exports from Estonia was observed in September 2021.

7 CONCLUSION

7.1 Preliminary reinvestigation finding

For the reasons set out in this preliminary 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.

8 APPENDICES AND ATTACHMENTS

Appendix A	Taxation of oil and gas for top natural gas producing countries
Appendix B	Estimated effect of the GET on the gas price in Germany
Appendix C	Assessment of conditions of competition and relationship between costs and prices in Australia and Russia
Appendix D	Constructed normal values – Russia
Confidential Appendix 1	Revised calculations for inquiry period of export prices, normal, values and dumping margins for NAK Azot
Confidential Appendix 2	Revised calculations for inquiry period of export prices, normal, values and dumping margins for Nevinka
Confidential Appendix 3	Revised calculations for inquiry period of export prices, normal, values and dumping margins for uncooperative and all other exporters
Confidential Appendix 4	Revised calculations for inquiry period of export prices, normal, values and dumping margins for NAK Azot - Benchmark adjusted for COVID
Confidential Appendix 5	Revised calculations for inquiry period of export prices, normal, values and dumping margins for Nevinka - Benchmark adjusted for COVID
Confidential Appendix 6	Revised calculations for inquiry period of export prices, normal, values and dumping margins for uncooperative and all other exporters- Benchmark adjusted for COVID
Confidential Attachment 1	Benchmark calculation and analysis
Confidential Attachment 2	ABF ammonium nitrate import analysis
Attachment 3	2020 Gazprom profit and prices
Confidential Attachment 4	Proper comparison analysis – CTMS
Confidential Attachment 5	Proper comparison analysis – Gas prices
Confidential Attachment 6	Proper comparison analysis – Prices and profits
Confidential Attachment 7	COVID-19 adjusted benchmark
Confidential Attachment 8	Contract analysis
Confidential Attachment B1	Equilibrium gas price model
Confidential Attachment C1	Competition cost price assessment

APPENDIX A: TAXATION OF OIL AND GAS FOR TOP NATURAL GAS PRODUCING COUNTRIES

Country	Production Volume 2017[190]	ADC Summary of taxation
United States	772,800	No export duties, CIT of 21%, onshore royalties from 12.5% to 30% and offshore royalties from 12.5% to 18.75%.[191]
Russia	665,600	Excluded from this summary.
Iran	214,500	No export duties, subject to CIT from 23.75 to 25% with allowable deductions. Some uncertainty following U.S.A. withdrawal from JCPoA.[192]
Qatar	166,400	No export duties, subject to CIT from 35% to 55%.[193,194]
Canada	159,100	No export duties, federal CIT of 15% and state rates between 11.5% and 16%, with royalties up to an effective rate of 45%.[195]
China	145,900	No export duties, CIT of 25%, VAT 17%, resource tax of 6% on sale price, royalties up to 12.5%.[196]
Norway	123,900	No export duties, upstream activities attract a marginal tax rate of 78% comprised of CIT of 22% and resource rent tax of 56%. Oil and gas companies not captured under this arrangement are subject to 22% CIT.[197]
Saudi Arabia	109,300	No export market.[198]
Australia	105,200	No export duties, royalties between 10% and 12.5%, CIT of 30% and resource rent tax of 40%.[199]
Algeria	93,500	No export duties, petroleum income tax 38% for foreign partners, royalties between 5.5% and 20%, additional profits tax of 15% or 30% depending on whether profits are reinvested or not, and surface fees.[200]
Turkmenistan	77,450	No export duties, gas operations subject to CIT of 20%.[201]
Indonesia	72,090	No export duties, CIT of 25% and branch profits tax of 20%.[202]
Malaysia	69,490	An export duty of 10% applies to petroleum products as well as a 38% petroleum income tax.[203]

[190] The World Factbook, 'Natural gas – production', https://www.cia.gov/the-world-factbook/field/natural-gas-production/country-comparison, (last accessed 31 March 2022) (millions of cubic metres).
[191] EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 734–750.
[192] Ibid, pp. 295–299.
[193] Ibid, pp. 557–562.
[194] PwC Oil and Gas Tax Guide for the Middle East 2015, https://www.pwc.com/gx/en/tax/publications/assets/me-oil-and-gas-guide.pdf, pp. 39–46.
[195] EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 102–112.
[196] Ibid, pp. 128–139.
[197] Ibid, pp. 488–493.
[198] The World Factbook, 'Natural gas – exports', https://www.cia.gov/the-world-factbook/field/natural-gas-exports/country-comparison, (last accessed 31 March 2022).
[199] EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 30–48.
[200] Ibid, pp. 1–7.
[201] PwC Worldwide Tax Summaries: Turkmenistan, up to date as of 3 January 2022, https://taxsummaries.pwc.com/turkmenistan/corporate/taxes-on-corporate-income, (last accessed 2 March 2022).
[202] EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 286–294.
[203] Ibid, pp. 390–399.

Country	Production Volume 2017[190]	ADC Summary of taxation
United Arab Emirates	62,010	No relevant federal tax scheme, with each Emirate issuing CIT decrees. Abu Dhabi, which holds 90% of the UAE's oil and gas reserves, has an income tax rate ranging between 55% and 85%.[204,205]
Uzbekistan	52,100	No export duties, gas producers subject to 12% CIT, 30% subsurface use tax (similar to a royalty), 50% excess profits tax on exports (calculated at selling price above US$160 per 1,000 cubic metres) and a 15% excise tax (which does not apply to sales to the general population).[206]
Egypt	50,860	No export duties, with a CIT of 40.55% on profit and no VAT allowing most goods to be exported free of duty.[207]
Netherlands	45,330	No export duties, CIT of 19% for first 200,000 of taxable profit and 25% after that, state profit share levy of 50%, royalties up to 7% and surface rental taxes.[208]
Nigeria	44,480	Majority of producers taxed under the Petroleum Profits Tax Act (PPTA) 2004 [risk service contracts taxed against CIT]. Under the PPTA new companies are charged 65.75% profit tax for their first 5 years of operations, and 85% from that point onwards. Existing companies are charged 85% for the total duration of their operations.[209]
United Kingdom	42,110	No export duties, subject to either a 19% or 30% CIT rate depending on nature of operations, a supplementary charge of 10% which is not deductible against CIT. A diverted profits tax of 25% or 55% may also apply.[210]

Table A1 Taxation of Oil and Gas for Top Natural Gas Producing Countries

[204] Ibid, pp. 716–719.
[205] Article 6 Abu Dhabi Decree No. 1/1965; PwC Oil and Gas Tax Guide for the Middle East 2015 pp. 55–57.
[206] EY Global Oil and Gas Tax Guide 2019, up to date as of 1 January 2019, pp. 761–766.
[207] Ibid, pp. 214–221.
[208] Ibid, pp. 454–465.
[209] Ibid, pp. 477–487.
[210] Ibid, pp. 720–733.

APPENDIX B: ESTIMATED EFFECT OF THE GAS EXPORT TAX ON THE GAS PRICE IN GERMANY

B 1 Preliminary findings

The commission preliminarily finds that the effect of the introduction of the GET was to increase equilibrium gas prices in Germany and the effect of the GET was to increase German gas prices by an estimated 28.4%.

B 2 Economic overview

General economic theory states that prices are determined through the interaction of supply and demand.

On the demand side, the amount of a good (or service) that consumers are willing and able to purchase at a certain price is called the quantity demanded.[211] The relationship between the price of a product and the quantity demanded is represented by a demand curve. Usually, a demand curve has a negative slope, indicating that as the price of the good increases, the quantity demanded falls as consumers are less willing to purchase the good as prices rise.[212]

On the supply side, the amount of a good (or service) that companies are willing and able to supply at a certain price is called the quantity supplied.[213] The relationship between the price of a product and the quantity supplied is represented by a supply curve. Typically, a supply curve has a positive slope, indicating that as the price of the good increases, the quantity supplied also increases as companies are willing to supply more at higher prices.[214]

Market equilibrium is where the quantity demanded equals the quantity supplied for a given price and is represented by the intersection of the supply and demand curves. When the market is in equilibrium, the intersection of the supply and demand curves occurs at the equilibrium price (Pe) and equilibrium quantity (Qe).[215]

B 3 The effect of a tax on supply and demand

Supply and demand curves are not static but respond dynamically to changes in the market by shifting either up (or left) or down (or right). Shifts in either curve affect the equilibrium price and equilibrium quantity. Many factors can cause shifts in the supply and demand curves[216,217] including:

- the price of substitute or complementary goods
- consumer preferences or tastes
- changes in technology or productivity
- changes in the environment (e.g. adverse or favourable weather events, seasons)
- changes in income or wealth
- the cost of raw material inputs

---

[211] Hubbard, G., Garnett, A., Lewis, P. and O'Brien, T., Microeconomics, Pearson Education, Australia, 2009, p. 62.
[212] Ibid, p. 63.
[213] Ibid, p. 70.
[214] Ibid.
[215] Ibid, p. 76.
[216] Hubbard, G., Garnett, A., Lewis, P. and O'Brien, T., Microeconomics, Pearson Education, Australia, 2009, pp. 69–75.
[217] Besanko, B. and Braeutigam, R., *Microeconomics*, Wiley, Australia, 2014, p. 34.

- the number of buyers and sellers
- expected future prices
- taxes.

Economic theory states that whenever a government introduces a tax on a good, production of that good will decrease ([218],[219],[220],[221] among others). The OECD noted[222] export restrictions such as taxes 'by their nature affect industries and consumers of importing countries, which in turn are confronted with reduced import volumes and higher import prices. When large countries with a significant market share of a particular product apply restrictions, such measures can raise international prices'.[223] However, there is no 'world price' for natural gas for Russia[224] as the need to transport gas through physical pipelines limits delivery. Russia delivers its gas via pipelines to many European countries so the introduction of the tax would raise their prices.[225] Whilst Russia is not the sole provider of gas to Germany, the commission considered it a significant supplier. During 2018, Russia accounted for 'about 40%' of gas imports into Germany.[226],[227] The commission therefore considers that the introduction of the tax raised the import price of natural gas in Germany.

The commission examined the effect of the export tax on Russian supply, German demand and prices using established economic theory.

B 3.1 Determining equilibrium prices before the tax was introduced

The introduction of a tax on a market can be demonstrated graphically using a partial equilibrium approach.[228] Holding everything else constant, economic theory states that the introduction of a government tax shifts the supply curve up leading to a rise in the price and a fall in the quantity supplied. Since the GOR collects the tax on natural gas from the Russian supplier and not from German consumers it is the supply curve that shifts.[229]

---

[218] Hubbard, G., Garnett, A., Lewis, P. and O'Brien, T., Microeconomics, Pearson Education, Australia, 2009, pp. 143–147.

[219] Latina, J., Piermartini, R. and Ruta, M., Natural Resources and Non-Cooperative Trade Policy, World Trade Organisation, Geneva, Switzerland, 2011, https://www.wto.org/english/res_e/reser_e/ersd201106_e.pdf, (last accessed 21 March 2022).

[220] Appleyard, D.R., Field, A.J. and Cobb, L., International Economics, McGraw-Hill Irwin, Boston, 2010, p. 289.

[221] Bouët, A. and Laborde Debucquet, D., Economics of Export Taxation in a Context of Food Crisis: A Theoretical and CGE Approach Contribution, International Food Policy Research Institute Discussion Paper 00994, June 2010, pp. 3–4, https://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/2291/filename/2292.pdf, (last accessed 24 March 2022).

[222] OECD, 2010, The Economic Impact of Export Restrictions on Raw Materials, OECD Trade Policy Studies, OECD Publishing, p. 14, http://dx.doi.org/10.1787/9789264096448-en, (last accessed 8 March 2022).

[223] Ibid, p. 3.

[224] Ibid, p. 135.

[225] Ibid, p. 140.

[226] 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", p. 26.

[227] Excerpt from article "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.", https://www.cleanenergywire.org/factsheets/germanys-dependence-imported-fossil-fuels, (last accessed 21 February 2021).

[228] A partial equilibrium analysis studies the determination of equilibrium prices and quantities in a single market taking as given the prices in all other markets (such as oil markets, LNG markets, etc.). Besanko, B. and Braeutigam, R., *Microeconomics*, Wiley, Australia, 2014, pp. 392–394.

[229] Hubbard, G., Garnett, A., Lewis, P. and O'Brien, T., Microeconomics, Pearson Education, Australia, 2009, pp. 143–147.

Figure B1 shows the shift in the supply curve for natural gas following the introduction of the GET by the GOR.

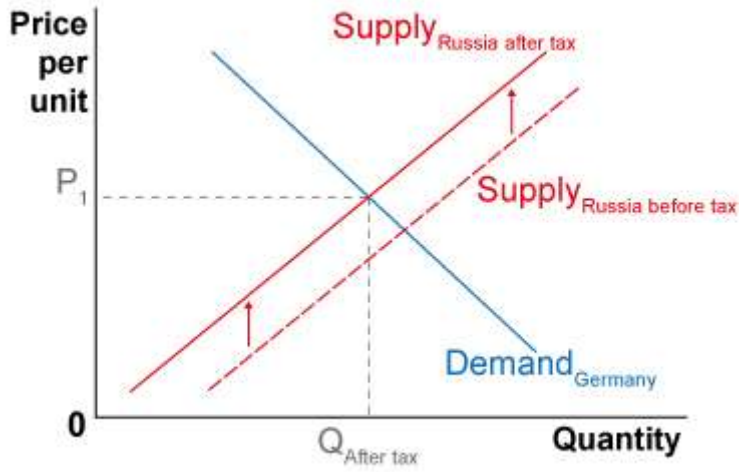

Figure B1: Effect of a tax on the German natural gas market

In this example, the prevailing price paid (P1 or the tax inclusive price) by consumers has increased following the introduction of the GET, whereas the prevailing quantity supplied (QAfter tax) has fallen. Since the GET is imposed at a rate of 30%, it is possible to calculate the unit tax revenue derived from the introduction of the GET. By subtracting this unit tax revenue from the price paid by the consumer (P1) it is possible to calculate the price received by the supplier after the tax is imposed (P2 or the tax exclusive price). Figure B2 demonstrates this relationship.

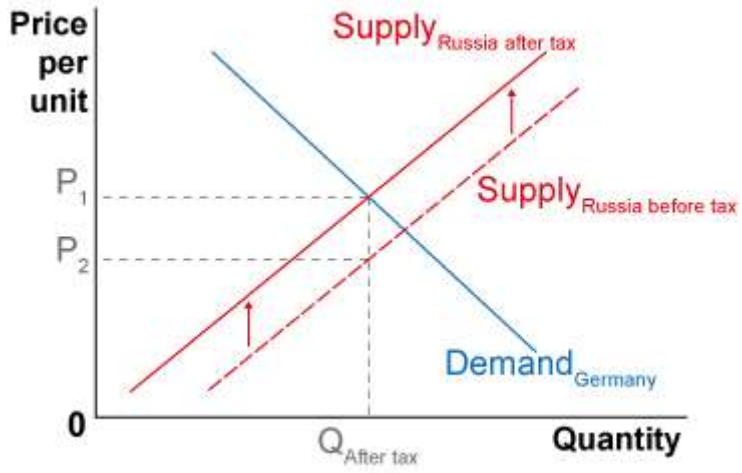

Figure B2: Prices paid by consumers and received by the supplier

The difference between the tax inclusive prevailing price paid by consumers (P1) and the tax exclusive price received by the supplier (P2) represents the 30% tax increase and the difference can be calculated in currency per unit terms.

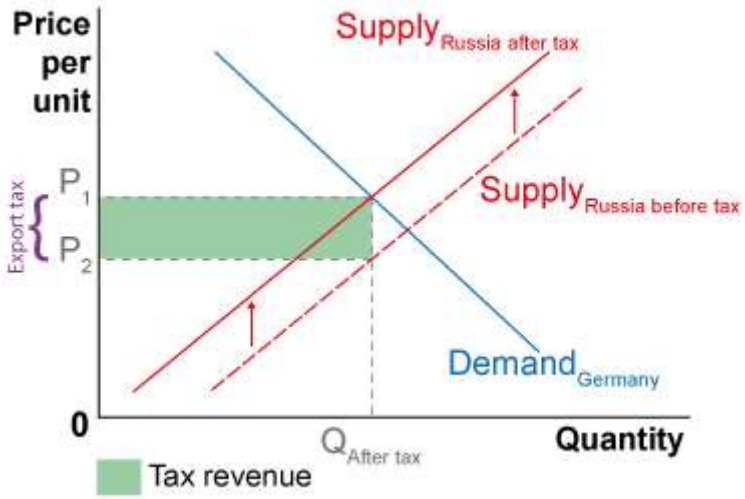

Figure B3: GOR tax revenue from the introduction of the GET

The green area in Figure B3 shows the total tax revenue raised by the GET. The quantity supplied (QAfter tax) following the introduction of the GET can be calculated by dividing the total tax revenue received by the GOR for the GET by the difference in prices in currency per unit terms. In Figure B4, the prevailing quantity supplied (C to D) is calculated by dividing the tax revenue (area A-B-C-D) by the price difference (A to D).

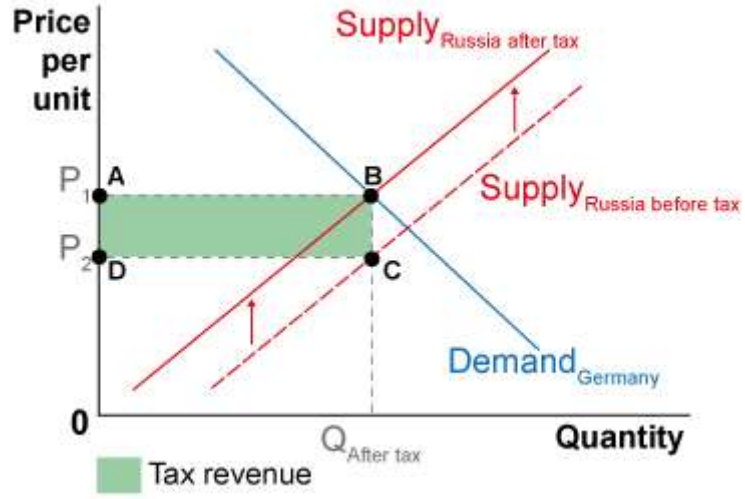

Figure B4: Using GOR tax revenue and price differences to calculate quantity supplied after the GET

The supply and demand curves demonstrate the relationship between price and quantity. Through data analysis, it is possible to calculate how sensitive quantity demanded or quantity supplied are to a change in price. For the demand curve, this sensitivity is called the price elasticity of demand and is calculated by dividing the percentage change in the quantity demanded by the percentage change in the product's price.[230,231] For the supply curve, this sensitivity is called the price elasticity of supply and is calculated by dividing the

[230] Hubbard, G., Garnett, A., Lewis, P. and O'Brien, T., Microeconomics, Pearson Education, Australia, 2009, p. 96.
[231] Besanko, D., and Braeutigam, R., Microeconomics, Wiley, Australia, 5th edition, 2014, p. 45.

percentage change in the quantity supplied by the percentage change in the product's price.[232,233]

Assuming that the supply and demand curves are linear, it is possible to estimate the equations for the linear demand and linear supply curves using the known prices, prevailing quantity (QAfter tax) and the price elasticities.[234] Using the prevailing quantity, prevailing price (P1) and the price elasticity of demand, a linear demand equation can be estimated. Using the prevailing quantity, prevailing price without the tax (P2) and the price elasticity of supply, a linear supply equation for supply before the introduction of the GET can be estimated. Market equilibrium occurs when the quantity demanded equals the quantity supplied and is represented by the intersection of the estimated supply and demand curves. By solving the estimated demand equation and the estimated supply equation simultaneously, the equilibrium price (Pe) before the introduction of the GET can be determined. This is shown in Figure B5.

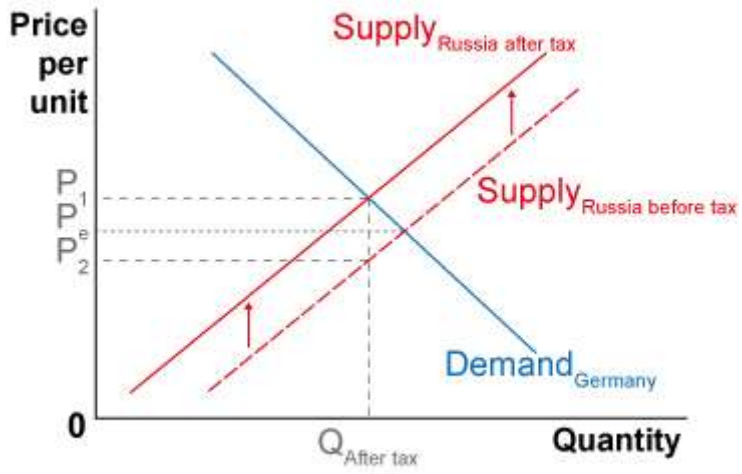

Figure B5: Using prevailing prices, prevailing quantity and elasticities to find equilibrium price before the GET

The difference between the prevailing price (P1) and the estimated equilibrium price (Pe) is the actual effect of the tax on prices in currency per unit terms. This value can be converted to a percentage: $(P_1/P_e) - 1$.

B 3.2 Assumptions made in this partial equilibrium model

The commission utilised the standard comparative static *ceterus paribus* assumption of economic analysis to evaluate the impact of the tax. In particular, this partial equilibrium model of the effect of the tax on the Russian supply and German demand curves makes the following assumptions:

- The introduction of the tax is an exogenous factor
- Gas is a normal good
- The supply curve is linear
- The demand curve is linear
- The introduction of the tax did not shift the demand curve as it was applied to the seller and not the buyer to collect
- The introduction of the tax did not change the slope of the demand curve

---

232 Hubbard, G., Garnett, A., Lewis, P. and O'Brien, T., Microeconomics, Pearson Education, Australia, 2009, p. 114.
233 Besanko, D., and Braeutigam, R., Microeconomics, Wiley, Australia, 5th edition, 2014, p. 56.
234 Ibid, pp. 60–61.

- The introduction of the tax did not change the slope of the supply curve
- The point on the linear demand curve represented by the quantity demanded and price at the quantity demanded exhibits price elasticity of demand equal to the value used
- The point on the linear supply curve represented by the quantity supplied and price at the quantity supplied exhibits price elasticity of supply equal to the value used
- Alternative sources of energy (substitutes) are excluded
- The supply from other rival gas competitors including German gas suppliers is excluded
- The marginal cost of producing natural gas is constant
- Other determinants of supply and demand (e.g. level and distribution of income, wealth, preferences, technologies, population, fiscal policies) are constant.

B 4 The effect of the GOR gas export tax on prices in Germany

The commission has taken the simplified partial equilibrium model above and applied relevant data to it to determine the effect of the tax on prices in Germany following the introduction of the GET. To do this, the commission determined plausible linear supply and linear demand curve slopes and then used these to estimate the effect of the GET on prices. The method followed is described below.

B 4.1 Determining a plausible linear demand equation slope

In order to determine the slope of a plausible linear demand equation, the commission researched and obtained the price elasticity of demand values for natural gas from 6 economic research papers. The commission acknowledges that many factors or determinants could affect the price elasticity of demand including the type of consumer, geographical area, type of data analysed, time period and statistical estimation method.[235] After considering these factors, several of these elasticities values were found to be unsuitable as the scope of the research was too narrowly focused in terms of customer types, countries covered or were derived from a less contemporary time period. From the economic research papers considered, the commission chose a long-term price elasticity of demand value for natural gas of –0.684.[236]

The commission considers this value reasonable because it was estimated after analysing 428 economic literature research papers of price elasticities of energy demand published from 1990 to 2016.[237] The commission considers that the quality of the estimated elasticity value rises along with the quantity of economic literature papers reviewed – a smaller study being more likely to have biases, extreme or statistically non-significant values. In the selected sample of elasticities used in this meta-analysis, the authors analysed 917 short-term and 959 long-term price elasticities of demand for energy products, including natural gas.[238] The commission chose the long-term elasticity rather than the short-term elasticity to reflect the fact that the 30% GET has been operational in the gas market since 2001.[239] In terms of countries covered, the meta-analysis analysed gas market research papers from large regions including Europe and OECD countries as well as single countries including Bangladesh, China, Greece, Italy, Kuwait, Republic of Korea, Turkey

---

[235] Xavier, Labeaga, Jose Maria, López-Otero, Xiral, 'A meta-analysis on the price elasticity of energy demand', 2017, Reprinted from Energy Policy, Vol. 102, Labandeira, pp. 549–568 (last accessed 15 February 2022 with permission from Elsevier).

[236] Ibid.

[237] Ibid, p. 551.

[238] Ibid, p. 552.

[239] Government Decree No. 706 of 2 November 2001, 'on Partial Amendments to the Decree of the Russian Government No. 798 of 12 July 1999".

and the U.S.A.. The commission considers a larger number of countries analysed to be better than a narrow selection of countries as it produces a more general result. The meta-analysis also analysed broad customer types including residential, commercial, industrial and aggregate consumers. The commission observes that the value chosen fell within the range reported for price elasticities of demand in some of the other economic research papers considered. Given the extent of this meta-analysis, the breadth of consumer types and the number of countries covered, the commission considers –0.684 a generic natural gas price elasticity of demand value which could reasonably represent the price elasticity of demand for natural gas in Germany.

The commission's enquiries identified German gas prices and volumes published for 2 gas hubs in Germany: Gaspool and NCG. The commission sourced aggregated consumption volumes for natural gas in Germany for 2019 from the Trading Hub Europe's website[240] and considers this to be the quantity demanded for natural gas following the introduction of the GET (QAfter tax). The commission compared this volume with Germany's aggregated consumption volumes stated on the Federal Statistical Office of Germany's website[241] and the aggregated consumption volumes for gas supply from Gaspool stated on the Gaspool website[242] and considers the stated volumes are reliable.

The commission sourced the average price per unit of natural gas in Germany for 2019 from the Trading Hub Europe's website[243] and considers this to be the price per unit of the quantity demanded for natural gas following the introduction of the GET (P1).

The commission used the price elasticity of demand, the prevailing price per unit and quantity demanded to estimate a plausible generic linear demand equation slope for natural gas demand in Germany.

B 4.2 Determining a plausible linear supply equation slope

In order to determine the slope of a plausible linear supply equation, the commission researched and obtained the price elasticity of supply values for natural gas from 3 economic research papers. The commission acknowledges that many factors or determinants could affect the price elasticity of supply including the number of producers, storage levels, excess capacity, ease of switching, length of production period and the statistical estimation method used.[244] After considering these factors, several of these elasticity values were found to be unsuitable as the scope of the research was too narrow in terms of geographic area covered, derived from a less contemporary time period or in a manner where the statistical methodology and source data was unclear. From the economic research papers considered, the commission obtained a long-term price elasticity of supply value for natural gas of 0.76.[245]

---

[240] Refer to archived 'Aggregated consumption data' on Trading Hub Europe's website at https://www.tradinghub.eu/en-gb/Download/Archive-NetConnect-Germany#1306157-other, (last accessed 29 November 2021).
[241] Refer to Federal Statistical Office website at https://www.destatis.de/EN/Home/_node.html, (last accessed 2 March 2022).
[242] Refer to archived 'Aggregated Consumption Data Market Area Gaspool' on Trading Hub Europe's website at https://www.tradinghub.eu/en-gb/Download/Archive-GASPOOL#1301161-other, (last accessed 3 December 2021).
[243] Refer to archived 'Monthly average gas prices' on Trading Hub Europe's website at https://www.tradinghub.eu/en-gb/Download/Archive-NetConnect-Germany#1306113-prices-fees-and-charges, (last accessed 26 November 2021).
[244] Hubbard, G., Garnett, A., Lewis, P. and O'Brien, T., Microeconomics, Pearson Education, Australia, 2009, p. 114.
[245] Ponce, Micaela and Neumann, Anne, 'Elasticities of Supply for the US Natural Gas Market', April 2014. DIW Berlin Discussion Paper No. 1372, on DIW Berlin's website at https://www.diw.de/documents/publikationen/73/diw_01.c.441773.de/dp1372.pdf, (last accessed 16 February 2022).

The commission considers this value reasonable because it was estimated using empirical data for determinants of natural gas supply including natural gas wellhead prices, crude oil prices (a substitute for natural gas), storage levels, drilling activity, seasonal variables (gas supply increases towards winter), industrial production and real income.[246] The commission considers that the types of determinants use in this research are appropriate as they would reasonably affect the quantity of natural gas produced. The estimation was made using monthly data from 1987 to 2012 which included 303 observations.[247] The commission considers that the quality of the estimated elasticity value rises as the timeframe and number of observations increase – a smaller number of observations or shorter timeframe being less likely to produce a reasonable value. The economic research found a long-run elasticity of supply but did not determine a short-run elasticity. The commission considers the long-term elasticity is suitable to reflect the fact that the 30% GET has been operational in the gas market since 2001.[248] In terms of markets covered, the research focused on natural gas supply in the U.S.A. only. The commission understand that the U.S.A. and Russia are the 2 largest natural gas suppliers producing 23.7% and 16.6% of 2020 world production[249] respectively. Combined they produce 40.3% of world production and have production volumes considerably more than the third ranked country Iran with 6.5%. The difference in order of magnitude between the top 2 producers and the rest of the world is significant. The research includes all customer types as it analysed aggregate supply. The commission observes that the value chosen was similar to the value reported for price elasticities of supply in some of the other economic research papers considered. Given the extent of this research, the breadth of consumer types and the focus on a large supplier in a competitive market, the commission considers it a generic natural gas price elasticity of supply value which could reasonably represent Russia's price elasticity of supply for natural gas in Germany.

The commission sourced natural gas production volumes in the U.S.A. for 2019 from the U.S.A. Energy Information Administration (EIA) and considers this to be the quantity supplied for natural gas.[250]

The commission sourced the national average price per unit of natural gas in the U.S.A. for 2019 from the EIA and considers this to be the price per unit of the quantity supplied for natural gas.[251]

The commission used the price elasticity of supply, the prevailing price per unit and quantity supplied to estimate a plausible generic linear supply equation slope for natural gas supply in the U.S.A. Given that both Russia and the U.S.A. are large suppliers of natural gas, the commission considers the supply slope a generic large supplier supply slope which could reasonably represent Russia's supply slope for natural gas in Germany.

B 4.3 Applying relevant data to the partial equilibrium model

Using the plausible supply and demand equations' slopes estimated above, the commission applied relevant data to determine the estimated linear supply and demand

---

[246] Ibid.

[247] Ibid.

[248] Government Decree No. 706 of 2 November 2001, 'on Partial Amendments to the Decree of the Russian Government No. 798 of 12 July 1999".

[249] Refer to Statistical Review of World Energy 2021, 70th edition on BP's website at https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2021-natural-gas.pdf, (last accessed 16 March 2022).

[250] Refer to "Summary of natural gas supply and disposition in the United States, 2016-2021" on the EIA's website at https://www.eia.gov/naturalgas/monthly/, (last accessed 17 March 2022).

[251] Refer to "Selected national average natural gas prices, 2016-2021" on the EIA's website at https://www.eia.gov/naturalgas/monthly/, (last accessed 17 March 2022).

curves for this inquiry. To ensure consistency with the data used to determine the slopes, the commission used 2019 data to determine the estimated linear supply and demand curves. The method followed is described below.

The commission considers the NCG 1-month forward price to represent the observed market price per unit in the German market inclusive of the GET and other charges. Other charges include costs for transporting the gas from the Russian border to the German hub which is a charge added after the GET has been applied. Therefore, the commission deducted the transport costs per unit from the price to determine a gas price per unit at the German border inclusive of the GET only. Consistent with REP 565, the commission considers that it is preferable to use the shortest or most economical route of the 3 routes available, being Ukraine route, Nordstream route (offshore pipeline) and the Yamal route (through Belarus and Poland). Accordingly, the commission only used the Yamal route for the purposes of deducting the transport costs. After deducting the transport costs per unit and converting to Russian Ruble (RUB), the prevailing market price per unit inclusive of the GET was determined (P1 in the model).

Having identified the tax inclusive prevailing price per unit paid by consumers (P1), the commission deducted the 30% GET to determine the tax exclusive price per unit received by the supplier (P2 in the model) and then determined the price per unit difference (P1 minus P2) in RUB per unit terms.

The commission obtained the total tax revenue received by the GOR for the GET for 2019 from Gazprom[252] (the green area in Figure B4 in the model) and this value was confirmed by a submission from Glencore[253]. As Gazprom's reporting period is calendar year, the commission only had access to total tax revenue data for either 2019 or 2020 and did not have access to data for the inquiry period. The commission selected the 2019 data as it included the first 6 months of the inquiry period and was not affected by supply chain and production disruptions caused by the global COVID-19 pandemic. Using the 2019 data, the prevailing quantity supplied (QAfter tax in the model) after the introduction of the GET was calculated by dividing the total tax revenue by the price per unit difference.

In terms of market demand, the commission used the slope of the plausible linear demand curve (refer to section B 4.1), the tax inclusive prevailing price per unit paid by consumers (P1) and the prevailing quantity supplied (QAfter tax) after the introduction of the GET to derive an estimated demand curve for natural gas in Germany.[254]

In terms of market supply, the commission used the slope of the plausible linear supply curve (refer to section B 4.2), the tax exclusive prevailing price per unit received by the supplier (P2) and the prevailing quantity supplied (QAfter tax) after the introduction of the GET to derive an estimated supply curve for natural gas from Russia before the introduction of the GET.[255]

Market equilibrium before the introduction of the GET is where the quantity demanded equals the quantity supplied. The commission solved the estimated demand equation and the estimated supply equation simultaneously to determine the equilibrium price (Pe in Figure B5 in the model) before the introduction of the GET. Using this approach, the commission determined the equilibrium price (Pe) to be RUB204.68 per mmBTU.

---

[252] Refer to p. 137, 'Gazprom Financial Report 2019', on Gazprom's website at https://www.gazprom.com/f/posts/72/802627/gazprom-financial-report-2019-en.pdf, (last accessed 27 January 2022).
[253] EPR 565, document number 57.
[254] The commission used the linear demand equation Qd = a – bP. The commission used the quantity demanded (Qd), the slope of the demand curve (b) and price of gas demanded (P) to calculate the axis intercept (a).
[255] The commission used the linear supply equation Qs = a + bP. The commission used the quantity supplied (Qs), the slope of the supply curve (b) and price of gas supplied (P) to calculate the axis intercept (a).

Having completed this analysis, the commission subtracted the equilibrium price before the introduction of the GET (Pe) from the tax inclusive prevailing price paid by consumers (P1) to determine the actual effect of the GET on prices in RUB per mmBTU terms. In other words, the amount that prices increased following the introduction of the tax. This value was converted to a percentage so that the percentage effect could be quantified. The commission estimated that the effect of the GET on prices to be 28.4%.

The commission's estimated equilibrium model is in **Confidential Attachment B1**.

B 4.4 Assumptions made in this estimated equilibrium model

This estimation of the effect of the GET on the equilibrium price makes the following assumptions:

- The introduction of the tax is an exogenous factor
- Gas is a normal good
- The plausible demand curve slope and estimated demand equation have linear functions
- The plausible supply curve slope and estimated supply equation have linear functions
- The introduction of the GET did not shift the estimated demand equation as it was directed to the seller and not the buyer to collect
- The introduction of the GET did not change the slope of the estimated demand equation
- The introduction of the GET did not change the slope of the estimated supply equation
- The point on the plausible linear demand equation represented by the quantity demanded and price per unit at the quantity demanded exhibits price elasticity of demand equal to the value used
- The point on the plausible linear supply equation represented by the quantity supplied and price per unit at the quantity supplied exhibits price elasticity of supply equal to the value used
- The price elasticity of supply value is relevant for supply to an export market
- Alternative sources of energy (substitutes) are excluded
- The supply from other rival gas competitors including German suppliers is excluded
- Marginal cost of producing natural gas assumed to be constant
- Marginal cost of transporting natural gas assumed to be constant
- Other determinants of supply and demand (e.g. level and distribution of income, wealth, preferences, technologies, population, fiscal policies) are constant.

B 4.5 Findings

The commission acknowledges that the rate of the GET for natural gas exported to Germany is 30%. However, using a partial equilibrium model, the commission used 2019 data and estimated the effect of the GET on equilibrium prices following the introduction of the tax to be 28.4%.

APPENDIX C: ASSESSMENT OF CONDITIONS OF COMPETITION IN AUSTRALIA AND RUSSIA

C 1 Australian ammonium nitrate market

C 1.1 Market characteristics

C 1.1.1 Market structure and participants

The Australian market for ammonium nitrate includes low (LDAN) and high-density ammonium nitrate (HDAN) in prilled, granular or in other solid forms. It includes ammonium nitrate with or without chemical additives or coatings. LDAN, which makes up the majority of sales in the Australian market, is generally in solid prilled form.

In Australia, ammonium nitrate's primary use is to make explosives, and to a lesser extent fertilisers and specialty medical gases. The Australian market for ammonium nitrate has distinct geographical areas due to its vast size and the complexities involved in storing and transporting it. The geographic areas are the eastern seaboard (divided into North East and South East), South West (Kalgoorlie and surrounds) and the Pilbara.[256]

End users of the products made from ammonium nitrate fall into 3 different categories of consumers depending on the products consumed:

- Medical industry (medical gases)
- Mining, quarrying and construction industries (explosives)
- Agriculture industry (fertilisers).

Based on the information before it, the commission considers the key market segments or supply channels for ammonium nitrate in the Australian market include chemical manufacturers, traders, mining companies, and emulsion producers and blasting service providers (explosives providers) in the mining, quarrying and construction sectors. These market segments can act as intermediaries between the supplier and the downstream (end user) consumer as well as use ammonium nitrate as an intermediate good in the manufacture of products for end users. Companies within the market segments are not limited to purchasing from one market segment or supplier and can purchase both domestically produced and imported ammonium nitrate from various sources. However, the commission understands that it is unusual for mining companies to import ammonium nitrate directly. This freedom to purchase also extends to end users in the agriculture and mining, quarrying and construction industries, which can purchase products made from ammonium nitrate from various sources. The commission observes that domestically produced and imported ammonium nitrate are supplied through each of the above-mentioned supply channels in the Australian market. Figure C1 illustrates the market segments and key participants in the Australian market.

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

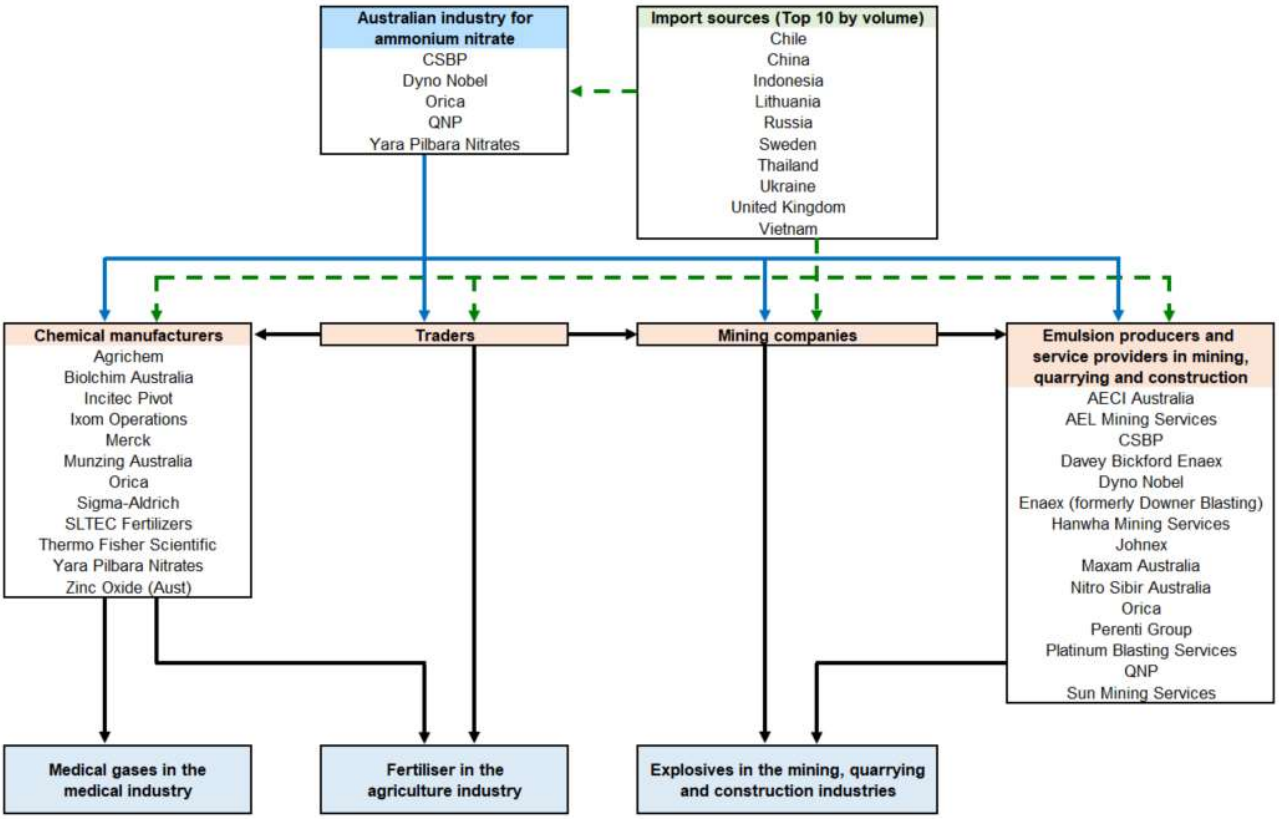

Figure C1: Ammonium nitrate supply channel in Australia[257]

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 from either domestic manufacturers or imports from various countries.

In relation to the Australian industry members which do not provide blasting services (CSBP Limited, 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 that 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.

CSBP was the sole ammonium nitrate manufacturer in Western Australia until 2017, when Yara Pilbara Nitrates commenced production in the Pilbara region. The commission understands that Yara Pilbara Nitrates commenced producing and selling commercially material quantities of ammonium nitrate during 2020.

Other than noted above, the commission is not aware of any significant market consolidation, new entrants or exits during the inquiry period.

C 1.1.2 Market sources

The commission confirmed that the Australian market for ammonium nitrate is supplied by CSBP, Dyno Nobel, Orica Australia, QNP and Yara Pilbara Nitrates and has not identified

[257] Confidential Attachment C1 – Competition Cost Price Assessment.

any other manufacturers of ammonium nitrate in Australia. Analysis of ABF import data shows the Australian market is also supplied from a number of countries as shown in Figure C2. Notable sources of imported ammonium nitrate since July 2016 ranked by volume include China and Russia.

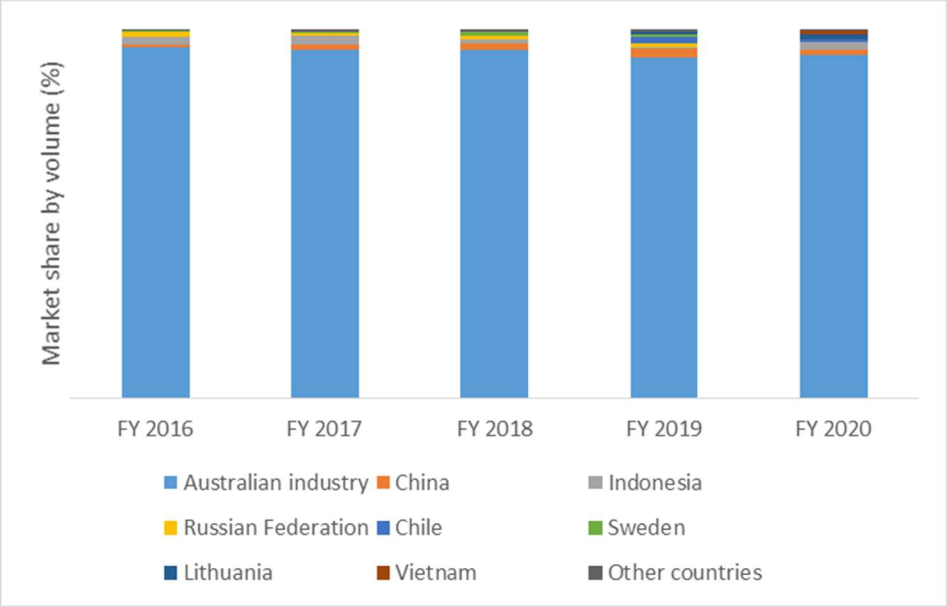

Figure C2: Market share by volume of sources of ammonium nitrate in the Australian market (%)[258]

C 1.1.3 Market size

The commissioner estimates that in FY 2020 local and imported manufacturers supplied approximately 2.64 million metric tonnes of ammonium nitrate.[259]

C 1.1.4 Regulatory framework

The commission is aware that ammonium nitrate is classified under the Australian Dangerous Goods Code as a category 5.1 dangerous good[260] and as hazardous according to Australian work health and safety regulations[261]. On 25 June 2004,[262] the Council of Australian Governments developed principles regarding the use, manufacture, storage, transport, supply, import and export of ammonium nitrate and agreed on a national approach to ban access to ammonium nitrate for other than specifically authorised users.[263] This agreement resulted in the establishment of a licencing regime in each jurisdiction in Australia. Ammonium nitrate blends, including ammonium nitrate, ammonium nitrate emulsions and ammonium nitrate mixtures containing greater than 45% ammonium nitrate, have been designated as a security sensitive material (known as security sensitive

---

[258] Ibid.

[259] Ibid.

[260] Refer to the 'Australian Dangerous Goods Code' on the National Transport Commission website at www.ntc.gov.au, (last accessed 17 December 2021).

[261] Refer to Safe Work Australia's website at www.safeworkaustralia.gov.au, (last accessed 17 December 2021).

[262] Refer to Orica Australia's website at www.oricaminingservices.com/au/en/page/about/ssan, (last accessed 17 December 2021).

[263] Refer to the 'Review of hazardous materials – ammonium nitrate' section in the 'Council of Australian Governments' Meeting 25 June 2004' notes on the National Library of Australia website at webarchive.nla.gov.au/awa/20080719130223/http://www.coag.gov.au/meetings/250604/index.htm and the agreed national set of principles at web.archive.org.au/awa/20080720155529mp_/http://www.coag.gov.au/meetings/250604/attachments_d.pdf, (last accessed 17 December 2021).

ammonium nitrate or SSAN) by the relevant state authorities.[264] Ammonium nitrate is also classified for physicochemical hazards and specified as dangerous in the International Maritime Dangerous Goods Code.[265]

Licences issued by relevant state authorities are required to transport[266] and store[267] ammonium nitrate. Licences are only granted for use in or supply to mining and agriculture. Ammonium nitrate is not available for use in the home or recreational facilities which includes parks, gardens, golf courses and bowling greens. Manufacturing facilities for producing ammonium nitrate are classified as major hazard facilities[268] and are periodically assessed and inspected by regulators.[269] In addition, there are restrictions on the amount of ammonium nitrate that can be received at a designated port at any one time.[270]

The commission is not aware of any other specific competition policy or regulation specific to the manufacture or sale of ammonium nitrate other than those described under Australian consumer[271], workplace safety[272], competition[273] and business[274] regulations.

The commission is not aware of any specific taxation regulation specific to the manufacture or sale of ammonium nitrate in Australia.

The commission is aware that there are state-based codes of practice for managing the health and safety risks of hazardous chemicals across Australia.[275]

The commission is not aware of any statutory minimum industry standards relevant to the manufacture of ammonium nitrate sold in the Australian market.

---

[264] At the time of writing authorities include: SafeWork (NSW); WorkSafe Victoria; Resources Safety & Health Queensland; Department of Mines, Industry Regulation and Safety (WA); SafeWork SA; Department of Natural Resources and Environment Tasmania; NTWorkSafe; and WorkSafe ACT.

[265] Refer to 'The International Maritime Dangerous Goods (IMDG) Code' on the International Maritime Organization website at www.imo.org/en/OurWork/Safety/Pages/DangerousGoods-default.aspx, (last accessed 16 December 2021).

[266] Refer to the 'Australian Code for the Transport of Dangerous Goods by Road & Rail' on the National Transport Commission website at www.ntc.gov.au, (last accessed 17 December 2021).

[267] Refer to 'The storage and handling of oxidizing agents' Australian standard, AS/NZS 4326-2008 on the Standards Australia website at www.standards.org.au, (last accessed 17 December 2021).

[268] Refer to 'Major hazard facilities' on the Safe Work Australia website at www.safeworkaustralia.gov.au and to the 'Model Work Health and Safety Regulations' which provide a basis for nationally consistent work health and safety laws at www.safeworkaustralia.gov.au/sites/default/files/2021-11/Model-WHS-Regulations-1January2021.pdf, (last accessed 15 December 2021).

[269] Refer to the resources relating to major hazard facilities on the Safe Work Australia website at www.safeworkaustralia.gov.au/safety-topic/industry-and-business/major-hazard-facilities/resources, (last accessed 17 December 2021).

[270] Refer to 'The handling and transport of dangerous cargoes in port areas' standard, AS 3846-2005 on the Standards Australia website at www.standards.org.au/standards-catalogue/sa-snz/transportandlogistic/me-081/as--3846-2005, (last accessed 17 December 2021).

[271] Refer to consumer laws on the Australian Consumer Law website at www.consumerlaw.gov.au, (last accessed 17 December 2021).

[272] Refer to work health and safety regulation on www.business.gov.au/work-health-and-safety, (last accessed 17 December 2021).

[273] Refer to the national statutory framework on Australian Competition and Consumer Commission's website at www.accc.gov.au, (last accessed 17 December 2021).

[274] Refer to business regulation on www.business.gov.au/regulations, (last accessed 17 December 2021).

[275] Refer to 'Model Code of Practice: Managing risks of hazardous chemicals in the workplace' which provides a national, practical guide on managing health and safety risks on Safe Work Australia's website at www.safeworkaustralia.gov.au, (last accessed 17 December 2021).

C 1.1.5 Structural barriers to entry and trade

The commission is not aware of any entry restrictions for new participants in the Australian market relevant to the manufacture or sale of ammonium nitrate.

The commission is not aware of any statutory minimum industry standards relevant to the manufacture of ammonium nitrate sold in the Australian market.

An examination of the Australian Patents database found that some Australian industry members for ammonium nitrate, chemical manufacturers and mining companies hold patents relating to the manufacture and use of ammonium nitrate in various physical forms as well as improvements in or relating to ammonium nitrate.[276] Aside from copyright and trademarks associated with brand ownership the commission is not aware of any other restrictions specific to the manufacture or sale of ammonium nitrate in Australia.

According to the CSIRO, the Australian plastics and chemical industries are capital intensive[277] and the commission acknowledges that the manufacturing of ammonium nitrate, which forms part of Australia's chemical industry, is also a capital intensive industry. This high level of capital intensity presents structural barriers to trade.

The commission is aware that some interested parties argue that there are structural or cost impediments to importing ammonium nitrate.[278] 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).

C 1.1.6 Demand

Given that ammonium nitrate in Australia is primarily used as a raw material in the manufacture of explosives, demand is largely driven by the level of activity in industries that require blasting services, namely in the mining, quarrying and construction industries. To a lesser extent, as ammonium nitrate is also used as a raw material in the manufacture of fertilisers, demand is also driven by the level of activity in the agriculture industry via the nutrient and seasonal requirements of particular crops.

Overall, the commission has not observed any seasonal variability in the demand for ammonium nitrate although it acknowledges there is a seasonality linked to crop cycles. As shown in Figure C3, demand for ammonium nitrate has been increasing from FY2016.

---

[276] IP Australia on www.ipaustralia.gov.au, (last accessed 17 December 2021).

[277] Refer to 'Elements in Everything: Current profile and future trends for the Australian chemicals and plastics industry', CSIRO, March 2013, at www.csiro.au/media/files/PACIA_Report1_ElementsInEverything.pdf, (last accessed 20 December 2021).

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

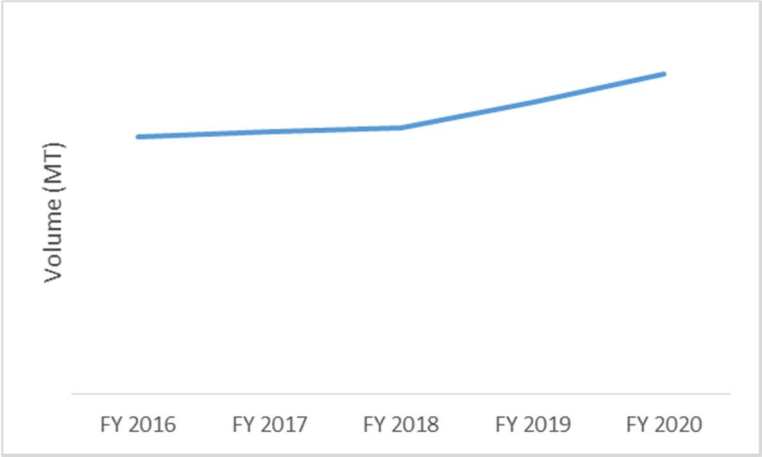

Figure C3: Trend in Australian market by volume[279]

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.[280] 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 2 years as new mines open in the Pilbara region. The commission also examined DISER's December 2020 quarterly report.[281] 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[282], 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

---

[279] Confidential Attachment C1 – Competition Cost Price Assessment.
[280] Refer to https://publications.industry.gov.au/publications/resourcesandenergyquarterlyseptember2020/documents/Resources-and-Energy-Quarterly-Sept-2020-Iron-Ore.pdf.
[281] Refer to https://publications.industry.gov.au/publications/resourcesandenergyquarterlydecember2020/documents/Resources-and-Energy-Quarterly-Dec-2020.pdf.
[282] Refer to https://www.industry.gov.au/sites/default/files/2020-11/resources-and-energy-major-projects-report-2020.pdf.

driven greater investment in nickel, cobalt, rare earths and lithium, with Australia now hosting around 60 projects in the 'battery commodity' space.[283]

Orica Australia advised that it is more likely to be affected in the east coast as there are more competitors in this region.[284] 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 1% 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.[285] 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[286], 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.

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.

C 1.2 Product characteristics

C 1.2.1 Ammonium nitrate products offered for sale and brand segmentation

The goods under consideration include LDAN, HDAN and ANsol. In the Australian market, the goods under consideration that are offered for sale include LDAN and ANsol. HDAN is not primarily offered for sale in Australia per se, but is imported into Australia as an intermediate good and is 'melted' to make emulsion products for explosive use. Findings from previous cases conducted by the commission have found LDAN, HDAN and ANsol, while not identical, have characteristics that closely resemble each other.[287]

Ammonium nitrate is sold with or without chemical additives or coatings which are used to minimise moisture absorption, increase abrasion resistance and to prevent the physical

---

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

[284] EPR 565, document number 31.

[285] Ibid.

[286] EPR 565, document number 12.

[287] Refer to Continuation Inquiry 168, Review 169, REP 312, Exemption EX0066 and Investigation 473, on the commission's website.

breakdown of the product.[288] Ammonium nitrate can be sold in several physical forms including prilled, granular and in other solid forms. The goods under consideration are sold in packages exceeding 10kg in bags or in bulk.

Manufacturers in the Australian market offer for sale proprietary branded products that are specially formulated to the differing needs of quarrying, mining (open cut metal, open cut coal and underground) and construction (tunnelling and underground) companies.

The commission considers that the primary physical characteristics of the goods are the density of the ammonium nitrate (high or low) and the physical form (prilled, granular and other solid forms).

Branding of this commodity product is primarily used by manufacturers to differentiate between products with differing additive systems for marketing and pricing purposes.[289] Occasionally ammonium nitrate is packaged into bags provided by customers and not into their own branded packaging.[290]

The commission is not aware of any supply differences in the availability of different types of ammonium nitrate for sale in Australia but is aware that the significant proportion of ammonium nitrate manufactured in Australia is LDAN.

C 1.2.2 Information on end uses

In Australia, ammonium nitrate is primarily used as a raw material in the production of explosives. 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 (UAN) solution. The commission also understands that small volumes are used to make specialty medical gases. The commission is not aware of any differences in use by source.

C 1.2.3 Product consumption and consumer preferences

The commission considers ammonium nitrate to be commoditised and that end users are unlikely to discern significant physical or functional differences. Price, quality, availability, reliability of supply and purchasing flexibility are key attributes that influence purchasing decisions and consumer preferences.[291]

The commission identified that ammonium nitrate is price sensitive and considers that there is little product differentiation ensuring price is a key consideration in any purchasing decision. Geographic location within Australia (east coast versus west coast), proximity to suppliers, security and quality risks are key attributes that influence purchasing decisions and consumer preferences. Consumer preferences have not changed over the last 5 years.

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. HDAN can be used in explosives or for agricultural uses. The commission understands that HDAN, after further processing, can be used interchangeably with ANsol to produce emulsion explosives.[292] The commission

---

[288] Refer to Orica Australia's product brochure which states the uses of coatings and additives at www.orica.com/ArticleDocuments/2605/200497_OR_J15-1425_Nitropril_A4_flyer_WEB.PDF.aspx, (last accessed 21 December 2021).

[289] EPR 565, document number 11.

[290] EPR 565, document number 13.

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

[292] EPR 565, document numbers 12 and 13.

considers that the substitutability of HDAN and ANsol is limited to circumstances where a customer has access to a solution tank or an emulsion making plant. While HDAN can also be used to make fertiliser, other nitrogenous fertilisers such as urea and UAN solution are considered substitutes.[293] [294] Ammonium nitrate was different from these other fertilisers because of its fast action, good solubility and low volatility at ambient temperatures.[295]

C 1.3 Price and competition characteristics

C 1.3.1 Commercial characteristics

CSBP, Dyno Nobel, Orica Australia, QNP, Yara Pilbara Nitrates and imports sourced from various countries supply the Australian market for ammonium nitrate. The commission observes that domestically produced and imported ammonium nitrate compete directly in the same market sectors and through similar distribution channels. Evidence indicates that the same or similar customers use the domestically produced and imported ammonium nitrate. Evidence also indicates that there are a range of supply arrangements including long-term contracts and occasional spot sales. Furthermore, domestically produced and imported ammonium nitrate are easily substitutable. Imported ammonium nitrate and the ammonium nitrate manufactured by the Australian industry are alike, have similar specifications and common end-uses.

C 1.3.2 Competition characteristics

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

The commission considers ammonium nitrate is a price sensitive product and while there are other factors that are considered during contract and tender negotiations, price is an important factor. Sales are made predominantly in accordance with fixed-term contracts with only a small minority of sales being spot sales.

Fixed-term contracts are typically of 2-5 years in duration but can also be longer or shorter.[296] They typically specify a base price, with rise and fall provisions. These base prices are negotiated on a number of commercial parameters, including pricing offers from alternative supply sources (imported or domestically produced) indicating strong price competition. The rise and fall provisions will be tied to a range of variables that differ between contracts. Contracts may also have exclusivity of supply arrangements and/or 'take or pay' provisions (minimum offtake volumes stipulated in supply agreements) both of which dilute competition.

Evidence indicates that price negotiations generally focus on 'next best alternative' or import pricing.[297] The commission considers that import offers are leveraged by customers to negotiate prices with Australian manufacturers in tender processes, and that ammonium nitrate manufacturers in Australia must respond to the price of imported products to remain competitive. The commission considers that, due to the degree of price sensitivity in the

[293] EPR 565, document number 11.

[294] Refer to p. 41 'Yara Fertilizer Industry Handbook 2018' on Yara's website at www.yara.com/siteassets/investors/057-reports-and-presentations/other/2018/fertilizer-industry-handbook-2018-with-notes.pdf, (last accessed 17 January 2022).

[295] Refer to p. 10, 'Ammonium Nitrate from Russia', August 2011, Publication 4249 on the U.S.A. International Trade Commission's website at www.usitc.gov/publications/701_731/Pub4249.pdf, (last accessed 23 December 2021).

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

[297] Refer to REP 565 – Confidential Attachment 3 for source data and EPR 565, document numbers 11, 12 and 13.

market, price competition is a major condition of competition between the imported goods and between the imported goods and the domestically produced goods.

Various participants in the Australian market promote technical data and product specifications using marketing on brochures and corporate websites. These participants use marketing to promote their ammonium nitrate products, brands and bulk explosives products and services. Manufacturers may use different additive systems to differentiate between products for marketing and pricing purposes.

C 1.3.3 Production and production costs

Manufacturers in the Australian market use plant operating rates, market intelligence and forecasts to manage production scheduling and utilise warehouse facilities to store finished goods.[298] Australian manufacturers determine their production mix (between LDAN, ANsol or HDAN) based on production scheduling and market intelligence about supply/demand dynamics.

The production of ammonium nitrate relies upon natural gas to produce ammonia, which is in turn reacted with nitric acid to produce water solutions of ammonium nitrate. In general, production costs for ammonium nitrate increase as the price of ammonia and natural gas increases. Some Australian manufacturers operate fully integrated facilities capable of using natural gas as a primary raw material ingredient to produce ammonium nitrate. Other Australian manufacturers source ammonia from related parties or third party suppliers. In the inquiry period, ammonia and natural gas represented a material proportion of the CTMS for ammonium nitrate for manufacturers in Australia.

C 2 Russian ammonium nitrate market

C 2.1 Market characteristics

C 2.1.1 Market structure and participants

The Russian market for ammonium nitrate includes LDAN and HDAN in prilled, granular or in other solid forms. It includes ammonium nitrate with or without chemical additives or coatings. HDAN is produced according to Russia's Federal Agency on Technical Regulating and Metrology (Rosstandart)'s International Standard GOST 2-2013 (Russian HDAN Standard)[299] and has 2 grades: grade A which is used for industrial purposes and grade B which is used in agriculture.[300] LDAN is produced according to Technical Specification TU 2143-073-05761643-2013 (Russian LDAN Standard)[301] and used only for industrial purposes.

In Russia, a large number of companies and plants produce ammonium nitrate. The top 3 producer groups are JSC Acron (Acron), EuroChem Group (EuroChem) and URALCHEM Holding P.L.C. (URALCHEM) which collectively account for more than 70% of production capacity.[302] According to the Government of Russia (GOR), the only LDAN producer in Russia is NAK Azot a member of the EuroChem Group of companies.[303]

---

[298] EPR 565, document numbers 11, 12 and 13.
[299] EPR 565, Exhibit C-2, document numbers 6 and 7.
[300] EPR 565, document numbers 33, 34 and 35.
[301] EPR 565, Exhibit C-2, document numbers 6 and 7.
[302] Refer to p. 8, REP 565 – Confidential Attachment 8 for source data.
[303] EPR 565, document number 35.

Ammonium nitrate as a raw material is primarily used to make fertilisers and, to a lesser extent, industrial explosives.[304] According to the Russian Fertilizer Producers Association (RAFP), there are 18 Russian producers of nitrogen fertilizers.[305] RAFP has an ammonium nitrate working group indicating the importance of this raw material to fertiliser sector.[306] The Russian market for ammonium nitrate has distinct geographical areas due to its vast size and the complexities involved in storing and transporting it. Producers typically distribute their products to regions in close proximity to their production facilities.[307]

End users of the products made from ammonium nitrate fall into 2 different categories of consumers depending on the products consumed:

- Industrial uses (explosives)
- Agriculture industry (fertilisers).

The commission is not aware of end users for ammonium nitrate in the medical industry (medical gases) in Russia.

Based on the information before it, the commission considers the key market segments or supply channels for ammonium nitrate in the Russian market include chemical manufacturers, traders/resellers, mining companies, and emulsion producers and blasting service providers (explosives providers) in the mining, quarrying and construction sectors[308]. These market segments can act as intermediaries between the supplier and the downstream (end user) consumer as well as use ammonium nitrate as an intermediate good in the manufacture of products for end users. Companies within the market segments are not limited to purchasing from one market segment or supplier and can purchase both domestically produced and imported ammonium nitrate from various sources. This freedom to purchase also extends to end users in the agriculture and mining, quarrying and construction industries, which can purchase products made from ammonium nitrate from various sources.

The EuroChem exporters in this inquiry stated that retailers were also participants in the Russian market for ammonium nitrate.[309] Given the hazardous nature of the goods (refer to D 2.1.4), the commission in unclear how retailers operate with respect to ammonium nitrate and what segments of the market they serve. The commission understands that retailers would be an active participant in the fertiliser market.

Figure C4 illustrates the market segments and key participants in the Russian market.

[304] Refer to p. 8, REP 565 – Confidential Attachment 8 for source data.
[305] Refer to the RAFP's website at rapu.ru/en/, (last accessed 14 January 2022).
[306] Refer to the About Us page on RAFP's website at rapu.ru/en/about/, (last accessed 14 January 2022).
[307] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Sections I-1 and I-2.
[308] Refer to the blasting services provider AZOTTECH's website at https://www.azottech.ru/en/, (last accessed 14 January 2022).
[309] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-1.

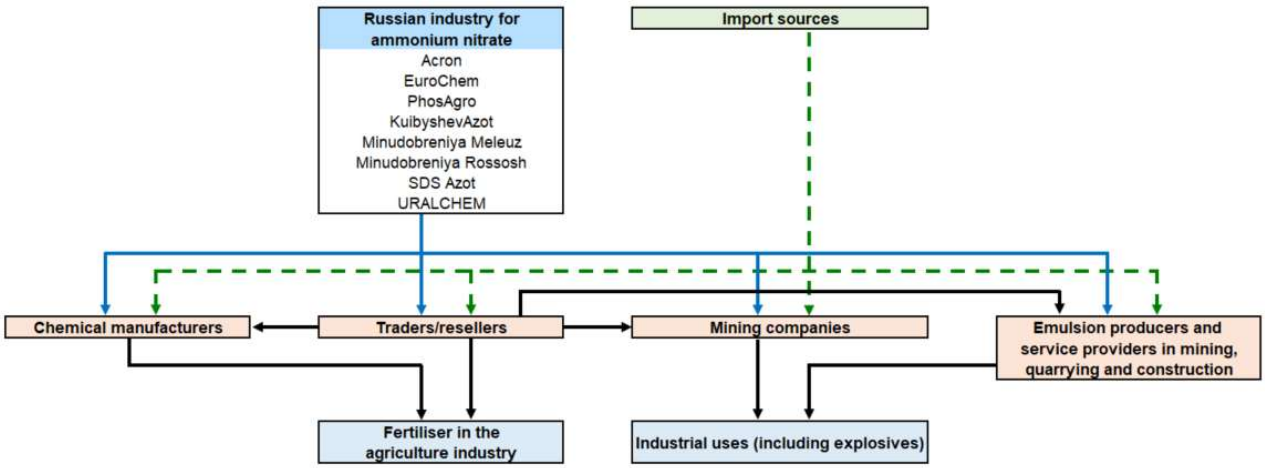

Figure C4: Ammonium nitrate supply channel in Russia[310]

The EuroChem exporters in this inquiry stated that the Russian ammonium nitrate market is very competitive.[311]

Other than noted above, the commission is not aware of any significant market consolidation, new entrants or exits during the inquiry period.

C 2.1.2 Market sources

The commission understands that the Russian market for ammonium nitrate is predominantly supplied by Acron[312], EuroChem[313], JSC Minudobreniya (Rossosh)[314] [315], JSC SDS Azot[316], KuibyshevAzot[317], PhosAgro Group[318], and URALCHEM[319] and has not identified any other significant manufacturers of ammonium nitrate in Russia.[320] Russian manufacturers almost entirely supply the Russian market, with only an immaterial volume supplied by imports[321] as shown in Figure C5.

[310] Confidential Attachment C1 – Competition Cost Price Assessment.
[311] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Sections H-8 and I-1.
[312] Refer to Acron's website at www.acron.ru/en/the-geography-of-business/akron/, (last accessed 17 January 2022).
[313] Refer to EuroChem's website at www.eurochem.ru/en/product/ammonium-nitrate/, (last accessed 17 January 2022).
[314] Refer to 'The road to Russian export quotas that hit ammonium nitrate, left other nitrogen products unscathed', 7 Dec 2021, on Profercy Ltd's website at www.profercy.com/2021/12/the-road-to-russian-export-quotas-that-hit-ammonium-nitrate-left-other-nitrogen-products-unscathed/, (last accessed 17 January 2022).
[315] Refer to Minudobreniya's website at www.minudo.com/?cid=32&parent_id=3, (last accessed 17 January 2022).
[316] Refer to SDS Azot's website at www.sds-azot.ru/en/about. JSC SDS Azot is also referred to as JSC SBU Azot. This is derived from the company name JSC "Siberian Business Union", which is known by its Russian initials SDS, (last accessed 17 January 2022).
[317] Refer to KuibyshevAzot's website at www.kuazot.ru/en/products/ammiachnaya-selitra/, (last accessed 17 January 2022).
[318] Refer to PhosAgro's website at www.phosagro.com/production/, (last accessed 17 January 2022).
[319] Refer to URALCHEM's website at www.uralchem.com/about/, (last accessed 17 January 2022).
[320] Refer to URALCHEM's website at www.uralchem.com/about, (last accessed 17 January 2022).
[321] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-1.

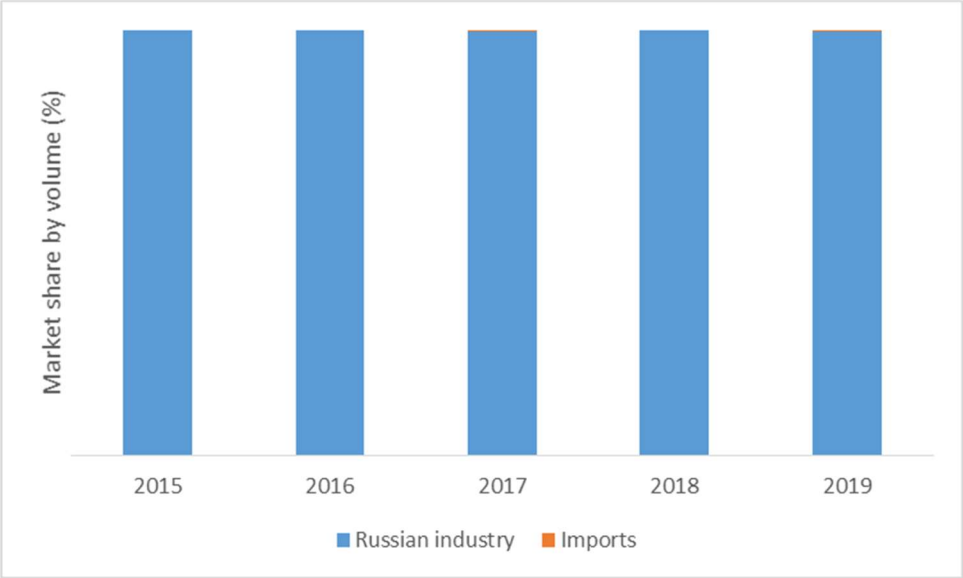

Figure C5: Market share by volume of sources of ammonium nitrate in the Russian market (%)[322]

C 2.1.3 Market size

According to the 'Ammonium Nitrate Russia Market 2021' by Merchant Research and Consulting (Merchant report), in 2019 approximately 10.2 million metric tonnes[323] of ammonium nitrate was supplied from local and imported manufacturers.

The commission observed that Russia was among the largest producer and exporter of ammonium nitrate in the world. In 2020, Russia accounted for 18% of world ammonium nitrate production, with Russia exporting 38% of production. [324] The low incomes of Russian agricultural producers underpins the export orientation of Russian producers of fertilisers.[325] In 2019, the main export destinations for Russian ammonium nitrate were Brazil, Peru and Kazakhstan.

C 2.1.4 Regulatory framework

The commission is aware that according to the 'Russian Federal Law on Industrial Safety of Hazardous Production Facilities' ammonium nitrate, as an oxidiser, is classified as a hazardous substance.[326] Ammonium nitrate blends, including ammonium nitrate and ammonium nitrate mixtures whose content of nitrogen and ammonium nitrate exceeds 28% by weight, as well as ammonium nitrate liquid substances whose ammonium nitrate concentration exceeds 90% by weight, have been designated as classes I-IV hazard class by the Federal, Environmental, Industrial and Nuclear Supervision Service of Russia (Rostechnadzor).[327] The quantity present at any one time at the hazardous production

---

[322] Confidential Attachment C1 – Competition Cost Price Assessment.

[323] Refer to p. 12, REP 565 – Confidential Attachment 8 for source data.

[324] Refer to p. 8, REP 565 – Confidential Attachment 8 for source data.

[325] Ibid.

[326] Refer to p. 33, 'Russian Federal Law on Industrial Safety of Hazardous Production Facilities' on the Federal, Environmental, Industrial and Nuclear Supervision Service of Russia's website at en.gosnadzor.gov.ru/framework/General-purpose%20industrial/Zakon%20116-FL.pdf, (last accessed 11 January 2022).

[327] Refer to p. 38, 'Russian Federal Law on Industrial Safety of Hazardous Production Facilities' on the Rostechnadzor's website at en.gosnadzor.gov.ru/framework/General-purpose%20industrial/Zakon%20116-FL.pdf, (last accessed 11 January 2022).

facility determines the relevant hazard class.[328] The International Maritime Dangerous Goods Code also specifies ammonium nitrate as dangerous[329] and the United Nations' Economic commission for Europe Inland Transport Committee classify it as an oxidising substance (Class 5.1) dangerous good.[330]

The Russian HDAN and LDAN Standards[331] detail the technical specifications for manufacturing ammonium nitrate as well as how it is to be labelled (hazard warnings as well as quality certifications), packaged (varies by mode of transport and region), transported and stored. It also stipulates quality assurance methods, timeframes for manufacturer's warranties, and work health and safety and environmental protection requirements.

Apart from the already identified Russian HDAN and LDAN Standards, the commission is not aware of any statutory minimum industry standards relevant to the manufacture of ammonium nitrate sold in the Russian market.

Licences issued by relevant authorities[332] are required to make[333], use[334], transport[335] and store[336] ammonium nitrate. Relevant authorities also issue work health and safety licences.[337] Manufacturing facilities for producing ammonium nitrate are classified as hazardous production facilities and licences are required to collect, transport, process, dispose of, neutralise and discard waste produced in manufacturing ammonium nitrate.[338] The relevant authorities periodically monitor compliance of permits/licences.[339]

---

[328] Refer to p. 35, 'Russian Federal Law on Industrial Safety of Hazardous Production Facilities' on the Rostechnadzor's website at en.gosnadzor.gov.ru/framework/General-purpose%20industrial/Zakon%20116-FL.pdf, (last accessed 11 January 2022).

[329] Refer to 'The International Maritime Dangerous Goods (IMDG) Code' on the International Maritime Organization website at www.imo.org/en/OurWork/Safety/Pages/DangerousGoods-default.aspx, (last accessed 17 December 2021).

[330] Refer to p. 90, the 'European Agreement Concerning the International Carriage of Dangerous Goods by Road' (ADR), on the UNECE Transport Division's website at unece.org/sites/default/files/2021-01/ADR2021_Vol1e_0.pdf, (last accessed 12 January 2022).

[331] EPR 565, Exhibit C-2, document numbers 6 and 7.

[332] At the time of writing government and semi-government authorities include:
- Federal, Environmental, Industrial and Nuclear Supervision Service of Russia (Rostechnadzor)
- Federal Public Institution Russian State Assay Office under the Russian Ministry of Finance
- Ministry of Health and Social Development of the Russian Federation
- Ministry of Transport of the Russian Federation
- Ministry of Education (by region)
- Ministry of Natural Resources and Environment of the Russian Federation (by region)
- Federal Service for Supervision in the Sphere of Protection of Consumer Rights and Human Welfare (by region)
- Federal Service for Supervision in the Sphere of Environmental Management (by region)
- Federal Security Service of Russia (by region)
- Association Self-regulated Organisation Builders (by region)
- Non-commercial Partnership Self-regulated Organisation Association of Designers (by region)
- Subsurface Use Department (by region)
- Diagnostika Magnitogorsk Independent Centre of Diagnostics and Expertise of Gosgortekhnadzor Facilities, CJSC
- Independent Authority for Attestation of Non-destructive Control Laboratories of Diagnostika Independent Technical Centre JSC.

[333] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section H-3.

[334] Ibid.

[335] Ibid.

[336] Ibid.

[337] Ibid.

[338] Ibid.

[339] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section H-4.

The commission is not aware of any other specific competition policy or regulation specific to the manufacture or sale of ammonium nitrate other than those described under Russian consumer, workplace safety, competition and business regulations.

The commission is not aware of any specific taxation regulation specific to the manufacture or sale of ammonium nitrate in Russia. The Tax Code of Russia regulates payment of taxes.[340]

C 2.1.5 Structural barriers to entry and trade

The commission is not aware of any entry restrictions for new participants in the Russian market relevant to the manufacture or sale of ammonium nitrate.[341]

Apart from the already identified Russian HDAN and LDAN Standards, the commission is not aware of any other statutory minimum industry standards relevant to the manufacture of ammonium nitrate sold in the Russian market.

An examination of the Russian patents database[342] found that some Russian industry members for ammonium nitrate, chemical manufacturers, universities specific to the mining and agriculture industries and emulsion producers and blasting service providers hold patents relating to the manufacture and use of ammonium nitrate in various physical forms as well as improvements in or relating to ammonium nitrate. Aside from copyright and trademarks,[343] the commission is not aware of any other trademark restrictions specific to the manufacture or sale of ammonium nitrate in Russia.

According to the KPMG,[344] the chemical industry is capital intensive and the commission acknowledges that the manufacturing of ammonium nitrate, which forms part of Russia's chemical industry, is also a capital-intensive industry. This high level of capital intensity presents structural barriers to trade.

Structural barriers may exist in the form of proximity to end uses. The commission considers that suppliers that are located geographically close to usage sites are able to mitigate some structural or cost impediments related to trade, including 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).

C 2.1.6 Demand

Given that the primary use of ammonium nitrate in Russia is as a raw material in the manufacture of fertilisers, the main driver of demand is the level of activity in the agriculture industry via the nutrient and seasonal requirements of particular crops. Total domestic demand in 2020 was predominately comprised of end use in the agriculture industry.[345] [346] The GOR provides the agricultural sector with some state support and state-subsidised fertiliser, which supports demand.[347] The industrial sector also uses

---

[340] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section H-1.

[341] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-1.

[342] Refer to the Russian patents database on the Federal Institute of Industrial Property's website at new.fips.ru/iiss/db.xhtml, (last accessed 14 January 2022).

[343] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section H-3.

[344] Refer to p. 13, 'Cash is always king: How chemical companies are optimizing their working capital management', on KPMG's website at https://assets.kpmg/content/dam/kpmg/pdf/2015/12/REACTION-18.pdf, (last accessed 14 January 2022).

[345] Refer to p. 8, REP 565 – Confidential Attachment 8 for source data.

[346] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-1.

[347] Refer to p. 8 and p. 41, REP 565 – Confidential Attachment 8 for source data.

ammonium nitrate in the production of explosives.[348] The commission is not aware of demand for ammonium nitrate in the production of medical gases by the Russian medical industry.

The commission is aware that in 2021 there was 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.[349]

Overall, the commission has not observed any seasonal variability in the demand for ammonium nitrate although it acknowledges there is a seasonality linked to crop cycles[350]. As shown in Figure C6, domestic demand for ammonium nitrate has been increasing from 2015.

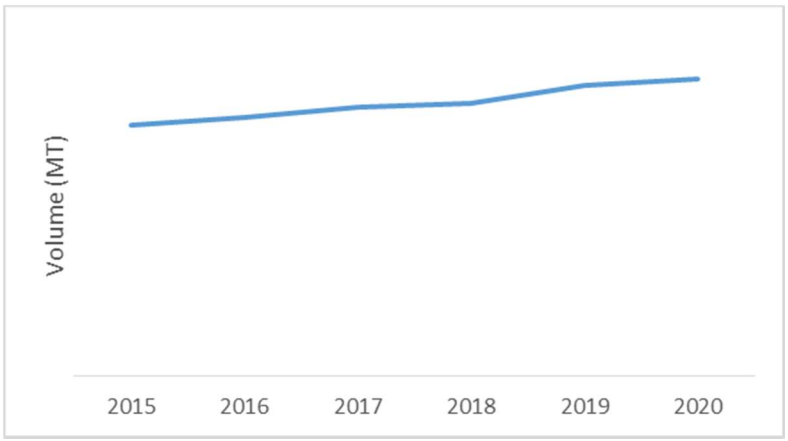

Figure C6: Trend in Russian market by volume[351]

The main regions for agricultural demand come from the western part of Russia, where 4 federal districts (the Central, North Caucasus, Urals and Volga) produce 3 quarters of Russia's agricultural outputs according to the International Trade Administration[352]. These regions broadly agree with the regions stated by the EuroChem exporters in their responses to questionnaires.

According to the Australian Trade and Investment commission[353], Russia is a producer of mining commodities in the world, which underpins industrial demand.[354] Mining demand is most concentrated in the eastern part of Russia (Siberia and the Russian Far East) where the bulk of Russia's mineral deposits are located.

According to the Ministry of Economic Development (MED) of the GOR[355], capacity utilisation rates from the RAFP was 95.7% (2016), 97.3% (2017), 91.2% (2018) and 96.7% (2019). It did not specify if this was HDAN or LDAN or combined. The commission

---

348 Ibid.

349 Ibid.

350 Refer to 'Nitrogen Market – Industry' page on SBU Azot's website at www.sds-azot.ru/en/infestor-relations/nitrogen-market/industry, (last accessed 17 January 2022).

351 Confidential Attachment C1 – Competition Cost Price Assessment.

352 Refer to 'Russia – Country Commercial Guide' for 'Agribusiness' on the International Trade Administration's website at www.trade.gov/country-commercial-guides/russia-agribusiness, (last accessed 17 January 2022).

353 Refer to 'Mining to Russia' on Austrade's website at www.austrade.gov.au/australian/export/export-markets/countries/russia/industries/mining, (last accessed 18 January 2022).

354 Refer to 'Nitrogen Market – Industry' page on SBU Azot's website at www.sds-azot.ru/en/infestor-relations/nitrogen-market/industry, (last accessed 18 January 2022).

355 EPR 565, document numbers 3 and 18.

considers that LDAN production is close to or at capacity in Russia, which is consistent with findings presented by the Australian industry the GOR and exporters.[356]

C 2.2 Product characteristics

C 2.2.1 Ammonium nitrate products offered for sale and brand segmentation

In the Russian market, the goods under consideration sold include LDAN and HDAN. HDAN is offered for sale in 2 grades: grade A which is used for industrial purposes and grade B which is used in agriculture. LDAN is only used for industrial purposes. Findings from previous cases conducted by the commission have found LDAN and HDAN, while not identical, have characteristics that closely resemble each other.

Ammonium nitrate with or without chemical additives or coatings is sold in Russia. Coatings minimise moisture absorption, increase abrasion resistance and prevent the physical breakdown of the product. Ammonium nitrate can be sold in several physical forms including prilled and granular. Sales of ammonium nitrate are in bags with a minimum net weight of 20kg[357], in bulk, or poured into silo trucks.[358]

The commission considers that the primary physical characteristics of the goods are the density of the ammonium nitrate (high or low) and the physical form (prilled, granular and other solid forms).

Manufacturers primarily use branding for marketing and pricing purposes. However, this has limited influence due to ammonium nitrate being a commodity product.[359]

The commission is not aware of any supply differences in the availability of different types of ammonium nitrate for sale in Russia but is aware that the majority of ammonium nitrate manufactured in Russia is HDAN.

C 2.2.2 Information on end uses

In Russia, the primary use of ammonium nitrate is as a raw material in the production of fertilisers and to a lesser extent as a raw material for industrial purposes (explosives). The commission is not aware of any differences in use by source.

C 2.2.3 Product consumption and consumer preferences

The commission considers ammonium nitrate to be a commoditised[360] product and that end users are unlikely to discern significant physical or functional differences. Price, payment terms, availability, quality and proximity to supplier are key attributes that influence purchasing decisions and consumer preferences.[361]

The commission understands that ammonium nitrate is price sensitive[362] and considers that there is little product differentiation; ensuring price is a key consideration in any purchasing decision. Geographic location within Russia, proximity to suppliers and quality

---

[356] Refer to p. 52, Section 7.6.1, REP 565 for source data.
[357] EPR 565, Exhibit C-2, document numbers 6 and 7.
[358] EPR 565, document numbers 9, 10, 33 and 34.
[359] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-2.
[360] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-1.
[361] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Sections I-1 and I-2.
[362] Refer to paragraph 305, p. 60, “Commission Implementing Regulation (EU) 2020/2100 of 15 December 2020 (the ‘EC Sunset Review’) on the official website of the European Union at https://eur-lex.europa.eu/eli/reg_impl/2020/2100/oj, (last accessed 20 January 2022).

are key attributes that influence purchasing decisions and consumer preferences. Consumer preferences have not changed over the last 5 years.[363]

The commission is not aware of any market substitutes for ammonium nitrate in Russia in the production of explosives used in the mining and quarrying industries. The industrial or agricultural sectors use HDAN. Whilst fertiliser is made from HDAN, other nitrogenous fertilisers such as urea and UAN solution are considered substitutes.[364]

C 2.3 Price and competition characteristics

C 2.3.1 Commercial characteristics

A large number of companies and plants including Acron[365], EuroChem[366], JSC Minudobreniya Rossosh[367] [368], JSC SDS Azot[369], KuibyshevAzot[370], PhosAgro Group[371], and URALCHEM[372] and imports sourced from various countries supply the Russian market for ammonium nitrate. Evidence indicates that sales are under long-term contracts, which are typically annual in duration[373], and occasional spot sales.[374]

C 2.3.2 Competition characteristics

The EuroChem exporters in this inquiry stated that the Russian ammonium nitrate market is very competitive.[375]

While buyers consider other factors during contract negotiations, the commission considers ammonium nitrate to be a price sensitive product[376], with price an important factor in making a sale[377]. Sales are predominantly made under fixed-term contracts.

For the EuroChem exporters, fixed-term contracts are typically one year in duration but can also be longer or shorter. Volumes, prices and payment terms are set in addendums to the contracts.[378] Price variability arises from differences in delivery, transport costs and packaging. Contracts did not include exclusivity of supply arrangements,[379] which would dilute competition.

---

[363] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-2.
[364] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-2.
[365] Refer to Acron's website at www.acron.ru/en/the-geography-of-business/akron/, (last accessed 18 January 2022).
[366] Refer to EuroChem's website at www.eurochem.ru/en/product/ammonium-nitrate/, (last accessed 18 January 2022).
[367] Refer to 'The road to Russian export quotas that hit ammonium nitrate, left other nitrogen products unscathed', 7 Dec 2021, on Profercy Ltd's website at www.profercy.com/2021/12/the-road-to-russian-export-quotas-that-hit-ammonium-nitrate-left-other-nitrogen-products-unscathed/, (last accessed 17 January 2022).
[368] Refer to Minudobreniya's website at www.minudo.com/?cid=32&parent_id=3, (last accessed 21 January 2022).
[369] Refer to SDS Azot's website at www.sds-azot.ru/en/about, (last accessed 20 January 2022).
[370] Refer to KuibyshevAzot's website at www.kuazot.ru/en/products/ammiachnaya-selitra/, (last accessed 21 January 2022).
[371] Refer to PhosAgro's website at www.phosagro.com/production/, (last accessed 17 January 2022).
[372] Refer to URALCHEM's website at www.uralchem.com/about/, (last accessed 17 January 2022).
[373] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section D-1.
[374] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-3.
[375] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section H-8.
[376] Refer to paragraph 305, p. 60, "Commission Implementing Regulation (EU) 2020/2100 of 15 December 2020 (the 'EC Sunset Review') on the official website of the European Union at https://eur-lex.europa.eu/eli/reg_impl/2020/2100/oj, (last accessed 20 January 2022).
[377] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-2.
[378] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section D-1.
[379] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section I-3.

The commission considers that, due to the degree of price sensitivity in the market, price competition is a major condition of competition between domestically produced goods and imported goods.

Various participants in the Russian market promote technical data and product specifications using marketing on brochures and corporate websites. These participants use marketing to promote their ammonium nitrate products, brands and bulk explosives products and services. Manufacturers may use branding to differentiate between products for marketing and pricing purposes.

C 2.3.3 Production and production costs

Russian fertiliser industry representatives meet with the Ministry of Agriculture (at the federal and/or regional level) to discuss Russian farmers' planting and harvesting forecasts and the fertiliser industry's ability to meet this demand.[380]

Manufacturers in the Russian market use of plant operating rates, market intelligence[381] and forecasts to manage production scheduling and utilise warehouse facilities to store finished goods.[382] Russian manufacturers determine their production mix (between LDAN and HDAN) based on production scheduling and market intelligence about supply/demand dynamics.

The production of ammonium nitrate relies upon natural gas to produce ammonia, which is in turn reacted with nitric acid to produce water solutions of ammonium nitrate. In general, production costs for ammonium nitrate increase as the price of ammonia and natural gas increases. Based on the evidence provided by the EuroChem exporters in this inquiry, ammonia and natural gas represented a material proportion of the CTMS for ammonium nitrate for manufacturers in Russia.

[380] EPR 565, document numbers 6 and 7.
[381] EPR 565, document numbers 6 and 7, Responses to Exporter Questionnaire, Section H-8.
[382] EPR 565, document numbers 11, 12 and 13.

APPENDIX D: CONSTRUCTED NORMAL VALUES – RUSSIA

D 1 Applicable legislation, policy and practice

Where the Minister is satisfied that a normal value cannot be determined under section 269TAC(1), as is the case in this inquiry for NAK Azot and Nevinka (collectively referred to as 'the exporters'), section 269TAC(2)(c) provides that the normal value is:

> *… the sum of:*
>
> - *such amount as the [Minister] determines to be the cost of production or manufacture of the goods in the country of export; and*
>
> - *on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the [Minister] determines would be the administrative, selling and general costs associated with the sale and the profit on that sale*

As required by sections 269TAC(5A) and 269TAC(5B), the construction of normal values under section 269TAC(2)(c) must be in accordance with the *Customs (International Obligations) Regulation 2015* (the Regulation).

When constructing normal values, section 43(2) of the Regulation requires that the Minister must work out the cost of production or manufacture using the information set out in the exporter's or producer's records if:

- an exporter or producer of the goods keeps records relating to the goods that are in accordance with GAAP in the country of export, and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods.

If the commission finds that one of those conditions is not satisfied, then the requirement to use the exporter's records is not enlivened.

Rather, in these circumstances, the commission's investigation into the cost of production or manufacture under section 269TAC(2)(c)(i) continues. Neither the Act nor the Regulation prescribe a particular method for the Minister to determine the cost of production or manufacture under section 269TAC(2)(c)(i) where the exporter or producer's records do not satisfy section 43(2) of the Regulation. Nor do they limit the data that the Minister may use in this regard, including vis-à-vis the exporter's records. Nonetheless, the factual conclusions reached by the commission as part of its assessment under section 43(2) of the Regulation – and, indeed, when examining the existence of a particular market situation – may be relevant to the assessment of whether the investigated exporter's or producer's records correspond to the 'cost of production in the country of export' under section 269TAC(2)(c)(i).

Where, following a consideration of the available evidence, including the exporter's or producer's records, a surrogate value or benchmark is used to adjust an exporter's or producer's records to determine the cost of production or manufacture of like goods in the country of export under section 269TAC(2)(c)(i), the commission considers the available evidence pertaining to any comparative advantages or disadvantages applicable to exporters or producers in the country of export.

D 2 Establishing normal values

The commission notes that, in accordance with section 269TAC(3A), the Minister is not required to consider working out the normal value of goods under section 269TAC(2)(d)

before working out the normal value of goods under section 269TAC(2)(c). Where section 269TAC(1) is not available, the commission's policy preference, as outlined at chapter 10 of the Manual, is to construct normal values under section 269TAC(2)(c), in the first instance, when the cost data of the exporter is available.

When considering whether it is preferable to use the price paid (or payable) for like goods sold by the exporter to a third country, pursuant to section 269TAC(2)(d), the commission must be satisfied that it is an 'appropriate third country'. The commission has regard to the following factors, to determine whether any such third country is 'appropriate':[383]

- whether the volume of trade from the country of export to the selected third country is similar to the volume of trade from the country of export to Australia
- the nature of the trade in like goods between the country of export and the selected third country is similar to the nature of trade between the country of export and Australia (in considering 'nature of trade' such things as the level of trade in a third country may be relevant). In this case, the commission considers that the information provided by both exporters in their respective response to the exporter questionnaire do not provide a precise or granular level of detail to determine whether a third country would be appropriate and to undertake the calculations required to determine a normal value.

Consequently, the commission has constructed normal values under section 269TAC(2)(c) for both exporters, and has done so in accordance with sections 43, 44 and 45 of the Regulation, relevant aspects of which are outlined below.

D 3 The records of the exporters

The commission is satisfied that both exporters kept records in relation to the production of like goods. Further, the commission is satisfied that both exporters records are in accordance with GAAP in Russia and, after adjusting for exceptions identified through verification and testing, reasonably reflect costs associated with the production of like goods, being that they reflect the costs actually incurred by the exporters.

As mentioned above, section 43(2) of the Regulation requires the commission to use the exporters' records if (inter alia) they reasonably reflect competitive market costs. We thus examine the exporters' records under section 43(2) as an initial matter.

The commission highlights that the exporters' records for the production of like goods include the following items:

- raw materials, being primarily gas used in the production of ammonia and nitric acid
- other materials
- direct labour
- manufacturing overheads
- depreciation expenses.

Of these cost elements in the exporters' records, only gas has been called into question as not reflective of competitive market costs. The significant portion of the exporters' overall costs of production relate to gas, representing approximately 75% of the ammonia's production costs and about 10% of nitric acid's production costs.[384] Both ammonia and nitric acid are the key ingredients in the production of ammonium nitrate. The commission has in Chapter 4 of this report assessed the degree to which the particular market situation impacts upon gas prices in the Russian domestic market. The factual and analytical

[383] The Manual, p. 51.

[384] The principal method of manufacture of nitric acid is the catalytic oxidation of ammonia. Producers typically use their manufactured ammonia, whose primary raw ingredient is gas, to produce nitric acid.

findings in Chapter 4 regarding gas costs in the Russian market are directly relevant to whether those costs can be properly characterised as 'competitive market costs' under section 43(2) of the Regulation.

In particular, noting the commission's finding that a particular market situation exists in respect of like goods in Russia, the commission compared the exporters' recorded gas costs to a benchmark unaffected by the particular market situation and adjusted to reflect what would be the gas price in Russia absent that market situation. The commission has established this benchmark by netting back the Russian export prices in a market unaffected by the Russian market situation to an in-country Russian price. We recall that the particular market situation in Russia is directly concerned with factors inhibiting the proper functioning of the domestic market for gas.

The commission considers that the difference between the benchmark unaffected by the particular market situation and the exporters' recorded gas costs is an indicator of the level of distortion of gas prices in Russia caused by the particular market situation.

The commission considers that the benchmark is indicative of a competitive market cost unaffected by the same particular market situation in respect of the like goods in Russia. The benchmark indicates that the gas cost, after allowing for differences that might affect the comparison, were materially different during the inquiry period than the gas cost recorded in the exporters' records.

The commission considers that the gas cost in the records of the exporters reflects the impact of the particular market situation. The commission considers that the programs and policies of the GOR's intervention in the domestic gas market have distorted the cost of gas in Russia. The commission considers that the distorted price of gas in the exporters' records does not reflect usual competitive market prices but rather reflects market conditions that are not normal and ordinary.

The commission is therefore satisfied that while the gas costs recorded in the exporters' records may reasonably reflect the costs associated with the production or manufacture of the goods, because of the particular market situation, they do not reasonably reflect competitive market costs associated with the production or manufacture of the goods.

Turning to section 269TAC(2)(c)(i), the commission considered whether it was appropriate to rely on the exporters' purchase prices of gas to form part of the cost of production of gas in Russia. In that regard, the commission recalls its finding of a particular market situation in Chapter 4, which pertained specifically to matters affecting ammonium nitrate prices in Russia. Given that the particular market situation finding for ammonium nitrate turned on gas prices, the commission considers that relying on the price paid by the exporters for gas to construct the normal value would undermine the very basis for having recourse to a constructed normal value in the first place. Put another way, the use of the exporters' recorded gas costs would reintroduce the very factors that warranted the commission's decision to construct the normal value. Such an approach would be counter to the commission's decision to have recourse to constructing the normal value based on the particular market situation found to be present in this case.

With respect to gas prices, therefore, the commission considers the exporters' records unsuitable when determining the cost of production of ammonium nitrate in Russia for the purpose of constructing normal value. The commission considers it necessary to adjust the costs for gas in the exporters' records in order to determine the cost of production of ammonium nitrate in Russia under section 269TAC(2)(c)(i).

The commission has not adjusted any of the other items recorded in the exporters' cost of production.

D 4 Calculation of the raw material cost adjustment

The commission has determined the adjusted gas cost for each exporter by comparing a benchmark cost unaffected by the particular market situation to each exporter's actual costs, and applying the resulting variation as an adjustment to its records. To recall, our identification of a gas benchmark cost unaffected by the particular market situation is tailored and adapted to reflect conditions in the domestic Russian market.

Specifically, the commission calculated an adjustment for each quarter based on the difference between:

- exporters' actual gas cost for each quarter
- a benchmark gas cost for each quarter (based on monthly NCG '1-Month' ahead gas price data) adjusted to reflect gas price in Russia (unaffected by the market situation) relevant to each of the exporters. The commission's consideration in this regard was to ensure that the benchmark values would, to the extent practicable in light of the available evidence, correspond to the 'cost of production in the country of export' under section 269TAC(2)(c)(i).

For the purposes of making the adjustments, the benchmark was adjusted:

- to reflect a price at the Russian border by deducting relevant German charges and costs to arrive at the border price
- to remove the effect of the GET on gas prices in Germany which are not relevant to gas costs in Russia
- to remove relevant export costs and export transport costs
- back to an equivalent 'netback price' that is comparable to the price paid by the Russian exporters at their respective factories.

Confidential Attachment 1 provides the commission's benchmark analysis. The commissioner will consider any information provided in response to this preliminary report, including regarding any comparative advantages or disadvantages, on the appropriate level of adjustment to the gas benchmark cost used.