



**Australian Government**  
Department of Industry,  
Innovation and Science

**Anti-Dumping  
Commission**

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CUSTOMS ACT 1901 - PART XVB

**REPORT**

**NO. 312**

**CONTINUATION INQUIRY CONCERNING CERTAIN  
AMMONIUM NITRATE  
EXPORTED FROM THE RUSSIAN FEDERATION, EITHER  
DIRECTLY OR VIA ESTONIA**

**4 April 2016**

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**ABBREVIATIONS**

\$	Australian dollars
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ANM	Australian Nitrogen Management Pty Ltd
the Applicants	CSBP Limited (CSBP) and Orica Australia Pty Ltd (Orica)
the Association	the All-Russia Association of Fertiliser Manufacturers
Azot	JSC Kemerovo Azot
CFR	cost and freight
COGS	cost of goods sold
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	cost to make
CTS	cost to sell
DBS	Downer EDI Mining - Blasting Services Pty Ltd
the Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
FIS	free in store
FOB	free on board
FTS	Government of Russia Federal Tariff Service
Gazprom	OAQ Gazprom
Glencore	Glencore Pty Ltd
the goods	the goods the subject of the application
GOR	Government of the Russian Federation
IMF	International Monetary Fund
Incitec	Incitec Pivot Pty Ltd
the Manual	the Anti-Dumping Commission's <i>Dumping and Subsidy Manual</i>
NIP	non-injurious price
Nitrochem	Nitrochem Pty Ltd
Novatek	OAQ Novatek
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
SEF	Statement of Essential Facts
USD	United States dollars

**PUBLIC RECORD**

WTO	World Trade Organization
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## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Introduction

This final report relates to a continuation inquiry by the Anti-Dumping Commission (the Commission) of the anti-dumping measures applying to certain ammonium nitrate exported from the Russian Federation (Russia), either directly or via Estonia. An application was made under subsection 269ZHB(1) of the *Customs Act 1901* (the Act)<sup>1</sup> by Orica Australia Pty Ltd (Orica) and CSBP Limited (CSBP), jointly 'the Applicants', for the continuation of the measures and for a review of the variable factors.

This final report sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his recommendation to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)<sup>2</sup> in relation to this application.

### 1.2 Recommendation to the Parliamentary Secretary

The Commissioner recommends to the Parliamentary Secretary that she secure the continuation of the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia, either directly or via Estonia. The Commissioner also recommends that the Parliamentary Secretary determine that, from 24 May 2016, the notice have effect to all exporters as if she had fixed different specified variable factors.

### 1.3 Application of law to facts

#### 1.3.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting inquiries into the continuation of measures that exist in relation to certain goods.

#### 1.3.2 Application

On 13 July 2015, in accordance with subsection 269ZHB(1)<sup>3</sup>, a notice was published in *The Australian* newspaper inviting certain persons<sup>4</sup> to apply to the Commissioner for the continuation of anti-dumping measures on ammonium nitrate exported to Australia from Russia, either directly or via Estonia.

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<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

<sup>2</sup> On 23 December 2014, the then Minister for Industry and Science delegated his powers and functions under Part XVB of the *Customs Act 1901* to the Parliamentary Secretary to the Minister for Industry and Science. On 20 September 2015, the Department of Industry and Science became the Department of Industry, Innovation and Science. The titles of the Minister and Parliamentary Secretary also changed to the Minister for Industry, Innovation and Science, and the Parliamentary Secretary to the Minister for Industry, Innovation and Science. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

<sup>3</sup> This subsection has subsequently been amended on 2 November 2015.

<sup>4</sup> The persons able to apply for a continuation of measures are the original applicant, and persons representing the majority of the Australian industry.

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On 10 September 2015, Orica and CSBP, members of the Australian industry producing ammonium nitrate, lodged an application for the continuation of the measures.

### **1.3.3 Initiation of inquiry**

After examining the application, the Commissioner was satisfied that:

- the application complied with subsection 269ZHC; and
- there appeared to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.<sup>5</sup>

The Commissioner decided not to reject the application, and notice of the initiation of this inquiry was published in *The Australian* newspaper on 9 October 2015.<sup>6</sup>

### **1.3.4 Statement of Essential Facts**

The Commissioner must, within 110 days after the initiation of an inquiry, or such longer period as the Parliamentary Secretary allows under subsection 269ZHI(3), place on the public record a Statement of Essential Facts (SEF) on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary.<sup>7</sup>

In formulating the SEF the Commissioner must have regard to the application concerned, and any submissions concerning publication of the notice that are received within 40 days after the date of initiation of the inquiry,<sup>8</sup> and may have regard to any other matters that he considers to be relevant.<sup>9</sup>

The Commissioner published the SEF on 17 February 2016.

## **1.4 Findings and conclusions**

The Commissioner has made the following findings and conclusions based on all available evidence.

### **1.4.1 The goods and like goods (Chapter 3 of this report)**

Locally produced ammonium nitrate is like to the goods under consideration.

### **1.4.2 Australian industry (Chapter 4 of this report)**

There is an Australian industry producing like goods, comprising of four Australian producers of ammonium nitrate, being Orica, CSBP, Queensland Nitrates Pty Ltd (QNP) and Incitec Pivot Pty Ltd (Incitec).

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<sup>5</sup> Subsection 269ZHD(2).

<sup>6</sup> Subsection 269ZHD(4).

<sup>7</sup> Subsection 269ZHE(1).

<sup>8</sup> Subsection 269ZHE(2)(a) as at time of initiation. This subsection has subsequently been amended on 2 November 2015.

<sup>9</sup> Subsection 269ZHE(2)(b).

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### **1.4.3 Australian market (Chapter 5 of this report)**

The Australian market for ammonium nitrate is supplied by the Australian industry and by imports, including imports from Russia.

### **1.4.4 Market situation (Chapter 6 of this report)**

There is a particular market situation for ammonium nitrate in Russia which makes the use of Russian domestic prices unsuitable for the purposes of calculating a dumping margin.

### **1.4.5 Replacement cost of gas (Chapter 7 of this report)**

The appropriate benchmark for replacement of non-competitive gas costs is the price of gas at the German border, adjusted for export costs and domestic transport.

### **1.4.6 Will dumping recur? (Chapter 8 of this report)**

The Commissioner is satisfied that it is likely dumping will recur if anti-dumping measures are not continued on ammonium nitrate exported to Australia from Russia.

### **1.4.7 Will the dumping cause material injury? (Chapter 9 of this report)**

The Commissioner is satisfied that the dumping of ammonium nitrate exported from Russia is likely to cause material injury to Australian industry.

### **1.4.8 Non-injurious price (Chapter 10 of this report)**

The non-injurious price (NIP) should be based on the Applicants' selling price, less adjustments reflecting the cost to import ammonium nitrate from Russia.

### **1.4.9 Recommended measures (Chapters 12-13 of this report)**

The Commissioner recommends to the Parliamentary Secretary that she secure the continuation of the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia.

The Commissioner recommends that the Parliamentary Secretary specify common variable factors for all grades of ammonium nitrate, and that the Parliamentary Secretary have regard to the lesser duty rule and alter the form of the anti-dumping measures, imposing a floor price based on the NIP.

## **1.5 Public Record**

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification visit reports and other publically available documents. It is available by request in hard copy in Canberra or Melbourne (phone 03 8539 2467 to make an appointment), or online at [www.adcommission.gov.au](http://www.adcommission.gov.au).

This final report should be read in conjunction with the documents on the public record.



## 2 BACKGROUND

### 2.1 Initiation

On 13 July 2015, in accordance with subsection 269ZHB(1), a notice was published in *The Australian* newspaper inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on ammonium nitrate exported to Australia from Russia.

On 10 September 2015, Orica and CSBP, members of the Australian industry producing ammonium nitrate, lodged an application for the continuation of the measures.

*Consideration Report 312* on the Electronic Public Record (EPR)<sup>10</sup> sets out the Commissioner's reasons for initiating the current continuation inquiry and the history of anti-dumping measures applying to ammonium nitrate exported to Australia from Russia. The measures were most recently secured following Trade Measures Branch Reports 168 (REP 168) and 169 (REP 169)<sup>11</sup>, published in April 2011.

The anti-dumping measures applicable to exports of ammonium nitrate from Russia to Australia are due to expire on 24 May 2016.

### 2.2 Nature and scope of the investigation

#### 2.2.1 Continuation and review of measures

The Applicants applied for a continuation of the measures established in REP 168 and REP 169, with a review of the variable factors applied to the goods.

#### 2.2.2 Market situation

The Applicants stated in the application that the measures should continue due to the particular market situation that affected sales of ammonium nitrate in, and exports of ammonium nitrate from, Russia. The Applicants alleged that through the Russian government's control of the natural gas price (which the Applicants claim artificially suppresses the cost of natural gas), it has depressed the price of ammonium nitrate produced in Russia. Natural gas is a major input into the production of ammonium nitrate.

#### 2.2.3 Cooperating parties

The following parties were involved in verification processes with the Commission during the inquiry:

- Australian industry – the Applicants each had a site visit conducted;
- Importers – Downer EDI Mining - Blasting Services Pty Ltd (DBS) had an on-site verification of data conducted; and

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<sup>10</sup> The EPR is located at [www.adcommission.gov.au](http://www.adcommission.gov.au). The specific page for this report at the time of publishing is [www.adcommission.gov.au/cases/Pages/CurrentCases/EPR312.aspx](http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR312.aspx). All references to documents published on the EPR in this report will be published on this page unless otherwise specified.

<sup>11</sup> REP 168 covered continuation of measures and REP 169 covered review of measures.

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- Exporters/manufacturers – JSC Kemerovo Azot (Azot), a Russian manufacturer who did not export to Australia during the inquiry period, participated in a remote verification process.

Subsection 269T(1) provides that an exporter in relation to an inquiry under Division 6A is an 'uncooperative exporter', where the Commissioner is satisfied that the exporter of the goods did not give the Commissioner information that he considers to be relevant to the inquiry, within a period he considers to be reasonable or where he is satisfied that an exporter significantly impeded the inquiry. Exporters of the goods from Russia who have not provided exporter questionnaire responses did not provide information that he considers relevant to the inquiry and are therefore considered to be uncooperative exporters.

### **2.3 Statement of Essential Facts**

The public notice of the initiation advised that the SEF for the investigation would be placed on the public record by 27 January 2016.

The Parliamentary Secretary granted an extension of 21 days to the date for the publication of the SEF. That extension required the SEF to be published by 17 February 2016, and the final report and recommendations to be provided to the Parliamentary Secretary by 4 April 2016. ADN No. 2016/08 provides further details and is available on the EPR.

On 17 February 2016 the Commissioner published the SEF, with an invitation to interested parties to make submissions by 8 March 2016.

### **2.4 Submissions in response to the SEF**

The Commissioner received submissions in response to the SEF from a number of interested parties. These submissions, and the Commissioner's response, are addressed in Chapters 10 and 12.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Finding

The Commissioner remains satisfied that ammonium nitrate manufactured by Australian manufacturers are like goods to the ammonium nitrate exported from Russia.

### 3.2 The goods

The goods, the subject of the current anti-dumping measures, are:

*ammonium nitrate, prilled, granular or in other solid form, with or without additives or coatings, in packages exceeding 10 kg.*

### 3.3 Tariff classification of the goods

Ammonium nitrate, whether or not in aqueous solution, is classified within sub-heading 3102.30.00, statistical code 05.<sup>12</sup>

Current anti-dumping measures on ammonium nitrate only apply to exports from Russia, either directly or via Estonia. These measures take the form of combination measures, with separate factors for high density ammonium nitrate (HDAN) and low density ammonium nitrate (LDAN).<sup>13</sup>

### 3.4 Legislative framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of dumping, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

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

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

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

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<sup>12</sup> For further detail refer to *Customs Tariff Act 1995*, Schedule 3.

<sup>13</sup> Following the decision in *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, anti-dumping measures are no longer able to be differentiated on the basis of model or type – refer to discussion at Chapter 12, below.

### **3.5 Like goods**

The issue of like goods was considered during the original investigation, in the 2005 review and in the 2011 continuation and review inquiries. It was also addressed in the SEF, including in submissions received in response to the initiation of this inquiry.

In Trade Measures Branch Report 28 (REP 28) the Australian Customs and Border Protection Service (ACBPS) determined that:

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

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

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

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

In the continuation inquiry and review of measures in 2005, ACBPS revisited the issue of like goods.<sup>14</sup> In Trade Measures Report No. 104 and 105 (REP 104 and 105) it was found that ammonium nitrate produced by the Australian industry were like goods to ammonium nitrate exported to Australia from Russia, irrespective of whether it was in solid or solution state, prilled or granular form, low density or high density. The same conclusion was reached in REP 168 and REP 169 in 2011.

The Commissioner has again examined this issue in this continuation inquiry. The Australian industry no longer sells HDAN on the domestic market. The industry now only sells low density, or explosive grade, ammonium nitrate and ANsol.

### **3.6 The Commission's like good assessment**

The following analysis is based on the verification visits to Australian industry members Orica and CSBP, to importer and end user DBS, as well as the verification process conducted with Azot.

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<sup>14</sup> See Trade Measures Report No. 104 and 105 (REP 104 and 105) and REP 168 and 169.

## **PUBLIC RECORD**

- Physical likeness: HDAN, LDAN and ANsol are physically similar, being ammonium nitrate with minor technical variations in density, form and concentration;
- Commercial likeness: there is a commercial likeness between the goods as they compete in the same market;
- Functional likeness: the goods are functionally similar as they are all used in the manufacture of explosives; and
- Production likeness: the Commissioner observed that the key steps in the production process (as outlined in Chapter 4, below) are very similar between Orica, CSBP and Azot.

The Commissioner has found that imported HDAN from Russia is used for the purpose of manufacturing emulsion explosives. This has been confirmed during the visit to DBS, an Australian blasting services provider who uses HDAN imported from Russia for this purpose.

Based on the above, and in line with previous inquiries, the Commissioner remains satisfied that LDAN and ANsol manufactured by the Australian industry are like goods to the HDAN exported from Russia.

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Findings

The Commissioner has found that there is an Australian industry producing the like goods consisting of Orica, CSBP, Incitec and QNP; and that the goods are wholly manufactured in Australia.

### 4.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Subsection 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Under subsection 269T(3), in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 4.3 Production process

Ammonium nitrate is produced by neutralising nitric acid with ammonia.

The main raw material for ammonia production is natural gas, which frequently accounts for 50% of the cost of production. Natural gas is reacted with steam and then air to produce hydrogen, nitrogen and carbon dioxide. The carbon dioxide is removed and the hydrogen is reacted with nitrogen to produce ammonia.

Nitric acid is produced by reacting ammonia with oxygen in the presence of a catalyst. The reaction produces nitric oxides, which are then dissolved in water to produce nitric acid.

The reaction of ammonia with nitric acid produces an ANsol. This can be sold in the solution state or solidified by either prilling or granulating.

To produce prills, the solution is sprayed into the top of a prilling tower. A rising air stream cools and solidifies the falling droplets into spherical balls or prills.

The density of the finished product is governed by the concentration of the solution. Low density prills are produced using a solution with a higher moisture content. The solidified prills also have a higher moisture content and go through a long drying process. High density prills are produced using a solution with a lower moisture content.

To produce a low density product, additives are introduced prior to prilling which changes the structure of the prills during the prilling process to make it more of a hollow, honeycomb type structure. It is the additives that increase the internal crystalline strength of the low density product. Coating agents are applied to stop the product clumping together, and to improve handling and storage properties.

Granules are made by either a rotating drum granulation process or fluid bed granulation process. Regardless of the production process, all granules are high density.

## **PUBLIC RECORD**

Verification visits were undertaken to CSBP and Orica. The visit reports, available on the EPR, detail the Commission's verification of production costs, sales revenue and address the submissions made by these parties. The visit to CSBP also included a tour of the facility. CSBP was observed to convert natural gas into ammonia, and ammonia into nitric acid, before producing ammonium nitrate.

Accordingly, the Commissioner is satisfied that the goods are wholly manufactured in Australia by the Australian industry.

## 5 AUSTRALIAN MARKET

### 5.1 Finding

The Commissioner has found that there is an Australian market for the goods, which is supplied predominantly by local supply with some imports.

### 5.2 Background

The Commissioner has calculated the size of the Australian market by using information from the Australian Border Force (ABF) import database as well as verified data obtained from the Australian industry and DBS.

Ammonium nitrate has two primary uses, being the manufacture of explosives and fertilisers. The Applicants advised that in Australia ammonium nitrate is predominantly used by the mining and quarrying industries as a raw material for explosives manufacture. The Applicants advised that ammonium nitrate has limited usage in Australia as a fertiliser. This is mainly due to the additional security protocols required for its transport and storage relative to other nitrogenous products such as urea and urea ammonium nitrate.

The Australian ammonium nitrate market is supplied from local production by Orica, CSBP and QNP. The main sources of import supply are Indonesia, Ukraine and China. Russia currently accounts for 2.5% of imports by volume.

### 5.3 Market structure

The Commissioner has found that the Australian ammonium nitrate market has some large contracts; however there are many smaller sales which are normally done on a quotation basis.

#### 5.3.1 Australian supply

The Australian industry holds large contracts for supply in the market, and represents the majority of supply in the Australian market. These contracts (arranged following a tender process) last for several years and will normally specify a base price, the process for price adjustments and any other conditions of sale.

These long term contracts underpin the business cases for maintaining or constructing ammonium nitrate manufacturing plants, enabling long term planning for known volumes of supply. However, in some cases the Commission found that these contracts do not guarantee exclusive supply by the Australian manufacturer, which partially exposes the Australian industry to price competition from other sources (including imports). This type of arrangement can also be beneficial to the mining industry, as it guarantees supply for extended periods of time but also provides some flexibility, allowing the customer to switch some of their supply to another source without penalty.

The Australian industry almost exclusively manufactures LDAN and ANsol. Any manufacture of HDAN is incidental.



### 5.3.2 Russian supply

All imports from Russia in the inquiry period have been of HDAN. While Russia has the capability to manufacture some LDAN, it primarily manufactures HDAN for use in fertilisers. Independent third-party research provided by the Applicants in the application indicates that the current Russian LDAN capacity is 500,000 tons per year, and this is almost exclusively in western Russia.

Azot has disputed the Applicants' view on the location and volume of LDAN production capacity, which stated that the JSC Agnarsk Nitrogen Fertilisers plant alone (located in Irkutsk Oblast, just north of Mongolia) is capable of producing 270,000 tons of LDAN per year.

### 5.3.3 Other importers

The other major sources of ammonium nitrate in Australia are Indonesia, Ukraine and China, which represent a little over 92% by volume of the import market.

## 5.4 Market size and share

The market for ammonium nitrate has continued to expand over the last 15 years as new and expanded mining operations come online. This is evident through the upgrade of existing ammonium nitrate plants, such as CSBP's expansion of its Kwinana plant, and the construction of new plants such as the Incitec plant at Moranbah.

The market size has been estimated at 2.2 million ton per annum based on verified sales data, import figures and the nameplate capacity of any non-verified plants.

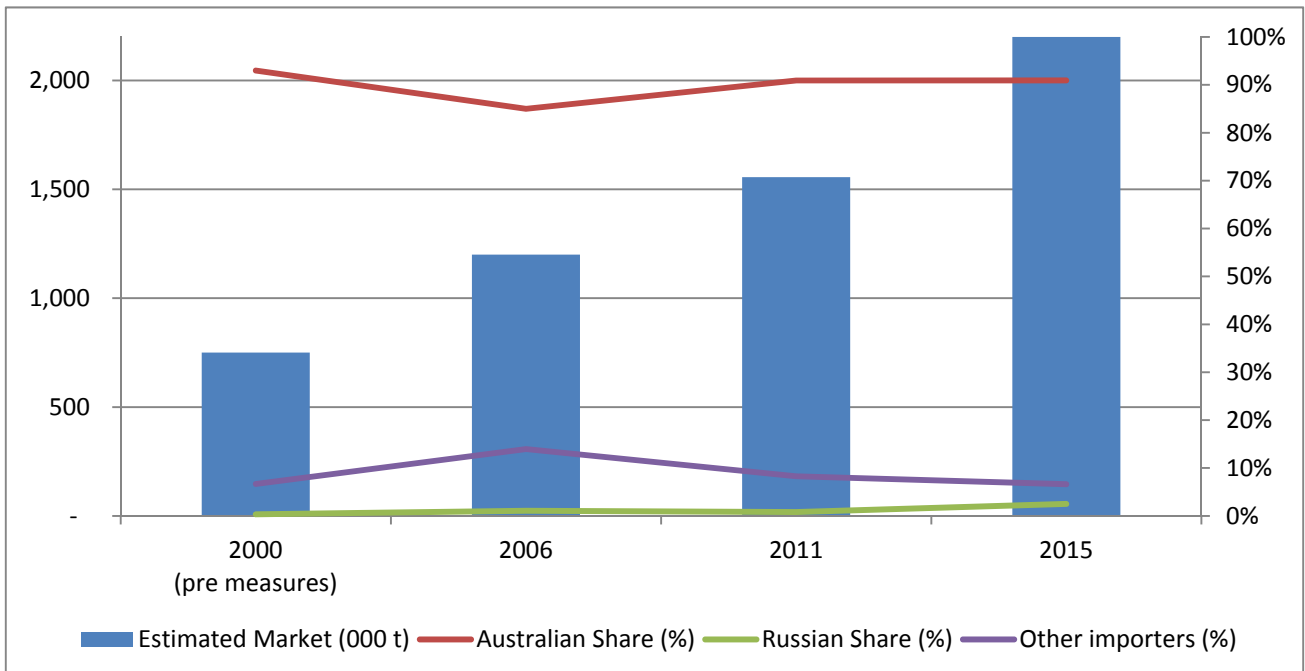


Figure 1: Australian market size and share

## **PUBLIC RECORD**

As can be seen above, the Australian industry share of the market has continued to be reasonably steady at approximately 90% since the measures were first imposed in 2001, even as the market more than doubled in size.

The share of the market for Russian imports has increased from 0.8% at the time of the prior inquiry in 2011 to 2.5% in 2015; however the volumes are still small.

The recent downturn in mining exploration in Australia has not materially affected the market for ammonium nitrate as it is primarily tied to extraction activities. Extraction usage of ammonium nitrate does not materially vary for mines already in operation, so while the rate of growth in mining, and therefore ammonium nitrate usage, is expected to slow with fewer new mines being opened, the demand for ammonium nitrate is not expected to significantly drop in the short- to mid-term.

The recent scaling down of production at the Orica plant at Kooragang Island in Newcastle at the same time as the creation of an Orica joint venture on the west coast reveals the dynamic that exists between the east and west coast markets. Each market is primarily serviced by manufacturers on that side of the country due to the prohibitive cost of transport from Western Australia to Queensland or New South Wales, and vice versa.

## 6 PARTICULAR MARKET SITUATION

### 6.1 Finding

The Commissioner is satisfied that there is a situation in the market in Russia such that sales of ammonium nitrate in Russia are not suitable for use in determining the normal value of the goods under subsection 269TAC(1).

### 6.2 Background

#### 6.2.1 Allegations of market situation

In their application, Orica and CSBP state that the price of natural gas, the chief raw material used in the manufacture of ammonia and nitric acid for the production of ammonium nitrate, is regulated by the Government of Russia (GOR) which effectively results in the market selling prices for ammonium nitrate being artificially low. The Applicants therefore claim that a particular situation in the market exists within Russia which renders domestic sales unsuitable for determining the normal value of ammonium nitrate under subsection 269TAC(1) of the Act.

#### 6.2.2 Legislative framework

In the original investigation and in the subsequent continuation inquiries, Russia was considered to be an economy in transition and therefore subsection 269TAC(5D) was used to determine the normal value. Following the last continuation inquiry in 2011, Russia has been admitted into the World Trade Organization (WTO) and was subsequently recognised by Australia as a market economy.<sup>15</sup> As such, the starting point for calculating the normal value of the goods is subsection 269TAC(1).

Subsection 269TAC(1) of the Act states:

*Subject to this section, for the purposes of this Part, 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 for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.*

However subsection 269TAC(2) provides:

*Subject to this section, where the Minister*

*(a) is satisfied that:*

- (i) ...*
- (ii) 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 subsection (1);*

*the normal value of the goods for the purposes of this Part is:*

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<sup>15</sup> Customs Amendment Regulation 2012 (No. 7) (SLI No 224 of 2012).

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- (c) except where paragraph (d) applies, the sum of:
- (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
  - (ii) 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; or
- (d) if the Minister directs that this paragraph applies – the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arm's length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transaction.

The Act does not provide any definition of particular circumstances or factors which would satisfy the Minister that a 'market situation' exists in a domestic market. The WTO *Anti-Dumping Agreement* is similarly silent regarding the definition of the concept of a 'particular market situation' referred to within Article 2.2.

### 6.2.3 Policy and Practice

In relation to market situation, the Commission's *Dumping and Subsidy Manual* (the Manual)<sup>16</sup> states on page 35:

*In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:*

- (i) *whether the prices are artificially low; or*
- (ii) *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1).*

*Government influence on prices or costs could be one cause of "artificially low pricing". Government influence means influence from any level of government.*

*In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.*

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<sup>16</sup> Available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The Manual also goes on to state:

*Prices may also be artificially low or lower than they would otherwise be in a competitive market due to government influence and distortion of the costs of inputs. Again the mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. Rather, the Commission looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices.*

In this context, the Commissioner considers it is reasonable, for the purpose of assessing whether a market situation exists, to examine any factors that may have affected the competitive conditions in the market for the production of ammonium nitrate in Russia in the inquiry period.

#### **6.2.4 Evidentiary threshold**

The Commissioner notes that the Act does not provide any guidance, implicit or explicit, as to the evidentiary standard required to warrant a finding being made that a situation exists in the market for the purposes of subsection 269TAC(2)(a)(ii). Ultimately, the Commissioner must be satisfied that because of the situation in the domestic market, domestic prices are not suitable for determining normal values under subsection 269TAC(1) in order to make a recommendation to the Parliamentary Secretary.

It is considered by the Commissioner that the assessment as to whether a market situation exists in a particular country constitutes a positive test. That is, before actual selling prices are rejected, the Commissioner needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes. However, in doing so, the impact of the 'market situation' on the prices in that market does not necessarily have to be quantified.

### **6.3 Assessment of influence of GOR on natural gas prices**

#### **Summary of findings**

The GOR exerts substantial influence on the Russian natural gas market through OAO Gazprom (Gazprom), a state-owned enterprise with an exclusive licence to export gas, monopoly ownership of and provision of access to gas pipeline infrastructure and which is subject to substantial price controls (which also heavily influence the prices obtained by independent, unregulated suppliers). This influence results in Russian domestic gas prices which are substantially less than what would be achieved in a competitive market.

#### **6.3.1 Russian natural gas industry**

Gazprom is Russia's largest natural gas producer and exporter, accounting for 69% of all Russian gas production in the 2014 calendar year.<sup>17</sup> During the previous review of measures and continuation inquiry (REP 168) it was found that Gazprom accounted for

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<sup>17</sup> OAO Gazprom Annual Report 2014, <http://www.gazprom.com/f/posts/45/410871/gazprom-annual-report-2014-en.pdf>, p10

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83% of all Russian gas production. Although the company is still the dominant supplier of gas within the country, the Commissioner notes that independent gas producers are successfully increasing their share of the total volume of gas being supplied to Russian consumers. Novatek, which is Russia's largest independent natural gas producer and also the second-largest natural gas producer in Russia, produced 10% of the total Russian natural gas production in 2014.<sup>18</sup>

Gazprom has the exclusive right to export natural gas. The company also has the authority to approve access to the natural gas pipeline system which it owns and operates. A 50.23% interest in the company is controlled by the Russian Government.<sup>19</sup>

### 6.3.2 Previous findings regarding influence of Russian Government

REP 168 found that the GOR controlled the price of natural gas sold domestically within Russia and that the prices did not substantially reflect free market conditions. This was based on information provided by the GOR, which indicated that the domestic price of natural gas was regulated by the Russian Federal Tariff Service (FTS). The GOR also advised that Gazprom was the only company required to price all natural gas sold domestically in accordance with the regulated rates established by the FTS. That is, all other independent Russian gas suppliers were not required to sell at the regulated prices.

However, during that inquiry it was determined that the rates being paid by consumers for natural gas from producers other than Gazprom were significantly higher than the prices for Gazprom natural gas.

The previous inquiry found that:

*"...the government control of prices for natural gas had the effect of holding natural gas prices at significantly lower levels than would have been achieved if they were not so controlled. The Government control of natural gas prices would, in turn, have had a strong depressing output price effect, resulting in lower ammonium nitrate prices in Russia."<sup>20</sup>*

It was also identified that:

*"...an indirect price control situation was evident in respect of the domestic selling price of ammonium nitrate in Russia. A price control situation applied in relation to the domestic selling price of ammonium nitrate in Russia because these prices are controlled, or substantially controlled, by the Russian Government."<sup>21</sup>*

### 6.3.3 Current Government influence on domestic gas prices

With respect to the current inquiry, the GOR advised the Commissioner that:

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<sup>18</sup> OAO Novatek Annual Report 2014, [http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/doc/NOVATEK\\_Annual\\_Report\\_2014\\_Eng.pdf](http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/doc/NOVATEK_Annual_Report_2014_Eng.pdf), p2

<sup>19</sup> Logofet, D, Konnov, O, Mamay, A and Bakaeva I (2016) 'Energy: Oil & Gas – Russia – Law & Practice.' [http://www.herbertsmithfreehills.com/-/media/Files/PDFs/2015/RUSSIA\\_LP.pdf](http://www.herbertsmithfreehills.com/-/media/Files/PDFs/2015/RUSSIA_LP.pdf), *Chambers Global Practice Guides*, p 4

<sup>20</sup> SEF 168: Continuation Ammonium Nitrate February 2011

<sup>21</sup> SEF 168: Continuation Ammonium Nitrate February 2011

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- the Federal Law No. 147-FZ of 17 August 1995 ‘*On Natural Monopolies*’ (as last amended on 21 July 2014) was enacted to enable the GOR to regulate the price of goods and services produced by natural monopolies;
- the Federal Law No. 69-FZ of 31 March 1999 “*On Gas Supply in the Russian Federation*” (as last amended on 30 December 2012) provides the GOR with the authority to establish the principles used in formulating gas prices;
- the Resolution of the Government of the Russian Federation No. 1021 of 29 December 2000 “*On State Regulation of Gas Prices and Gas Transportation Services Tariffs on the Territory of the Russian Federation*” provides guidance on the setting of gas prices and tariffs for the transportation of gas on a cost plus profit basis;
- the regulated prices in the gas sector are only applicable to:
  - the gas produced by Gazprom and its affiliates; and
  - services for the transportation of gas produced by privately owned companies through pipelines owned by Gazprom and its affiliates.
- the Resolution of the Government of the Russian Federation No. 333 of 28 May 2007 established regulated prices for Gazprom, with minimum and maximum price levels for different consumer categories and regions. The right to negotiate and determine gas prices within these minimum and maximum limits is granted to suppliers and buyers. The resolution also introduced measures whereby the domestic gas prices would be increased to align them with international gas prices by 2011.
- the price levels for gas are regularly assessed by the Russian Government FTS,<sup>22</sup> taking into account:
  - recovery of economically justified costs covering gas production, overheads, financing charges, and gas transportation;
  - maintenance and upgrade of extraction and distribution infrastructure;
  - investment in exploration and development of new fields;
  - price regions, which generally match the territory and entities of the Russian Federation, to take into account the location of customers from the gas fields; and
  - recovery of reasonable profits.
- the price for transportation services of gas from non-Gazprom producers through the gas pipe network owned by Gazprom is dependent on the volumes of gas being transported as well as the distance travelled.

It should be noted that the regulated prices are inclusive of transportation costs.

### 6.3.4 Commission’s analysis

The Commissioner considers that the information above demonstrates that the GOR continues to exert control over the Russian natural gas industry through its price regulation.

The Oxford Institute for Energy Studies commented:

*“Due to unforeseen developments in European gas pricing which were largely linked to higher oil price levels, the implementation of Resolution No. 333 in 2007 by the*

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<sup>22</sup> Available at [http://www.fstrf.ru/tariffs/info\\_tarif/gas](http://www.fstrf.ru/tariffs/info_tarif/gas).

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*Russian Government in 2007 has to date not resulted in domestic Russian gas prices matching prices of Russian gas being sold within the European market.”<sup>23</sup>*

The Commissioner considers that this is still the case. For the 2014 calendar year, Gazprom<sup>24</sup> reported that:

- the average sale price of gas sold domestically within Russia was 3,531 roubles per 1,000 cubic metres; and
- the average delivered sale price of Russian gas sold to European and other countries was approximately 10,992 roubles per 1,000 cubic metres (net of customs duties and excise taxes).

For the six months to 30 June 2015, Gazprom<sup>25</sup> reported that:

- the average sale price of gas sold domestically within Russia was 3,543 roubles per 1,000 cubic metres; and
- the average delivered sale price of Russian gas sold to European and other countries was approximately 11,779 roubles per 1,000 cubic metres (net of customs duties and excise taxes).

Although some of the variance between the domestic and international prices is attributable to higher costs required to transport the gas to foreign countries, it is clear that there is a discrepancy between these prices. The Commissioner considers this is most likely a result of the GOR regulating natural gas prices at levels lower than would have been payable had market conditions prevailed.

For example, despite Gazprom selling 51% of its total gas volume within Russia in 2014, the value of sales generated from this amount represented only 27% of its total annual gas sales revenue.<sup>26</sup>

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<sup>23</sup> Henderson, J (2011) *Domestic Gas Prices in Russia – Towards Export Netback?*, [http://www.oxfordenergy.org/wpcms/wp-content/uploads/2011/11/NG\\_57.pdf](http://www.oxfordenergy.org/wpcms/wp-content/uploads/2011/11/NG_57.pdf), NG57, The Oxford Institute for Energy Studies, p2.

<sup>24</sup> Extracted from Gazprom in Figures 2010-2014, <http://www.gazprom.com/f/posts/91/415561/gazprom-in-figures-2010-2014-en.pdf>, p80-82.

<sup>25</sup> Extracted from OAO Gazprom, Management's Discussion and Analysis of Financial Condition and Results of Operations – Interim Results for the Half Year Ending 30 June 2015, <http://www.gazprom.com/f/posts/12/001311/gazprom-ifs-2q2015-management-report-en.pdf>, p3.

<sup>26</sup> OAO Gazprom Annual Report 2014, <http://www.gazprom.com/f/posts/91/415561/gazprom-annual-report-2014-en.pdf>, p79.



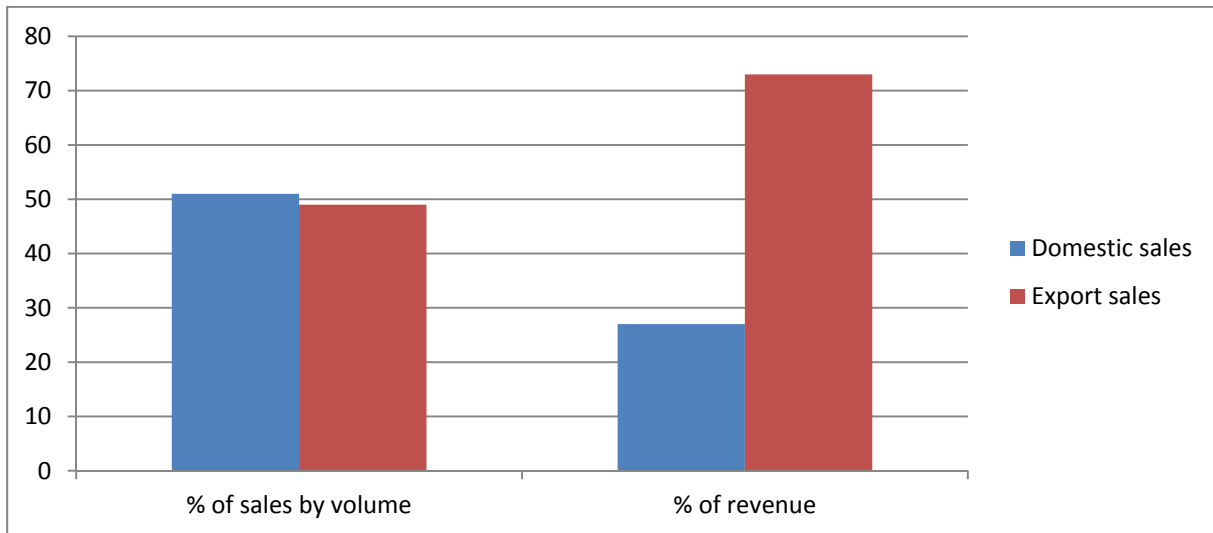


Figure 2 – Gazprom proportional sales and revenue

As shown above, the Russian domestic price reflects a poor return for Gazprom compared to that achieved in export markets. If the Russian domestic market was paying a competitive price it is reasonable to expect that the value of domestic sales would make up a higher proportion of the total revenue. If domestic demand was weak then this discrepancy may be explainable (for example, weak demand may have prompted Gazprom to cut prices to maintain sales volumes), but demand domestically reflects that of exports. The Commissioner considers that the discrepancy between its domestic pricing and supply arrangements and its approach to exports suggests that Gazprom is not engaging in profit maximising behaviour.

The Commissioner acknowledges that although the Gazprom gas prices are heavily regulated, and therefore at rates which are significantly lower than sales to foreign countries, an increasing number of private and independently owned gas producers are still able to profitably produce and sell gas within Russia.

For example, the performance of OAO Novatek (Novatek) (the largest independent gas producer operating within Russia) during the 2014 calendar period was reviewed by the Commission. It was found during that period that Novatek's gas sales represented 64% of its total revenue, and that it had an earnings before tax and depreciation margin of 45.4%.<sup>27</sup> This result is similar to its performance in previous periods, based on prior financial reports. Gazprom itself appeared to have generated a gross profit of approximately 99 billion roubles from Russian gas sales in 2014, representing 8.3% of earnings before tax.<sup>28</sup>

The successful performance of independent gas producers is due to a number of factors. These include freedom from the restrictions of the regulated price regime, which allows

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<sup>27</sup> OAO Novatek, Fourth Quarter and Full Year 2014 Operational and Financial Results Conference Call, [http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/doc/NOVATEK\\_CC\\_FY\\_14\[1\].pdf](http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/doc/NOVATEK_CC_FY_14[1].pdf).

<sup>28</sup> OAO Gazprom Financial Report 2014, <http://www.gazprom.com/f/posts/91/415561/gazprom-financial-report-2014-en.pdf>, pp57-58.

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them to charge whatever prices the market will accept. Gazprom has stated<sup>29</sup> that a direct result of this is that independent gas producers offer their gas at lower than the minimum regulated prices.

A consequence of this is that independent producers are able to offer gas to reliable major commercial customers in high-income regions within Russia. This allows them to target the most profitable areas, which often allows them to incur lower transportation costs due to shorter distances travelled. This is also supported by the fact that they supply almost no gas to households – Gazprom is required to be the gas supplier of last resort, and consequently it is required to guarantee the supply of gas to all commercial customers (including in less profitable regions in Russia) as well as to households (which are regulated by separate gas prices lower than those applied commercially). This reflects a change from the finding of REP168 outlined above.

Despite being able to charge gas at lower gas prices, the Commissioner has noted that there have been instances in the past where independent gas producers have also sold at prices higher than the maximum regulated price.<sup>30</sup> Noting that it is not bound to charge the regulated prices, Novatek has claimed that its “natural gas prices on the domestic market are strongly influenced by the prices regulated by the [FTS].”<sup>31</sup> Novatek went on further to say that during the 2014 calendar period, its natural gas prices increased by an average of 4.8% “due to a cumulative increase in the average regulated FTS price by 7.4%.”<sup>32</sup>

The Commissioner acknowledges that independent producers are able to make sizable profits while selling gas at prices below those of Gazprom. However, the profitability of market participants and a particular market situation are not mutually exclusive concepts.

The price cap set by the existence of regulations on Gazprom (which is the dominant provider in the market), or the practical limitation of access to Gazprom pipes, restricts the profit maximising behaviour that characterises a market economy.

On this basis, the Commissioner is unable to view Gazprom's prices as being representative of a true market price, and instead reflect suppressed prices.

### 6.3.5 Natural gas commercially traded in Russia

Since October 2014 monthly natural gas auctions have been held at the Saint-Petersburg International Mercantile Exchange (SPIMEX), thereby allowing exchange-based gas trading within the Russian domestic market. Gazprom stated in its 2014 Annual Report that “on-exchange gas trading is a vital tool to establish market criteria and improve

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<sup>29</sup> OAO Gazprom Annual Report 2014, <http://www.gazprom.com/f/posts/91/415561/gazprom-annual-report-2014-en.pdf>, p52.

<sup>30</sup> Henderson, J (2011) *Domestic Gas Prices in Russia – Towards Export Netback?*, [http://www.oxfordenergy.org/wpcms/wp-content/uploads/2011/11/NG\\_57.pdf](http://www.oxfordenergy.org/wpcms/wp-content/uploads/2011/11/NG_57.pdf), NG57, The Oxford Institute for Energy Studies, p28.

<sup>31</sup> OAO Novatek (2014), Management's Discussion and Analysis of Financial Condition and Results of Operations, [http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/doc/MDA\\_2014\[3\].pdf](http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/doc/MDA_2014[3].pdf), p11.

<sup>32</sup> *ibid.*, p12.

transparency for market gas pricing practices, enabling [Gazprom] to obtain market input for the pricing system.”<sup>33</sup>

Although gas sales on SPIMEX are based on unregulated prices, the Commissioner has noted that the natural gas prices listed on the SPIMEX are exclusive of transportation costs. Once transportation costs are added to the monthly SPIMEX price, none of the sales made between October 2014 and June 2015 exceeded the maximum unit price thresholds for each respective region within Russia which were established by the FTS.

In addition the vast majority of gas sales were actually made at prices which were lower than the minimum regulated prices, sometimes by more than 10%.<sup>34</sup> This demonstrates that the lower bound of the FTS price acts as a cap, above which private sales do not make fiscal sense as it would be cheaper to buy directly from Gazprom which can make the sale at the lower bound. These calculations are included in **Confidential Appendix 1 – Market Analysis**.

The cap, as discussed above, demonstrates direct government intervention resulting in non-profit maximising behaviour across the entire domestic gas industry. The presence of a fixed minimum and maximum price in each region, which is set for the major industry player and which is bound to guarantee supply, is unavoidably distorted. As demonstrated above, this distortion reduces the profit of natural gas relative to the export market.

In consideration of this, the Commissioner is of the view that, while the gas sales made on the SPIMEX are not at regulated gas prices, they are unable to be considered as representative of a truly competitive price.

#### **6.4 Market situation affecting Russian sale prices**

During the verification process with Azot, the price setting mechanisms for fertiliser grade HDAN were discussed. Agricultural fertiliser sales, which account for 20% of Azot’s domestic sales of ammonium nitrate based products, are made with reference to the price established by the All-Russian Association of Fertiliser Manufacturers (the Association).

Each month the ammonium nitrate producers from across Russia meet to discuss a ceiling price to propose to the Association. This is set with reference to the price of Russian ammonium nitrate at the Black Sea and Baltic Sea ports as published in *Fertecon Weekly*, a major industry publication which is used globally as a benchmark for ammonium nitrate sale and market data. The Association either accepts or rejects the proposed ceiling price.

This arrangement was put in place in January 2013. Prior to this the ceiling price was set centrally by the GOR. To date the price has never been rejected by the Association, nor has any manufacturer sold above the ceiling.

Prices at the Black Sea and Baltic Sea are almost exclusively for ammonium nitrate from Russia, with minimal sales from other countries such as Ukraine. As such, the prices are reflective of the domestic price for the majority of the product sold, being fertiliser grade

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<sup>33</sup> OAO Gazprom Annual Report 2014, <http://www.gazprom.com/f/posts/91/415561/gazprom-annual-report-2014-en.pdf>, p160

<sup>34</sup> Information extracted from the SPIMEX website: [www.spimex.com](http://www.spimex.com).

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HDAN. This, combined with the arrangement with the Association detailed above, results in a feedback loop where the domestic price influences the export price, and vice versa.

In addition, the Commissioner considers these prices to be artificially low due to the competitive advantage afforded by the non-competitive gas prices.

### **6.5 Conclusion**

The Commissioner is satisfied that a situation exists in the Russian market for ammonium nitrate such that domestic prices are unsuitable for use in determining normal value under section 269TAC(1). As such, the normal value of the goods will be determined under subsection 269TAC(2)(c) and, for uncooperative and all other exporters, under subsection 269TAC(6).

## 7 REPLACEMENT COST OF GAS

### 7.1 Finding

The Commissioner has found that the appropriate replacement cost of gas for determining normal value is the price of Russian natural gas at the German border, adjusted for export costs and domestic transport.

### 7.2 Basis of replacement of gas prices

The market situation outlined in Chapter 6 means that domestic prices in Russia are unsuitable to establish a normal value under section 269TAC(1). Instead, normal value will be constructed under subsection 269TAC(2)(c), and for all other exporters under subsection 269TAC(6). To do so, it will be necessary to determine a replacement cost for the non-competitive natural gas cost.

### 7.3 Comparative benchmark gas prices

Using an appropriate benchmark for the replacement price is important to ensure a fair estimate of normal value to ensure that the dumping margin calculations, and any measures resulting from these, are based on the most appropriate values.

The price of natural gas delivered to the factory of the only cooperating manufacturer, in Kemerovo Oblast, has been included in the following analysis for comparison. Due to this being the only region with a cooperating manufacturer, the Commissioner has deemed this to be the most relevant regulated price of gas. As discussed in Chapter 6, the Commissioner has deemed this price to be non-competitive and finds that it should be replaced with a competitive gas price.

Three benchmark prices were considered by the Commissioner as alternatives: the price of Russian gas at the German border adjusted for export and domestic transport costs, the Henry Hub in USA, and the Victorian wellhead price.

#### 7.3.1 Russian natural gas at German border

The Applicants proposed substituting the price of Russian gas at the German border. Gazprom has exclusive rights to export Russian gas to international markets, and is able to do so without being burdened by regulated prices from the GOR, as these only apply to domestic sales. Consequently it is able to sell at prices that the market is willing to pay.

Russia is not the sole participant in the European gas market, with Norway, Algeria, Netherlands and Slovakia all contributing significantly to the supply.<sup>35</sup> Russia, and specifically Gazprom, contributed 31% of gas consumed in Europe in 2015.<sup>36</sup>

The pricing in an international market reflects true profit-maximising behaviour not seen in the Russia domestic market due to the government-imposed constraints. There is a

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<sup>35</sup> European Commission *Quarterly Report of European Gas Markets Volume 8*

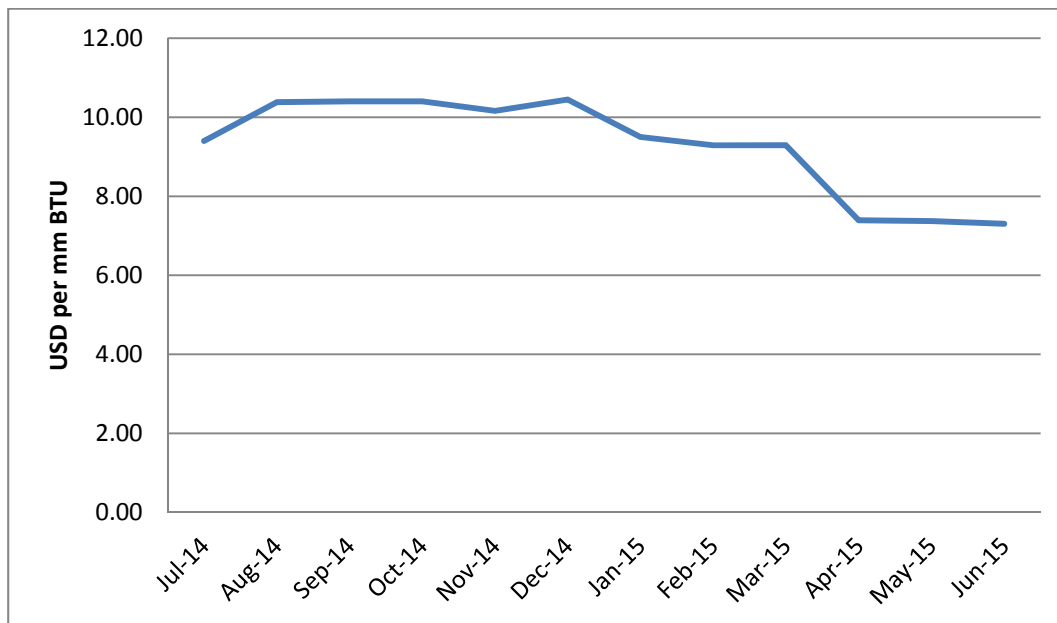
[https://ec.europa.eu/energy/sites/ener/files/documents/quarterly\\_report\\_on\\_european\\_gas\\_markets\\_q3\\_2015.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/quarterly_report_on_european_gas_markets_q3_2015.pdf)

<sup>36</sup> <http://www.wallstreetdaily.com/2016/02/17/lng-natural-gas-price/>.

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geographic hurdle to overcome in transporting gas to central Europe, but transport is readily achieved through the Nord Stream pipeline, and through pipelines in the Ukraine. On this basis it is expected that the adjusted prices are more reflective of the true competitive price of Russian natural gas.

The graph below provides a summary of the price for Russian natural gas at the German border, as per the International Monetary Fund (IMF) database:<sup>37</sup>



**Figure 3: Russian natural gas price at the German border**

The commission noted the following in relation to this benchmark:<sup>38</sup>

- Gas exported from Russia to Germany is normally done so under long term contracts, which can last up to 25 years. Consequently they are not governed by spot gas prices (which other potential benchmarks such as the Victorian gas price and the Henry Hub terminal in Louisiana are based on);
- This benchmark is based on the border price of gas imported from Russia.<sup>39</sup> Consequently it will be inclusive of taxes and all transportation costs up to the German border.

To establish a delivered gas price for use in a constructed normal value based on this benchmark, the Commissioner must make two adjustments to the recorded gas price: one to reduce the cost of export to return to the wellhead price, and one to add the cost of domestic transport for the gas to the plant.

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<sup>37</sup> Information extracted from the IMF database website:

[https://www.imf.org/external/hp/res/commod/External\\_Data.xls](https://www.imf.org/external/hp/res/commod/External_Data.xls).

<sup>38</sup> OAO Gazprom – Marketing – Europe (2014), <http://www.gazprom.com/about/marketing/europe/>.

<sup>39</sup> Market Observatory for Energy (2014), *Quarterly Report on European Gas Markets*,

[https://ec.europa.eu/energy/sites/ener/files/documents/quarterly\\_report\\_on\\_european\\_gas\\_markets\\_2014\\_q4.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/quarterly_report_on_european_gas_markets_2014_q4.pdf), DG Energy, Volume 7, European Commission, p24.

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The export costs adjustment is standard for all producers, as The Oxford Institute for Energy Studies estimates that the total cost of export for Russian Gas when delivering to the German border is US\$3.50 per mmBTU.<sup>40</sup> The second adjustment is specific to each producer of ammonium nitrate based on the distance from the wellhead and the fee each specific carrier charges on the use of that pipeline. The adjustment for each exporter will be calculated based on the actual charges they incurred.

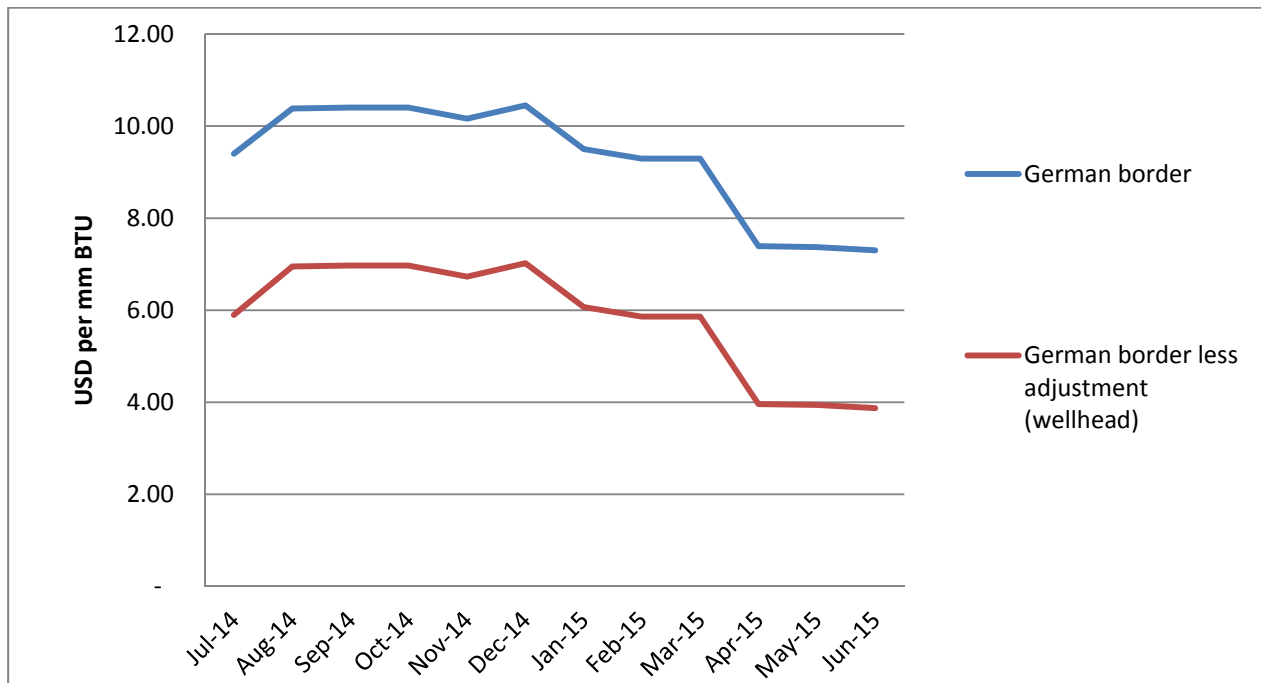


Figure 4: Effect of adjustments to German border price

Prices for gas sales subject to long term contracts are generally determined using a price formula which takes into account oil prices in the previous 6 to 9 months. Consequently, although the impact in the significant downturn in global oil prices will have a flow-on effect on the price of natural gas, the flow-on effect to this benchmark did not start to occur until the second quarter of 2015.<sup>41</sup>

There is a significant correlation between the price of oil and natural gas, as shown in the graph below,<sup>42</sup> and consequently further declines in the price of gas are therefore expected beyond the inquiry period. This relationship demonstrates that the movement in the Russian Natural Gas Border Price in Germany reflects market conditions.

<sup>40</sup> Oxford Institute for Energy Studies (2016), *Gazprom – Is 2016 the Year for a Change of Pricing Strategy in Europe?*, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/01/Gazprom-Is-2016-the-Year-for-a-Change-of-Pricing-Strategy-in-Europe.pdf>.

<sup>41</sup> Market Observatory for Energy (2014), *Quarterly Report on European Gas Markets*, [https://ec.europa.eu/energy/sites/ener/files/documents/quarterly\\_report\\_on\\_european\\_gas\\_markets\\_2014\\_q4.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/quarterly_report_on_european_gas_markets_2014_q4.pdf), DG Energy, Volume 7, European Commission, p16.

<sup>42</sup> Information extracted from the IMF database website: [https://www.imf.org/external/hp/res/commod/External\\_Data.xls](https://www.imf.org/external/hp/res/commod/External_Data.xls).

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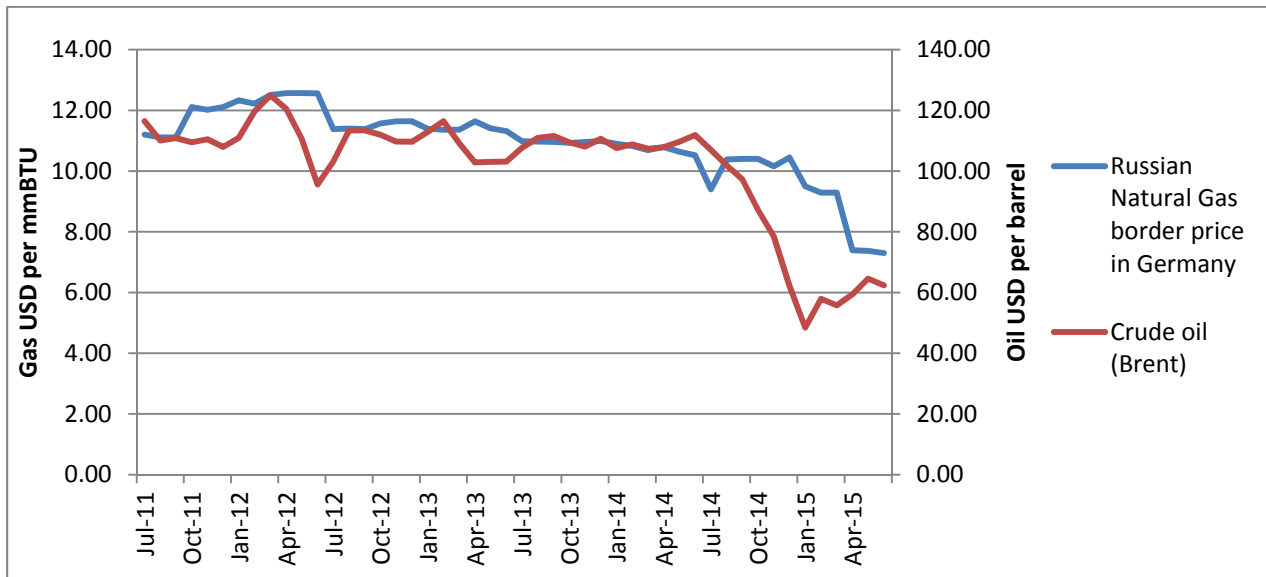


Figure 5: Russian natural gas price vs Brent crude oil price

### 7.3.2 Alternate 1 – Victorian gas price

Victoria's wholesale gas market allows participants to buy and sell gas at a spot price.<sup>43</sup> Trading occurs five times a day. Prices are for gas only; transportation is an additional cost which is charged separately by the pipeline owner in addition to the gas spot price.<sup>44</sup> Consequently this must be taken into consideration when comparing this to other benchmark prices.

### 7.3.3 Alternate 2 – Henry Hub Louisiana

The Henry Hub is the largest centralised point for natural gas spot and futures trading in the United States. It is a distribution hub on the natural gas pipeline system located in Louisiana. Consequently the prices are for the gas commodity only, with transportation an additional cost. Approximately 49% of U.S. wellhead production either occurs near the Henry Hub or passes close to it as it is transported to the consumption markets. Spot prices set at Henry Hub generally correlate to the US wellhead natural gas price.<sup>45</sup>

### 7.3.4 Comparison of all prices

The graph below provides a comparison of the relative natural gas price benchmarks over the 12 month inquiry period:

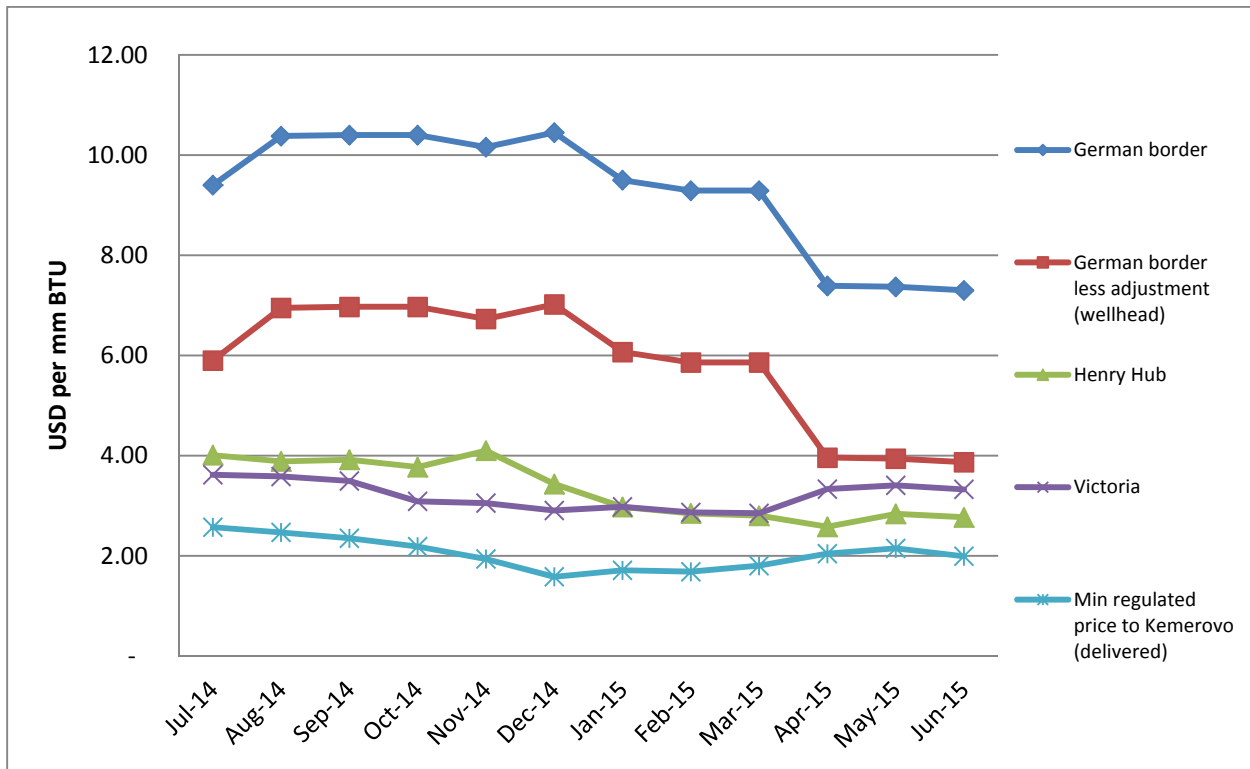
<sup>43</sup> Australian Energy Regulator (2011) <https://www.aer.gov.au/system/files/Chapter%203%20Gas.pdf>, p85.

<sup>44</sup> Australian Energy Regulator (2014) *User Guide to the AER Weekly Gas Market Report*, <https://www.aer.gov.au/system/files/User%20guide%20to%20the%20AER%20gas%20weekly%20report.pdf>, p15.

<sup>45</sup> Budzik, P, *U.S. Natural Gas Markets: Relationship Between Henry Hub Spot Prices and U.S. Wellhead Prices* <http://www.eia.gov/oiaf/analysispaper/henryhub/>, U.S. Energy Information Administration.



## PUBLIC RECORD



**Figure 6: Comparison of natural gas benchmark prices**

Gas prices from the SPIMEX have not been considered in the above graph, mainly because customers from the Kemerovo region in Russia (which is also the location in which Azot operates) did not make any purchases of ammonium nitrate through the exchange during the inquiry period. However, the analysis performed by the Commission at Chapter 6 suggests that were any sales to be made to this region, the price for natural gas paid would not exceed the maximum price regulated by the FTS.

The Commissioner is of the view that all of the alternative natural gas benchmarks are reflective of market conditions, whereas the Russian domestic price (which in this instance is specific to the Kemerovo region) does not share this same dependency. The movements in the Russian domestic price in the graph above are entirely a result of the foreign exchange fluctuation of the Russian Rouble against the US Dollar, as the prices are fixed in roubles by the GOR and the above chart is in USD.

### 7.3.5 Comparison of potential benchmarks

In the verification process with Azot, the Commission noted the claims made by the Australian industry concerning market situation, and noted that, if such a finding was made, the Commission may seek to replace gas costs with an appropriate benchmark. The Commission sought Azot's views on potential benchmarks in this context. Azot stated that the Russian government intends to move domestic gas prices towards parity with the price at the German border (excluding the cost of transport), and that it would consider this to be the most appropriate benchmark of which it is aware.<sup>46</sup>

<sup>46</sup> Section 6.3.3 refers to the relevant GOR policy stating this aim.

## PUBLIC RECORD

The Commissioner notes that the price at the German border (excluding transport costs) represents prices in a market which is in close proximity to Russia and which has a similar structure to what the Commissioner considers would be present in a competitive market in Russia - that is, an extensive pipeline network connecting suppliers and markets, with a range of suppliers operating independently of government regulation and competing with each other. It is also affected by the same geopolitical impacts as the Russian domestic market, and supplied by the same producers.

With respect to the alternate benchmarks mentioned previously:

- The American market has traditionally been self-contained, with relatively few imports or exports. The Commissioner notes that this may change subsequent to the inquiry period due to the 'shale gas revolution,' which has led to a significant increase in domestic natural gas production. Although this is expected to result in substantial exports of natural gas (with the first shipment actually occurring in February 2016 to Brazil),<sup>47</sup> these exports will all be based on the spot-market prices at Henry Hub. This is unlike other international exports, which are indexed to oil or oil-related products.<sup>48</sup> As Henry Hub spot prices do not have the same influencing factors as the German border price, the Commissioner is of the opinion that it would be inappropriate to use this as a replacement cost for natural gas in Russia.
- The Australian natural gas market differs significantly from the Russian market. Australia has a low domestic gas demand compared to many other countries due to a relatively small population, relatively small manufacturing sector, a temperate climate, and electricity generation based largely on coal.<sup>49</sup> For example, 64% of electricity produced is generated by coal.<sup>50</sup> This compares to only 14.4% in Russia, with a greater reliance on natural gas for electricity generation.<sup>51</sup>

The Australian market, in particular Victoria, also does not have the same infrastructure to facilitate the transport of gas to other countries as seen in Russia, with the Nord Stream and Ukrainian pipelines which supply Europe with Russian gas. To illustrate this, although a gas spot market is available in Victoria, gas purchased from there cannot be readily transported to the Northern Territory or Western Australia due to a lack of pipework connections, and instead it must be shipped. This is exacerbated further if the gas is to be exported, as the cost is substantially higher than pumping through a pipe.

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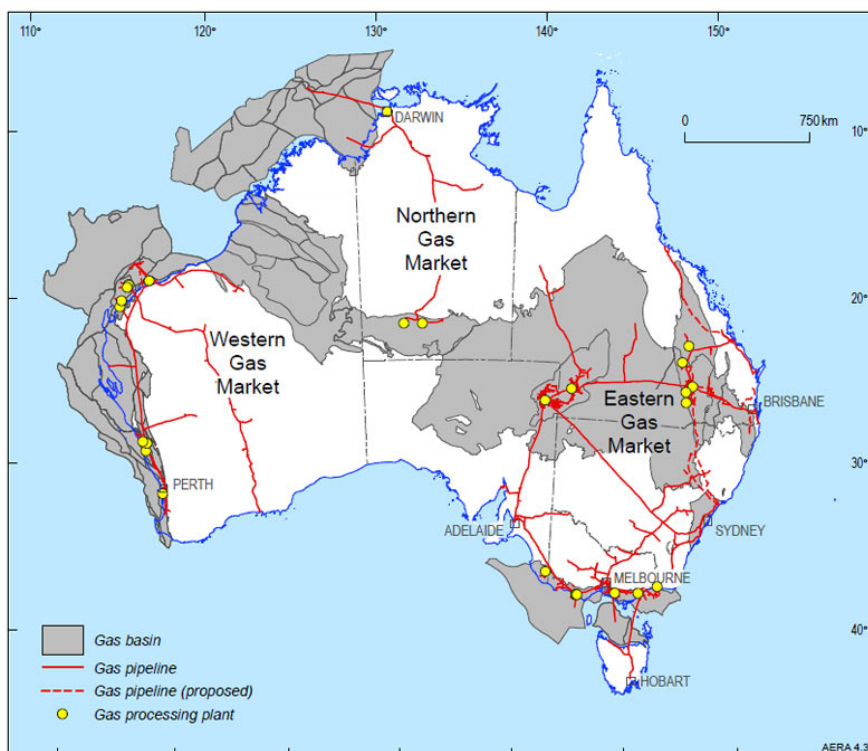
<sup>47</sup> Kennedy, C (2016) *First U.S. LNG Shipment Departs...for Brazil* <http://oilprice.com/Energy/Natural-Gas/First-US-LNG-Shipment-Departsfor-Brazil.html>, Oilprice.com

<sup>48</sup> Boersma, T, Ebinger, C and Greenley, H (2015) *Natural Gas Issue Brief #4: An Assessment of U.S. Natural Gas Exports* [http://www.brookings.edu/~media/research/files/papers/2015/07/us-natural-gas-exports/lng\\_markets.pdf](http://www.brookings.edu/~media/research/files/papers/2015/07/us-natural-gas-exports/lng_markets.pdf), Brookings Energy Security and Climate Initiative Natural Gas Task Force, p8.

<sup>49</sup> Calder, W (2014) *Gas Market Report* <http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/gas-market/gasmarketreport-201411.docx>, Bureau of Resources and Energy Economics, p9.

<sup>50</sup> Boersma et al, *Natural Gas Issue Brief #4: An Assessment of U.S. Natural Gas Exports* [http://www.brookings.edu/~media/research/files/papers/2015/07/us-natural-gas-exports/lng\\_markets.pdf](http://www.brookings.edu/~media/research/files/papers/2015/07/us-natural-gas-exports/lng_markets.pdf), Brookings Energy Security and Climate Initiative Natural Gas Task Force, p11.

<sup>51</sup> R-A Business Staff (2010) *Russia's Energy: Electric Power Sector* [http://russianamericanbusiness.org/web\\_CURRENT/articles/595/1/Russia%92s-energy%3A-electric-power-sector](http://russianamericanbusiness.org/web_CURRENT/articles/595/1/Russia%92s-energy%3A-electric-power-sector).



**Figure 7: Australia’s Gas Markets and Infrastructure**

Source: Geoscience Australia (2014a)

Australian domestic gas trade is dominated by bilateral long-term contracts between buyers and sellers, largely because they provide certainty for large producers and consumers. However the increase in liquefied natural gas production (LNG) has resulted in increases in long term gas prices.

Given that the scale and structure of the Australian gas market (in particular in Victoria) significantly differs from that of Russia, the Commissioner is of the view that it would be inappropriate to use the Victoria wholesale gas price as a replacement cost for the calculation of the normal value of gas.

## 7.4 Conclusion

The Commissioner considers that the price of Russian gas at the German border, adjusted for export and transport costs, is the most appropriate benchmark for the replacement of costs in the calculation of normal value. This price best reflects the true competitive price in the country of origin. Using this price is advantageous over other benchmarks which may be substituted, as the other benchmarks are distinctly different in geographical situation, market suppliers, ability to export and method of export.

## 8 LIKELIHOOD OF DUMPING RECURRING

### 8.1 Finding

The Commissioner has found that, if the measures expire, it is likely that dumping of the goods would recur.

### 8.2 Determination of normal value

The starting point for determining normal value is the price paid or payable for like goods in the domestic market of the country of export. However, the Commissioner's finding that a particular market situation for ammonium nitrate has resulted in those prices being considered to be unsuitable. Consequently, for the single cooperating producer, normal value has been constructed under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and (5B) in accordance with the conditions of sections 43,44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation). In accordance with section 269TACAB, the normal value of goods for uncooperative exporters has been worked out under subsection 269TAC(6).

Subsection 269TAC(2)(c) of the Act provides, in part, that the normal value of the goods is the sum of:

*(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*

*(ii) 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.*

In determining the cost of production, as outlined in Chapter 6 the Commissioner has found that the natural gas costs recorded in the cooperating producer's accounts are not reasonably competitive market costs.<sup>52</sup> Accordingly, the Commissioner has replaced those costs with what it considers to be a suitable benchmark, being the cost of Russian natural gas at the German border excluding transport costs, for the reasons discussed in Chapter 7.

Gas conversion rates have been calculated based on gas usage per tonne of ammonium nitrate provided by Azot. Gas prices have been calculated from the IMF database, and can be found at **Confidential Appendix 1 – Market Analysis**.

The price of gas transport for the producer has been calculated as the cost of transport by Gazprom Transgaz Tomsk, which operates the pipeline used to supply the producer. The distance used is 835km, the distance from Nizhnevartovsk to Kemerovo.<sup>53</sup> This is RU147.80 per million cubic metres, which equates to US\$0.07 per mMBTU using the average conversion rate for Roubles to USD in the inquiry period.

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<sup>52</sup> Section 43(2)(b)(ii) of the Regulation refers.

<sup>53</sup> <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/03/NG-95.pdf>.

All other costs used are the verified costs established for the cooperating producer, as no allegation has been substantiated regarding non-competitive costs for other inputs. This includes costs for manufacturing (except for gas inputs), sales and administration costs, overheads, transport costs and profit margin.<sup>54</sup>

It is worth noting that this profit figure is high, and the Commissioner considers this is unlikely to be representative of the broader Russian ammonium nitrate industry. However, in the absence of better information, the Commissioner considers that the constructed normal value for Azot is suitable for the purpose of assessing whether dumping may recur.

The complete calculations are in **Confidential Appendix 2 – Normal Value**.

### **8.3 Export price**

As there were no cooperating exporters having export sales to Australia, subsection 269TACAB directs that the export price is to be worked out under subsection 269TAB(3). Subsection 269TAB(3) provides that:

*(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained ... the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.*

For the purposes of this calculation, the export price will be calculated under subsection 269TAB(3) as the weighted average free on board (FOB) price for all exports of ammonium nitrate from Russia to Australia during the review period, being 1 July 2014 to 30 June 2015. The complete calculations are in **Confidential Appendix 3 – Export Price**.

### **8.4 Calculation of dumping margin**

Based on the constructed normal value for Azot, and the export price outlined above, the dumping margin for Azot has been calculated as 12.2%.

The Commission considers the information provided by Azot in conjunction with ABF import data to be the best available information. The calculation for all non-cooperating exporters has been calculated as 12.2%.

### **8.5 Continuation of exports**

It is clear from the ongoing sale of ammonium nitrate into Australia from Russia that there continue to be export pathways from Russia to Australia, despite the imposition of measures for 15 years. The removal of measures would be highly likely to increase the volume of ammonium nitrate sold to Australia from Russia. This is based on the statement from Azot that the reason for not exporting to Australia during the review period was the imposition of measures.

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<sup>54</sup> Sections 43(2) and 44(2) of the Regulation refer.

## **8.6 Capacity to dump goods**

The Commission purchased a report on the Russian ammonium nitrate industry written by Merchant Research and Consulting to independently validate the claims made by the Applicants and in submissions relating to confidential attachments. In this report it was stated that Russian production of ammonium nitrate in 2014 was 8.25 million tons of ammonium nitrate, while capacity was 10.45 million tons.<sup>55</sup> The spare capacity of 2.2 million represents approximately 5% of total global production capacity.<sup>56</sup>

The primary limiting factor for dumping would be port capacity at both the export and import terminals due to safety restrictions concerning the volume of oxidising agents allowable at ports.

## **8.7 Conclusion**

The Commissioner views that Russian ammonium nitrate manufacturers have a demonstrated propensity to export ammonium nitrate to Australia below the constructed normal value. This is based on the verified information from Azot, the only cooperating producer, with replacement of non-competitively priced inputs. The Commissioner is also satisfied that there is excess capacity for production in Russia, and that there are still functioning export channels from Russia to Australia for ammonium nitrate.

On this basis, the Commissioner finds it is likely that the removal of measures would result in the recurrence of dumping.

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<sup>55</sup> Merchant Research & Consulting *Russian Ammonium Nitrate Market Outlook 2015*

<sup>56</sup> *ibid*

## 9 LIKELIHOOD OF RECURRENCE OF MATERIAL INJURY

### 9.1 Finding

The Commissioner is satisfied that the expiration of the anti-dumping measures to which the application relates would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

### 9.2 Approach to injury analysis

Subsection 269ZHF(2) requires the Commissioner to be satisfied that the expiration of measures would lead, or be likely to lead, to a recurrence of the material injury the measures are intended to prevent if he is to recommend the measures be continued.

As the measures have been in place for fifteen years, it is relevant to consider both the material injury that was found to occur when the measures were first in place, the market conditions since the measures were imposed, and to analyse likely market behaviour should those measures now expire.

As stated in Chapter 8, it is likely that if the measures were not in place dumping would recur due to Russian ammonium nitrate manufacturers' demonstrated propensity to export ammonium nitrate below the constructed normal value, and that exporter pathways still exist and are likely to resume should measures expire. Given this finding, the next question is whether the recurrence of dumping would lead to material injury recurring.

In the original investigation REP 28 in 2001 the then investigating authority found that ammonium nitrate had been dumped from Russia and that dumping had caused material injury to the Australian industry.

Ammonium nitrate is a chemical and for high density and low density ammonium nitrate respectively there are minor differences (if any) in chemical composition. Due to this fundamental characteristic of this product, there is limited scope for product differentiation on factors other than price and ammonium products are therefore considered to be commodity products.<sup>57</sup> As such, price is the primary driver of purchasing decisions – particularly for spot quotes outside of long term contracts that may place a value on guarantee of supply.

In considering whether the expiration of the measures would lead to or be likely to lead to a recurrence of material injury, the Commissioner has had regard to the price-based nature of competition in ammonium nitrate markets.

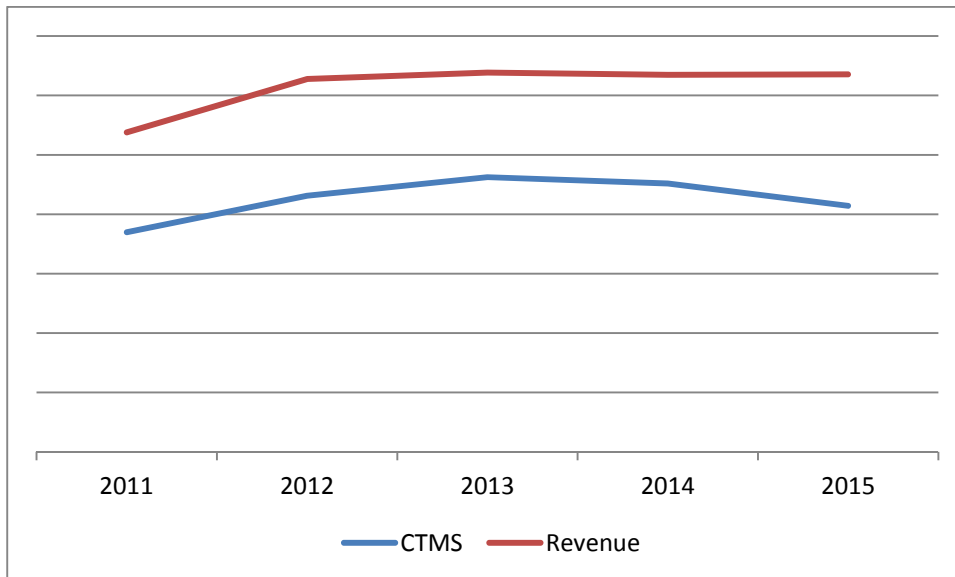
### 9.3 Price suppression and depression

Average sales prices of ammonium nitrate have been fairly steady relative to costs to manufacture for the Australian industry since the implementation of measures. The past five years of information is displayed for the aggregated information verified with the Applicants.

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<sup>57</sup> IBISWorld, IBISWorld Industry Report C1892: *Explosive Manufacturing in Australia (July 2015)*

## PUBLIC RECORD



**Figure 8: Revenue and cost to manufacture per ton for Australian industry**

The Applicants have presented evidence showing that quotes are sought by Australian customers for FOB prices of ammonium nitrate in Russia at the Baltic Sea. These quotes, which are significantly lower than Australian ex-works prices, are then used to negotiate lower prices from the Australian industry. The FOB price for the Baltic Sea during the inquiry period is included in **Confidential Attachment 4 – Import Parity Pricing**.

The Baltic Sea FOB prices are below both the constructed normal value at FOB and the Australian average ex-works price. Similarly, the price for the Baltic Sea product at free into store (FIS) terms is cheaper than the Australian delivered price. The Commissioner notes that it is likely that exports to Australia would be sent from ports on the east coast; the verified domestic transport data for Azot indicates that there would only be a small increase in FOB prices for ammonium nitrate shipped from the east coast compared to this benchmark.

On this basis, it is expected that price depression would occur if the measures are removed, as the Russian export price will likely approach the Baltic Sea price which would undercut the Australian market, driving the Australian price down. The presence of cheaper Russian exports in the market would be likely to have a suppressive effect on Australian prices if the cost to make and sell were to increase (for example, through anticipated increases in natural gas prices in Australia).

### 9.4 Volume effects

The Commissioner's understanding of the relevant markets is informed by information collected over the fifteen years the measures have been in place.

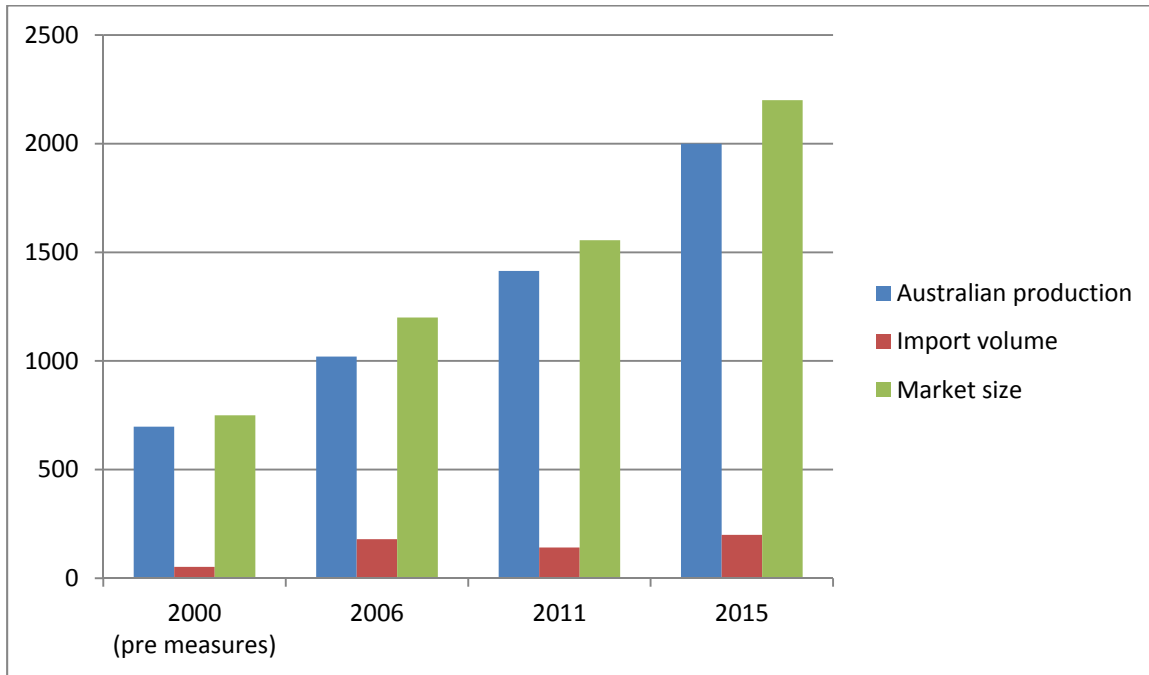
At the time of the original investigation, the then investigating authority found that there was evidence that the Australian industry had lost particular accounts to Russian exports and was able to estimate an amount of ammonium nitrate revenue forgone in lost sales.



## PUBLIC RECORD

In the last continuation inquiry, evidence was provided which showed that Australian customers had referenced import prices of high density ammonium nitrate in seeking parity pricing for ammonium nitrate from the Australian industry.<sup>58</sup>

Since the measures have been imposed, the Australian industry has significantly scaled up production capacity and production volume has also increased to meet increased demand over the same period. This suggests that the measures have been effective in addressing material injury caused by dumping.



**Figure 9: Relative market shares and total market size**

Import volumes from all sources in 2000, prior to implementation of the anti-dumping measures, represented 7% of market share which increased to 15% in 2006. The import volume then declined in 2011 but has stabilised at approximately 10% of the market since then.

In the current continuation inquiry, there is evidence that importers use Russian quotes to attempt to influence prices in Australia in their negotiations with CSBP and Orica (as discussed above). Figure 9 shows the Australian industry has scaled up capacity and increased its production volume. The Applicants each stated that the existence of measures had been a factor in business cases to expand their operations, as it allowed them to have confidence that they would be competing on fair terms.

Analysing the above information, the picture that emerges is an Australian industry that is not suffering material injury since the measures were put in place but one that is potentially susceptible to injury in circumstances where, absent the measures, dumping is likely to resume (see Chapter 8) and price suppression occur (see above).

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<sup>58</sup> REP 169, p.30

## **PUBLIC RECORD**

This, combined with the Commission's understanding of the chemical similarity of ammonium nitrate between suppliers and past and current market behaviour, supports the view that price is a key consideration in the customer's purchasing decisions.

As set out above, price depression is likely to occur if the measures are removed. This is because currently the measures require exporters to pay a duty or, to avoid a duty, export at or above the established floor price. The removal of measures will remove the incentive for pricing at the floor price. This would likely result in lower prices to regain market share, noting the findings above that dumping is likely to recur should the measures be removed.

The Commissioner considers that the likely outcome would be the immediate displacement of that proportion of supply not based on long term contracts with dumped ammonium nitrate. The longer term implication would be significant price reductions during the tender and negotiation process concerning long term contracts, if not the outright loss of these contracts to the dumped goods.

### **9.5 Profits and profitability**

The removal of measures is likely to lead to both loss of market share and price suppression, as discussed above. A reduction in market share or suppression of prices will consequently have an impact on Australian profits and profitability.

Reduced profits will result in a lower return on capital and return on net assets, the primary measures by which performance is measured for the Applicants. This is due to the large up-front investment required for each plant, which is based on an expected return over the life of the plant.

In addition to this, further injury would occur based on excess capacity developing within the Australian industry, resulting in higher unit costs and lower profitability. The actual volume of production possible in an ammonium nitrate plant occurs within a narrow bandwidth, with limited ability to vary production volumes to match a decline in demand. At a certain point, production volumes cannot be reduced any further; the plant must be shut down. This is a highly expensive process, but it is expected that the displacement of sufficient local product by dumped imports would make this a significantly more likely occurrence, increasing the unit cost while reducing the output which would compound the problem.

### **9.6 Factors other than dumping**

#### **9.6.1 Australian natural gas pricing**

The price of natural gas in Australia has significantly increased recently, in particular after 30 June 2015, as export markets open up in Asia due to the commissioning of liquid natural gas plants in Queensland. This has increased the cost of the key raw material in the production of ammonium nitrate and, while this is either partially or completely compensated for in existing contracts, it makes tendering for new contracts more challenging.

### **9.6.2 Downturn in mining exploration**

A contraction of the mining industry in the form of mine closures would likely result in decreased demand for ammonium nitrate. While this industry has not demonstrated contraction yet, based on the current market size and the ongoing expansion of Australian capacity, this may still occur with the tailing off of exploration and / or sustained falls in commodity prices.

The Commissioner's view is that this in itself does not inherently harm the industry while market share is not unduly affected by dumped goods. The displacement of market share by dumped goods which leads to lower volumes of sales, and the price depression from the presence of dumped goods which leads to lower sale price, would be the primary injury factors.

### **9.7 Conclusion**

The Commissioner's finding is that, while there may be other factors which may be likely to cause injury to the Australian industry, the injury likely to be caused by the recurrence of dumped goods in the market is likely to be, in and of itself, material.

## 10 RESPONSES TO STATEMENT OF ESSENTIAL FACTS

All submissions referred to can be found on the EPR at [www.adcommission.gov.au](http://www.adcommission.gov.au). They have been summarised below, and the Commission's response provided.

### 10.1 Government of Russia

#### Particular Market Situation

The GOR stated that it disagreed with the methodology applied by the Commissioner in the SEF to calculate normal value. The GOR submits that, under Article 2 of the WTO *Anti-Dumping Agreement*, adjustments to normal value “may be made only if ... accounting records do not reasonably reflect costs associated with production (not inputs) and sale of product (not inputs)” or “in case of a particular market situation”. As such, it contends that replacement of input costs cannot be undertaken.

In addition to this, the GOR alleges that there is a free market for natural gas in Russia due to the existence of SPIMEX and other non-Gazprom sellers of gas who are not subject to government regulation of prices.

#### Response

The methodology applied by the Commissioner is outlined in Chapter 7. The Commissioner considers that his approach complies with subsection 269TAC(2) of the Act and section 43 of the Regulation.

#### Domestic price for non-cooperating manufacturers

The GOR submitted that the benchmark prices for the Association should be used as the domestic selling price for all Russian companies who did not cooperate with the inquiry.

#### Response

The Commissioner views that this price is subject to the market situation affecting the production of domestic ammonium nitrate, and will construct a normal value under subsection 269TAC(6) instead.

#### Other issues

The GOR submitted that only explosive grade ammonium nitrate should be considered as like goods. As outlined in Chapter 3, the Commissioner views all forms of ammonium nitrate meeting the definition as like goods.

The GOR stated the Commission failed to prove the causal link between dumped Russian imports and injury to Australia, which it states currently experiences overcapacity. This is addressed in Chapters 8 and 9.

#### Meeting with GOR on 1 April 2016

On 1 April 2016 the GOR and the Commission met by teleconference. The objections raised were primarily those outlined in the response to the SEF.

The GOR raised the WTO decision on anti-dumping measures imposed by the EU on biofuels from Argentina, made on 29 March 2016.<sup>59</sup>

Response

The Commissioner has noted this submission; however the submission was mentioned on 1 April 2016 and received by the Commission on 3 April 2016. Due to the report being due to the Assistant Minister on 4 April 2016, the Commissioner is of the opinion that having regard to the submission would prevent the timely preparation of the report. As such, the Commissioner has had no regard to this submission under subsection 269ZHF(4).

**10.2 Nitrochem**

Australian capacity

Nitrochem made a number of comments on the Australian overcapacity. These were not substantiated with evidence as to either the current or future market size. On this basis, the Commissioner has not altered his findings relating to the size of the Australian industry or market.

Causal link between Russian exports and injury

Nitrochem noted that the current profitability of Orica Australia exceeds that of the other Orica businesses, and claimed that the margin has increased over the inquiry period. Nitrochem also stated that injury should not be found as Russian imports during the inquiry period account for minimal imports, and that it has been 16 years since injury was last proved. Finally, it alleged that Australian margins will not diminish under rising local gas prices as contracts with end users are constructed so that prices increase if gas prices increase.

Response

The Commissioner notes that Orica's overall profitability, and the Australian business' profitability relative to other arms, are not relevant when determining the likelihood of the recurrence of injury in respect of the goods. Orica has a diverse business including other service offerings and products which are not like goods and therefore are beyond the scope of the inquiry.

The Commissioner notes that, for measures to be continued, material injury during the period in which the measures are in place does not need to be demonstrated. Instead, in making a recommendation to the Parliamentary Secretary, the Commissioner must be satisfied that, if the measures were to expire, the injury would likely recur as per subsection 269ZHF(2). That is the test which has been applied in this report.

Public interest

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<sup>59</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds473\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm)

## PUBLIC RECORD

Nitrochem asserted that Australia's mining industry is being placed at risk by being denied access to lower cost inputs. The Commissioner notes that any public interest test is not considered when determining appropriate measures, and as such will not take this into account when determining the form or value of measures.

### Form of measures

Nitrochem additionally made a submission regarding the form of measures. This is addressed in Chapter 12.

## 10.3 Orica and CSBP

In their submission, the Applicants agree with the approach taken by the Commissioner in a number of areas of the SEF. These have been omitted from this response to the submission.

### Substitute gas price

In the SEF, the benchmark gas price used for constructing normal value was the price of Russian gas at the German border, exclusive of the cost of transport. The Applicants state that the price of transport from the wellhead to the factory should be added back to reflect the delivered price of raw inputs.

### Response

The Commissioner has adjusted the benchmark gas price to account for a delivered price. Further detail is contained in Chapter 7.

### Depreciation and maintenance

The Applicants expressed concern that the depreciation and maintenance costs for the ammonium nitrate plants are not "consistent with methodologies in market economy countries".

### Response

The Commissioner notes that, in the verification report for Azot, the depreciation and maintenance costs for the ammonium nitrate plant are isolated from all other costs within the business, and identified as part of the cost to manufacture the goods. These costs were reconciled upwards to the audited financial statements, and downwards to the unit cost to make and sell.

On this basis the Commissioner has no evidence to suggest that the financial records of Azot are not prepared on a basis compliant with the generally accepted accounting principles which prevail in Russia. Accordingly, the Commissioner will not adjust the normal value on this basis.

### Form of measures

The Applicants additionally made a submission regarding the form of measures. This is addressed in Chapter 12.

## 11 NON-INJURIOUS PRICE

### 11.1 Discussion

The NIP is defined in section 269TACA of the Act as “the minimum price necessary ... to prevent the injury, or a recurrence of the injury, or to remove the hindrance [to the industry]” caused by the dumped goods the subject of a notice under section 269TG. It is ordinarily the Australian sales price from a period where the industry is not affected by dumping.

The NIP has been calculated based on the verified weighted average sales price for the Applicants in the inquiry period, as the potentially injurious effects of dumping have been counteracted by the anti-dumping measures, with adjustments made to calculate the price at FOB. The adjustments reverse out the cost of ocean freight, insurance, customs entry fees, customs broker fees and quarantine. These adjustments have been based on the information obtained from DBS and verified. No adjustment has been made for importer selling and administration costs or profit, as the importers in the review period were predominantly end users, meaning no additional expense is incurred by end users as a result of importer margins.

The calculations are available in **Confidential Attachment 5 – NIP**.

### 11.2 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).<sup>60</sup> The level of dumping duty imposed by the Parliamentary Secretary cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Parliamentary Secretary must also have regard to the desirability of fixing a lesser amount of duty.

However, subsection 8(5BAA)(a) of the Dumping Duty Act provides that the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. One such circumstance is where the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii) of that Act.

The Commissioner notes that even where one of these circumstances exists, the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty.

### 11.3 Discussion

The normal value which has been constructed is based on one manufacturer of ammonium nitrate which did not export to Australia during the inquiry period.

The Commissioner notes that the normal value is significantly above the NIP.

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<sup>60</sup> Subsection 8(5B) of the Dumping Duty Act.

## 12 ANTI-DUMPING MEASURES

### 12.1 Finding

The Commissioner recommends that the Parliamentary Secretary secure the continuation of the anti-dumping measures applying to certain ammonium nitrate exported to Australia from the Russian Federation, either directly or via Estonia. The Commissioner recommends that, in continuing the anti-dumping measures, interim dumping duty be calculated based on the floor price duty method.

Consistent with the Federal Court decision discussed below, the Commissioner also recommends that the dumping duty notice be altered to specify common variable factors for all grades of ammonium nitrate. The Commissioner recommends this be based on the lesser of the NIP and the normal value.

### 12.2 Existing measures

The method of interim dumping duty currently applied to ammonium nitrate is the combination method.

Further, the dumping duty notice published in respect of certain ammonium nitrate exported from Russia specifies different variable factors for different sub-sets of the goods: high density ammonium nitrate and low density ammonium nitrate.

The Commissioner notes that the continuation inquiry was initiated on the expectation that it may also incorporate a review of the measures applying to ammonium nitrate exported to Australia from Russia. The Commissioner has therefore considered whether the variable factors relevant to the taking of the measures (being the normal value, the export price and the NIP) have changed.

### 12.3 Forms of duty available

The forms of duty available to the Parliamentary Secretary when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- floor price duty method;
- fixed duty method (\$X per tonne);
- *ad valorem* duty method (i.e. a percentage of the export price); or
- combination of *ad valorem* and variable duty method (combination method).<sup>61</sup>

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others.

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<sup>61</sup> Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.



## 12.4 Forms of duty

### 12.4.1 Background

In considering which form of duty to recommend to the Parliamentary Secretary, the Commissioner has had regard to the published *Guidelines on the Application of Forms of Dumping Duty November 2013* (the Guidelines)<sup>62</sup> and relevant factors in the ammonium nitrate market.

### 12.4.2 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Parliamentary Secretary exercises powers to ascertain an amount for the export price and the normal value.

### 12.4.3 Floor price duty method

The floor price duty method sets a ‘floor’ – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

This duty method does not use an ascertained export price as a form of ‘floor price’ as occurs with the combination and fixed duty methods.

### 12.4.4 *Ad valorem* duty method

The *ad valorem* duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect. It is duty applied as a proportion of the actual export price of the goods.

An *ad valorem* dumping duty is determined for the product as a whole, meaning that a single ascertained export price is required when determining the dumping margin.

### 12.4.5 Combination duty method

The combination duty comprises two elements: the “fixed” element and the “variable” duty element.

The fixed element is determined when the Parliamentary Secretary exercises powers to “ascertain” an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* on the ascertained export price.

The variable component stems from a feature of this form of duty whereby, having ascertained the export price for the purposes of imposing the dumping duty, if the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount (i.e. the difference between the

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<sup>62</sup> Available at

<http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsofdumpingduty-November2013.pdf>

ascertained export price and the actual export price). It is called a ‘variable’ element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

## **12.5 Federal Court finding**

As outlined above, different variable factors currently apply to high density ammonium nitrate and low density ammonium nitrate. Since those measures were imposed, the Federal Court has issued a decision indicating that dumping duty notices are not able to specify different variable factors for different sub-sets of the goods.<sup>63</sup> Consistent with the Federal Court finding, the Commissioner is proposing to recommend the dumping duty notice be altered to specify common variable factors for all grades of ammonium nitrate.

## **12.6 Submissions received regarding measures**

Two submissions were received regarding the form of measures in response to the SEF. These can be found on the EPR at [www.adcommission.gov.au](http://www.adcommission.gov.au). The submissions have been summarised below, and the Commission’s response provided.

### Nitrochem

Nitrochem submitted that it supports the recommendation to set a floor price at the lower of the constructed normal value and the NIP.

### The Applicants

The Applicants disputed the measures proposed by the Commissioner in the SEF. While they are in agreement that both an *ad valorem* and fixed duty method would not be effective in preventing the injury from recurring, it was claimed in the submission that:

*“The proposed methodology represents a significant concession for Russian Federation exports by not applying measures on a combination basis ... and parties only have to apply for ‘duty assessment’ reviews if they price below the floor price”*

The Applicants hold the view that either the measures imposed should be combination measures, with the floor price at the NIP and the *ad valorem* at the derived dumping rate of 23.5%, or a floor price at the constructed normal value.<sup>64</sup>

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<sup>63</sup> Federal Court of Australia, *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870 at para. 154, <http://www.adcommission.gov.au/cases/Pages/Federal-Court-Cases.aspx>.

<sup>64</sup> Note that, due to a change in methodology for calculating gas transport prices and as a result of further validation of gas export and transport costs, the derived dumping margin is now 12.2% as discussed in Chapter 8.

## **12.7 Commissioner's recommendation on measures**

### **12.7.1 Appropriate form of measures**

Australian industry has submitted that "industry views the proposed floor price methodology as not dissimilar with the historic measures that have operated on a fixed and variable basis (i.e. combination method) except that no 'fixed' component is applied representing the margin of dumping during the investigation review period". As outlined in the SEF, the fixed component of the current ammonium nitrate measures has been determined to be \$0 per kilogram, therefore, this component of the measures has not been collecting duty. As the fixed component of the combination method currently collects no duty and the ascertained export price is set at the NIP, the measures are currently operating in the same manner as a floor price. Therefore, there will be no practical change in the way duty is taken.

The aim of the anti-dumping system is to remedy material injury being caused to Australian industry through dumping and subsidisation. Given the effectiveness of the current form of measures in preventing injury to the Australian industry (discussed further below), the Commission is of the view that this method should remain in place. In a review it is not necessary that a dumping margin always be established, and in this inquiry it has not been possible to establish a dumping margin that is reflective of the Russian ammonium nitrate industry to the Commissioner's satisfaction.

Normal value has been constructed in line with the relevant legislation. However, with Azot as the only cooperating producer and not an exporter during the inquiry period, the normal value is unlikely to be representative of Russian exporters in general.

Using the combination method with the fixed component set at the dumping margin would mean that a duty is collected above the level that is required to prevent injury from occurring to the Australian industry.

### **12.7.2 Lesser duty rule**

The lesser duty rule and the circumstances in which the Parliamentary Secretary may exercise her discretion to not have regard to this rule are outlined in Chapter 11.

Measures on ammonium nitrate have been in place for 15 years with the NIP being the operative measure throughout. Over this time measures were set at an effective floor price, being a combination method with a \$0 fixed component.

Since 2001 when measures were put in place, the ammonium nitrate market in Australia has seen significant growth and the Australian industry has maintained a high share of the market. The industry has also experienced a high level of profitability. Therefore, it is clear that the measures in place have been effective in remedying the injury that was being caused to the Australian industry from dumped goods and preventing further injury from occurring. The submission from the Australian industry acknowledges that *'the measures in place have been effective in addressing material injury caused by dumping'*.

Given this, the Commissioner recommends the use of a floor price, using the NIP as the operative measure

## **12.8 Conclusion**

The Commissioner considers that:

- the normal value applicable to the single cooperating producer, Azot, has been established; however
- in the absence of cooperation from other exporters, their normal values have been established using subsection 269TAC(6);and
- the export price relevant to Azot and all other exporters has been determined using subsection 269TAB(3).

The Commissioner recommends the dumping duty notice be altered to specify common variable factors for all grades of ammonium nitrate.

The Commissioner recommends the method of working out interim dumping duty be altered from the combination method to the floor price method.

The Commissioner notes that the Parliamentary Secretary is not required to have regard to the lesser duty rule due to the operation of subsection 269TAC(2)(a)(ii). Nonetheless, for the reasons outlined above, the Commissioner recommends that the Parliamentary Secretary consider applying a lesser amount of duty to the goods and that the floor price of the goods be imposed at the NIP.

## 13 RECOMMENDATIONS

On the basis of the reasons contained in this report, and in accordance with subsection 269ZHF(2) of the Act, the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to certain ammonium nitrate exported from Russia, (either directly or via Estonia) 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.

As such, the Commissioner recommends that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures relating to certain ammonium nitrate exported to Australia from Russia from the expiry date of 24 May 2016.

### **The Commissioner recommends the Parliamentary Secretary be satisfied:**

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished and is not available, to enable the export price of ammonium nitrate exported to Australia from Russia to be determined under subsections 269TAB(1)(a), (b), or (c);
- in accordance with subsection 269TAC(2)(a)(ii), that the normal value of ammonium nitrate exported to Australia from Russia cannot be ascertained under subsection 269TAC(1) because the situation in the Russian market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of ammonium nitrate exported to Australia from Russia to be ascertained under subsection 269TAC(2)(c) for 'uncooperative' and 'all other' exporters;

### **The Commissioner recommends that the Parliamentary Secretary determine:**

- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price of ammonium nitrate for the 'cooperating' exporter, and the 'all other' and 'uncooperative' exporters are set out in **Confidential Appendix 3 – Export Price**;
- in accordance with subsection 269TAC(2)(c) that the normal value of ammonium nitrate exported from Russia for the cooperating exporter, is the sum of:
  - the cost of production or manufacture of the goods in the country of export as set out in **Confidential Appendix 2 – Normal Value**; and
  - on the assumption that ammonium nitrate, instead of being exported, had been sold for home consumption in the ordinary course of trade in Russia, the administrative, selling and general costs associated with the sale and the profit on that sale as set out in **Confidential Appendix 2 – Normal Value**;

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as adjusted, in accordance with subsection 269TAC(9), to ensure that the normal value so ascertained is properly comparable with the export price of those goods as set out in Confidential Attachment 2 – Normal Value to Final Report No. 312;

- in accordance with subsection 269TAC(6), having regard to all relevant information, that the normal value for the ‘uncooperative’ and ‘all other’ exporters of ammonium nitrate exported to Australia from Russia are as set out in **Confidential Appendix 2 – Normal Value**;

**The Commissioner recommends that the Parliamentary Secretary declare:**

- in accordance with subsections 269ZHG(1)(b) and (4)(a)(i) and ZHG(5) that the dumping duty notice continue in force after 24 May 2016;
- in accordance with subsection 269ZHG(4)(a)(iii) that after 24 May 2016 the notice has effect, in relation to exporters generally, as if different variable factors had been fixed, those factors being set out in **Confidential Attachment 6 – Measures**.

**14 APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	Market Analysis
<b>Confidential Attachment 2</b>	Normal Value
<b>Confidential Attachment 3</b>	Export Price
<b>Confidential Attachment 4</b>	Import Parity Pricing
<b>Confidential Attachment 5</b>	NIP
<b>Confidential Attachment 6</b>	Measures