



**Australian Government**  
**Anti-Dumping Review Panel**

Anti-Dumping Review Panel  
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By EMAIL

Dr Bradley Armstrong  
Commissioner of the Anti-Dumping Commission  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

Dear Commissioner,

**ADRP Review No 134 - Ammonium Nitrate exported from the Russian Federation**

The Anti-Dumping Review Panel (“Review Panel”) is currently conducting a review of the decision of the Minister for Industry, Science and Technology (“Minister”) made on 20 May 2021 under s.269ZHG(1) of the *Customs Act 1901* (“the Act”), relating to the continuation of anti-dumping measures in respect of ammonium nitrate exported from the Russian Federation (“Russia”).

The Review Panel accepted applications for review, made to the Review Panel under s.269ZZC of the Act, from the following applicants:

1. Orica Australia Pty Ltd (“Orica”);
2. Dyno Nobel Asia Pacific Pty Ltd (“Dyno Nobel”);
3. CSBP Limited (“CSBP”); and
4. Queensland Nitrates Pty Ltd (“Queensland Nitrates”).

Together, the four applicants are referred to as “the Applicants”.

As you are aware, I am conducting the review.

Pursuant to section 269ZZL of the Act, I require that the following findings in Report No 565 (“REP 565”) relating to the Applicants’ grounds of review, be reinvestigated:

FINDING 1: The finding that the Commissioner is not satisfied that the expiration of the anti-dumping measures in respect of exports of ammonium nitrate from Russia would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping.

There are two parts to this finding that should be reinvestigated:

**A. Methodology of Ascertainment of Normal Value**

1. The Commissioner is requested to reinvestigate the methodology of the ascertainment of normal value, and the resulting effect on the dumping margins of the Russian exporters. This is the subject of challenge in respect of Ground 1 of the Applicants’ respective applications for review.
2. For ease of reference, I set out below, my understanding of the various stages of the analysis of the Anti-Dumping Commission (“ADC”) that led to its finding on normal value:
  - a. The ADC found that a “particular market situation” existed in respect of the domestic market for ammonium nitrate in Russia during the inquiry period, pursuant to s.269TAC(2)(a)(ii) of the Act, with the reasoning and evidence set out in Appendix B to REP 565.<sup>1</sup>
  - b. Having found that a particular market situation existed, the ADC then considered, pursuant to s.269TAC(2)(a)(ii) of the Act, whether, because of the situation in the Russian market, sales of ammonium nitrate in that market were not suitable for determining a price under s.269TAC(1) of the Act.
  - c. In undertaking its assessment of whether sales were “suitable” for the purposes of s.269TAC(1) of the Act, the ADC considered the relative effect of the market situation on both the domestic sales and export sales, to determine whether domestic sales were not “suitable” for the purposes of s.269TAC(1) of the Act.<sup>2</sup>

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<sup>1</sup> In particular, the ADC considered that the Government of Russia (“GOR”) continued to exert significant influence over the Russian natural gas industry through its price regulation and creation of a mandated Gazprom export monopoly on piped natural gas. The ADC further noted that gas is the primary raw material used in the production of both ammonia and nitric acid, which are the key inputs into the production of ammonium nitrate. Consequently, the ADC was satisfied that there is a market situation in the Russian domestic market for ammonium nitrate.

<sup>2</sup> The ADC considered this approach to be consistent with Australia’s obligations under the World Trade Organization (“WTO”) Anti-Dumping Agreement (“ADA”) and the WTO Panel’s interpretation of the

- d. To assess the scale of the market situation's effect on Russia's domestic prices for ammonium nitrate, the ADC had regard to a competitive benchmark for natural gas. The ADC's assessment and determination of a competitive benchmark is contained in Appendix C to REP 565.
- e. The ADC identified a relevant external benchmark that, after making relevant adjustments, it considered reflected a competitive market prices for natural gas in Russia. The preferable gas benchmark identified was an external benchmark that reflected the Russian natural gas at the German border after adjustments for export and domestic costs.<sup>3</sup>
- f. The ADC made adjustments to the identified benchmark to ensure its relevance in the Russian domestic market, including:
- Adjustments to reflect a price at the Russian border by deducting relevant German charges and costs to arrive at the border price;
  - Adjustments to remove relevant export costs and export transport costs; and
  - Adjustments back to equivalent 'netback price' that is comparable to the price paid by the Russian exporters. This included a deduction for a 30 per cent 'Russian export tax' on natural gas ("the Gas Export Tax") to arrive at the gas price at the Russian border.
- g. The ADC then compared the competitive benchmark, after making the adjustments, against the actual gas costs incurred by the exporters to assess whether the exporters' prices are likely to have been distorted by the market situation and, if so, whether the market situation prevented a proper comparison under s.269TAC(1) of the Act.
- h. The ADC found that the cost of gas for both exporters was comparable to the competitive price benchmark during the inquiry period. Therefore, the ADC considered that the evidence before it did not demonstrate that the market situation was having a substantial effect on domestic prices. In turn, the ADC considered that it was not demonstrated that the market situation was having a different relative effect on domestic and export prices.<sup>4</sup>

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obligations set out in the WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R (“*Australia – Anti-Dumping Measures on A4 Copy Paper*”).

<sup>3</sup> The ADC identified a benchmark consisting of daily NetConnect Germany (NCG) gas prices at 1 month ahead prices, which included gas imports to Germany from Russia.

<sup>4</sup> See Section 6.5.2 of REP 565, page 44 (for JSC Novomoskovsky Azot (“NAK Azot”) and Section 6.6.3 of REP 565, page 46 (for JSC Nevinnomyssky Azot (“Nevinka”).

- i. Accordingly the ADC considered that a proper comparison under s.269TAC(1) of the Act was permitted and proceeded to calculate normal value for both exporters on this basis.
3. The particular focus of this reinvestigation relates to the deduction made by the ADC for the Gas Export Tax to the identified benchmark for natural gas, as part of its adjustments to, “ensure that the gas benchmark is relevant to what would be the competitive gas price in the Russian domestic market”. This was the subject of challenge during Continuation Inquiry 565, following SEF 565, and is now the subject of review by the Applicants in Ground 1 of their respective applications for review. In this regard the Applicants contend that the dumping margin has been wrongly determined and that the Minister should have found that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or recurrence of, dumping in Australia.
4. The ADC’s position with regard to the adjustment of the Gas Export Tax, was stated in REP 565 and parts of it repeated in REP 565, which I set out below:

*“... when using an out-of-country benchmark, the Commission considers whether adjustments are necessary to account for different conditions in the country of export to reflect what competitive cost would be. Such differences may include prices occurring at different times, differing physical characteristics, differing delivery costs or terms and differing taxes. In this case, the Commission has considered whether the competitive benchmark should be adjusted to deduct the 30 per cent export tax levied on gas exported to Germany.*

*In undertaking this consideration, the Commission has also had regard to whether this export tax forms part of the distortive impact caused by the GOR and which constitutes the particular market situation in Russia’s domestic natural gas market.*

*In the first instance, the Commission notes that the market situation finding outlined in Appendix B of this report and SEF 565 does not rely on, nor cite as contributing factor, the 30 per cent of export tax levied on natural gas exports. Further, on the basis that domestic prices are regulated for the largest domestic supplier, Gazprom, who also holds an export monopoly on piped natural gas, the Commission does not consider that the export tax distorts Gazprom’s domestic pricing in the Russian market. Given that the IGS sector will seek to supply at*

*prices at or below the regulated Gazprom domestic price and are prohibited from exporting piped natural gas, the Commission considers that the export tax does not have a distortive effect on the gas prices offered by the IGS sector.*

*Accordingly, the evidence before the Commission does not demonstrate that the export tax is part of the distortive impact caused by the GOR, which constitutes the market situation, and thus should be deducted from the competitive benchmark to reflect an in-country competitive cost for natural gas”.<sup>5</sup>*

5. I provide below my reasons for making the request under s.269ZZL of the Act, with regard to this finding:
  - a. Firstly, I question why in determining whether to deduct the Gas Export Tax, it was necessary to have regard to, *“whether this export tax forms part of the distortive impact caused by the GOR and which constitutes the particular market situation in Russia’s domestic natural gas market”*. The clear consideration, as stated by the ADC, when using an out-of-country benchmark, was whether adjustments are necessary to account for different conditions in the country of export to reflect what a competitive cost would be. The fact that the market situation finding outlined in Appendix B of REP 565 and SEF 565 did, *“not rely on, nor cite as contributing factor, the 30 per cent of export tax levied on natural gas exports”* does not appear to be relevant to this consideration as indicated in the passage from REP 565 quoted in paragraph 4 above. Neither does the fact that the ADC does not consider that, *“the export tax distorts Gazprom’s domestic pricing in the Russian market”*.<sup>6</sup> The object of using the benchmark, as stated by the ADC, is to assess the scale of the market situation’s effect on Russia’s domestic prices for ammonium nitrate as compared to its effect on export prices.
  - b. The ADC appropriately considered whether adjustments were necessary to account for different conditions in the country of export to reflect what a competitive cost would be (looking at differences such as prices occurring at different times, differing physical characteristics, differing delivery costs or

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<sup>5</sup> See Section C 4.1.3 of REP 565, page 100 - 101.

<sup>6</sup> This is actually contradicted by the ADC’s own finding in Appendix B: *“The resultant price of ammonium nitrate in Russia in the inquiry period was artificially lower than would have otherwise been and reflected the capped price and cost of gas in Russia that resulted from the programs and policies of the GOR.”* See the last paragraph of Section B 4 of Appendix B of REP 565, page 91

terms and differing taxes). It is important, however, to carefully examine the facts and circumstances surrounding each adjustment claimed, to determine if the adjustment is appropriate and justified in the particular circumstances. In this instance, I consider it to be particularly significant to examine the specific nature and circumstances of the imposition of the Gas Export Tax, to determine whether it is a usual type of tax that applies to exporters, both domestically and in other gas producing countries, and indeed if it is “tax” that is contemplated and appropriate as an adjustment, irrespective of how it is described or categorized by the exporters. It is incumbent upon an investigating authority to examine the particular facts and circumstances to determine if it would qualify as the type of deduction referred to by the ADC, “to account for different conditions in the country of export to reflect what competitive cost would be”. It is noted that in the EuroChem - Brattle Report (a report commissioned by the exporters), it is simply described as follows:

*“a 30% export tax (customs duty) on all gas exported from Russia .....applied to the price of gas once it has been transported to the relevant border”, and therefore to be deducted together with transportation costs to the Russian border to “arrive at a price for the Russian side of its border.”<sup>7</sup>*

- c. It is clear from the ADC’s analysis of the market situation in Russia, in relation to the export of Russian gas, that Gazprom is a government-majority-owned entity that holds a government created monopoly on gas exports. The ADC specifically states this monopoly is acknowledged in the EuroChem – Brattle Report.<sup>8</sup> In its analysis of the market situation and in finding that a market situation exists in Russia in respect of its domestic natural gas industry, the ADC stated:

*“Consistent with the findings in Inquiry 312, the Commission considers that the GOR continues to exert significant influence and direct control over the Russian natural gas industry through its price regulation and creation of a mandated Gazprom export monopoly on piped natural gas.” [emphasis added]<sup>9</sup>*

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<sup>7</sup> See paragraph 82 of the EuroChem - Brattle Report, page 30.

<sup>8</sup> Reference was made to page v of the EuroChem - Brattle Report.

<sup>9</sup>See Section B 3.6 of Appendix B of REP 565, page 86.

- d. The emphasized portion of the passage quoted indicates that the ADC considered that the export monopoly of Gazprom contributed to the market situation in respect of natural gas.
- e. It would appear to me that a relatively high 'export tax' (30 per cent) that is paid to government, from a government-owned entity that has a monopoly on exports in a market (natural gas), where it has been found that a market situation exists, warrants a thorough and comprehensive analysis as to whether the Gas Export Tax is a usual tax, and appropriate for an adjustment to the benchmark, to account for different conditions in the country of export (Russia) so as to reflect what a competitive cost would be in Russia. I consider that there is merit in the Applicants' submissions that:
- the "tax" applies only to sales by Gazprom, a majority government-owned monopoly exporter (and is thus, in effect, a mark-up by the seller rather than an external impost);
  - Gazprom's prices net of that "tax" are not the product of competitive market conditions and the appropriate benchmark is the price at which gas is sold into a competitive market; and
  - the Gas Export Tax should be considered a levy that corrects the artificially low Russian gas price to an equivalent competitive market gas price that compensates Russia for the export of its natural resource.

I consider these arguments worthy of further analysis in determining the appropriateness of the Export Tax Deduction.

6. As part of its reinvestigation, and after its reassessment of the appropriateness of the deduction of the Gas Export Tax, the ADC should then proceed to compare the reinvestigated competitive benchmark, against the actual gas costs incurred by the exporters to assess whether the exporters' domestic and export prices are likely to have been distorted by the market situation and, if so, whether the market situation prevents a proper comparison under s.269TAC(1) of the Act. This is the investigative step referred to in paragraph 2(g) above. With regard to this stage of the reinvestigation I would like to make the following comments:

- a. As stated in paragraph 2(h) above, the ADC found in REP 565 that the cost of gas for both exporters was comparable to the competitive price benchmark during the inquiry period. Therefore, the ADC considered that the evidence before it did not demonstrate that the market situation was having a substantial effect on domestic prices. In turn, the ADC considered that it did not demonstrate that the market situation was having a different relative effect on domestic and export prices.

It should be noted that the underlined portion in the paragraph above is contradicted by the ADC's own statement in Appendix B that states:

*"The resultant price of ammonium nitrate in Russia in the inquiry period was artificially lower than would have otherwise been and reflected the capped price and cost of gas in Russia that resulted from the programs and policies of the GOR".<sup>10</sup>*

- b. It should also be noted that the ADC in REP 565 considered that the approach it undertook in its assessment of whether sales are "suitable" for the purposes of s.269TAC(1) of the Act, outlined in paragraph 2(c) above, to be consistent with Australia's obligations under the ADA and the WTO Panel's interpretation of the obligations set out in the Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*. I consider this to be a sound approach and particularly refer the ADC to relevant passages in the Panel Report, addressing the requirement to examine whether sales in the exporting country's market do not "*permit a proper comparison*" because of "*the particular market situation*".<sup>11</sup>
- c. The ADC sets out in some detail in REP 565 the methodology it would adopt if it found that the exporters 'prices were likely to have been distorted by the market situation, to assess the relative effect of the particular market situation on domestic and export prices, in accordance with *Australia - Anti-Dumping Measures on A4 Copy Paper*.<sup>12</sup> However, the ADC ultimately made a very brief analysis (summarised in paragraph 2(h) above), based on the finding that the cost of gas for both exporters was comparable to the competitive price benchmark during the inquiry period, and that it was not

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<sup>10</sup> See the last paragraph of Section B 4 of Appendix B of REP 545, page 91.

<sup>11</sup> See *Australia – Anti-Dumping Measures on A4 Copy Paper*, paras 7.74 – 7.76; 7.80 – 7.81; 7.87; 7.89 -7.90.

<sup>12</sup> See REP 565, pages 41- 42.



demonstrated that the market situation was having a substantial effect on domestic prices or having a different relative effect on domestic and export prices. The ADC should therefore, as part of the reinvestigation, and after its reassessment of the deduction of the Gas Export Tax in its determination of the benchmark, ensure that it does a comprehensive examination of whether "a proper comparison" of the domestic and the export price is permitted, for the purpose of s.269TAC(1) of the Act. It should assess whether the domestic and export prices can be properly compared, focusing on how the particular market situation affects that comparison, in accordance with its stated methodology in REP 565 and as informed by the various findings in *Australia - Anti-Dumping Measures on A4 Copy Paper*, referred to in Footnote 11.

7. If in its reinvestigation and after a comprehensive examination of relevant factual circumstances, the ADC finds that the exporters' domestic sales do not permit a proper comparison with the export price for the purposes of s.269TAC(1) of the Act, the ADC should ascertain normal value under s.269TAC(2) of the Act and recalculate the dumping margins of the relevant exporters accordingly.

**B. The likelihood that dumping will recur**

8. In REP 565, in respect of the two cooperating exporters, the ADC found that neither exporter exported ammonium nitrate during the inquiry period and, if there had been exports, those exports would not have been at dumped prices. Accordingly, the ADC was not satisfied that the evidence before it indicated that any future exports of Russian ammonium nitrate from these exporters would likely be at dumped prices. The ADC acknowledged that any future exports of ammonium nitrate from uncooperative exporters may be dumped but it was not satisfied that it would be "likely", in accordance with the threshold set out in s.269ZHF(2) of the Act.<sup>13</sup>
9. I provide below my reasons for making the request under s.269ZZL of the Act, with regard to this finding:
  - a. To the extent that the reinvestigation of the normal value methodology (discussed above) results in any change in the dumping margins of the exporter (including those of the uncooperative exporters), the finding that the Commissioner is not satisfied that the expiration of the anti-dumping

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<sup>13</sup> See Section 7.5.1 of REP 565, page 52.

measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping, should also be reinvestigated.

- b. It was noted in REP 565 that in Continuation Inquiry 312, the ADC was satisfied that, should the measures expire, it was likely that dumping would recur, and that this finding was primarily made on the basis that verified information of the cooperating exporter led to a positive dumping margin for that exporter. It was further noted that in Continuation Inquiry 565 both cooperative exporters had negative dumping margins.<sup>14</sup> This would appear to indicate the weight that the ADC places on positive dumping margins in reaching the required level of satisfaction that it was likely that dumping would continue or recur.
- c. Therefore, to the extent that the reinvestigation of the normal value methodology (discussed above) results in an increase in the dumping margins of the exporters, and bearing in mind the weight placed on positive dumping margins in relation to this finding, the ADC should also as part of its reinvestigation re-examine its finding on the likelihood of exports recurring should the measures be removed. In this regard, the ADC in REP 565 only found that it was satisfied that exports of ammonium nitrate are likely to continue or recur on a spot sale basis, which forms approximately 5 per cent of sales in the Australian market.<sup>15</sup>
- d. Besides focusing on the effect of higher anti-dumping duties (resulting from the reinvestigation of normal value) on its finding in regard to the likelihood of exports recurring if measures are removed, I request that the ADC also re-examine Russian production capacity and capacity utilisation in light of certain “further information” of Orica (that is not “relevant information” within the meaning of s.269ZZK(6) of the Act), but that the Review Panel has obtained pursuant to a conference held under s.269ZZHA(1) of the Act on 24 August 2021 (“the August Conference”). I have had “regard to” this “further information” in requesting this reinvestigation, since I consider that it “relates to the relevant information” (within the meaning of s.269ZZK(6) of the Act) and pursuant to s.269ZZHA(2)(a) of the Act. In this regard:

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<sup>14</sup> See Section 7.5.1 of REP 565, page 51.

<sup>15</sup> See Section 7.6.5 of REP 565, page 63.

- The “further information” of Orica that is “related to the relevant information”, referred to above, and concerns information of the launch of new ammonium nitrate capacity by Kemerovo on 31 May 2021 (“the Kemerovo expansion further information”), consists of -
    - the highlighted portion of Orica’s letter to the Review Panel of 13 July 2021, and
    - Non-Confidential Appendix 4 to that letter
 both of which are attached to this Reinvestigation Request letter, as Annexure A.<sup>16</sup>
  - The Review Panel considers the Kemerovo expansion further information to be directly “related to relevant information”, in particular, to the information relating to the Kemerovo expansion submitted by Orica during Continuation Inquiry 565, in its submission of 25 March 2021 in response to SEF 565.<sup>17</sup>
  - The Review Panel has not reached any conclusions based on “the Kemerovo expansion further information” obtained at the conference, as it is not “relevant information” for the purpose of s.269ZZHA(2)(b) of the Act.
  - The reasons for the Review Panel’s decision in this regard, as well as its reasons for its decisions regarding other pieces of “further information” of both Orica and Dyno Nobel, that were also obtained during the August Conference, as well as the Review Panel’s process and approach to exercising its discretion, will be detailed in the Review Panel’s report to the Minister under s.269ZZK(1) of the Act.
- e. In reconsidering the finding relating to Russian production capacity and capacity utilisation, the ADC should consider the Kemerovo expansion further information and its relevance to the correctness of the ADC’s related findings and conclusions. The ADC should also take into consideration the response comments of Glencore Coal Assets Australia Pty Ltd (“Glencore”) and the EuroChem Group AG, including NAK Azot and Nevinka, on the Kemerovo expansion further information, provided to the Review Panel during respective conferences held on 14 September 2021, under s.269ZZHA(1) of the Act.

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<sup>16</sup> Both these documents were part of Annexure B to the summary of the August Conference.

<sup>17</sup> See confidential version of Document #039 of EPR 565, 5<sup>th</sup> page (unnumbered).

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

10. This finding is the subject of the Applicants' Ground 3 in their respective applications for review.
11. After considering various factors, the ADC made a finding that it is not satisfied that the expiration of measures would be likely to lead to a continuation of recurrence of material injury that the anti-dumping measure is intended to prevent.
12. Notwithstanding the above finding, the ADC was satisfied that the expiration of the measures would likely result in minimal volumes of Russian ammonium nitrate being exported to Australia and that the estimated landed price of Russian ammonium nitrate may be lower than other participants in the market. The ADC also considered that the impact of the low priced imports would likely affect pricing of spot sales, which account for up to 5 per cent of the ammonium nitrate market in Australia. The ADC also accepted that low-priced imports would have some price effect on the contract examples provided by Orica. The ADC further found that due to the low volumes of goods likely to be exported, insufficient positive evidence before it, and the speculative nature regarding the degree of impact of the low priced-inputs, the ADC was not satisfied that it is likely that any injury to Australian industry would be material in degree, noting that the estimated Russian landed price calculation also contained many limitations and was not satisfied that it is likely any injury would be attributable to dumping.<sup>18</sup>
13. In its conclusion relating to this finding in REP 565, the ADC stated that it is not satisfied any injury suffered by the Australian industry would likely be due to dumping.<sup>19</sup>
14. In the ADC's discussion of its finding relating to likelihood of injury recurring, there are other references to the dumping finding, for example:
  - in the response to the Applicants' claims relating the landed Russian ammonium prices being the lowest of all countries during the inquiry period

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<sup>18</sup> Section 7.7.4 of REP 565, page 70.

<sup>19</sup> Section 7.8 of REP 565, page 70.

and equating this pricing with the Russian Government's influence on gas prices, the ADC in its s.269ZZJ submission refers to its finding that the Russian exporters' gas prices were consistent with the gas benchmark.<sup>20</sup> This is in fact a reference to the ADC's finding on normal value in REP 565, which is the subject of reinvestigation, as discussed above.

- In its discussion of the limited ability of Russian exporters to service large ongoing contracts, the ADC refers to the fact that it did not find that exports are likely to be dumped.<sup>21</sup>
- In its discussion on both spot sales and country hopping in its s.269ZZJ submission, the ADC makes reference to lack of excess capacity in Russia, rendering it unlikely to dramatically increase exports, and states that it was unclear how the claimed "surge" in sales would be at dumped prices.<sup>22</sup>

15. Therefore, since the negative dumping finding impacts this likelihood of injury finding, to the extent that the reinvestigation of the normal value methodology (discussed above) results in an increase in the dumping margins of the exporters, the finding that the Commissioner is not satisfied that the expiration of the anti-dumping measures would lead, or would likely lead, to a continuation of, or a recurrence of, injury, should be reinvestigated.

16. Also, in so far as Russian production capacity and capacity utilisation is relevant to the finding relating to the continuation of, or the recurrence of, injury, the ADC should also reconsider this issue, with reference to the Kemerovo expansion further information, referred to under Section B above.

If you have any issues in relation to the reinvestigation or if you consider that a conference under s.269ZZHA of the Act would assist in obtaining the further information the subject of the reinvestigation, please contact the Secretariat.

Please could you report the result of the reinvestigation within 110 days, that is, by **5 January 2022**.

If you require more time, including time to allow interested parties the opportunity to comment on an aspect of the reinvestigation, please contact the Secretariat.

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<sup>20</sup> See paragraph 87 of the ADC's s.269ZZJ submission, page 18.

<sup>21</sup> See paragraph 93 of the ADC's s.269ZZJ submission, page 19.

<sup>22</sup> See paragraph 104 of the ADC's s.269ZZJ submission, page 21.

Thank you for your assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Blumberg', with a stylized initial 'L'.

Leora Blumberg  
Panel Member  
Anti-Dumping Review Panel  
17 September 2021



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13 July 2021

Review Panel Member  
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Email: [ADRP@industry.gov.au](mailto:ADRP@industry.gov.au)Dear Panel Member, **FOR PUBLIC FILE****Applications for review of the Minister's Decision in relation to Ammonium Nitrate exported from the Russian Federation (ADN 2021/053) – Submission of Orica Australia Pty Ltd**

Thank you for your correspondence dated 7 July 2021. As requested, Orica sets out below, its written submissions responding to the matters highlighted in your correspondence.

Orica considers that this information is critically relevant to the conclusions made by the Commissioner of the Anti-Dumping Commission (ADC) (which Orica consider to be fundamentally flawed) and that anti-dumping measures against imports of ammonium nitrate from Russia should be permitted to expire on the grounds that imports from Russia were unlikely to occur and that any imported volumes from Russia would be confined to "spot" sales.

In its application for review of this decision, Orica sought three grounds for review which relate to:

- (a) Calculation of dumping margin;
- (b) Likelihood that dumping of Russian AN will recur; and
- (c) Likelihood that future exports of Russian AN cause, or threaten, a recurrence of material injury.

Following the Minister's Decision published on 23 May 2021, Orica has become aware of four key instances of market relevant information which it considers will support its contention that there exists a likelihood that dumping of Russian AN will recur. These instances go to Russian exporters' desire to export ammonium nitrate at dumped prices to the detriment of Australian industry and assist in confirming that the Commissioner's conclusions in this regard are wrong.

The further information Orica submits the ADRP should consider is set out below:

**1. Approaches made to Orica (and other members of the industry)**

Within a short time after the Minister's decision to allow measures against Russian imports to expire, advances were made to Orica which clearly indicate that Russian exporters have a current interest in exporting ammonium nitrate to Australia.

- (a) [*Commercially sensitive information – date and time of offer to supply Russian AN due to increased capacity to supply exports by Russian exporter – supporting information at Confidential Appendix 1 – internal file note of conversation between Orica Australia employee and Russian company export sales representative*].

\*The department has redacted additional information for publication purposes.

Public File

- (b) [Commercially sensitive information concerning the supply of Russian AN to an Australian customer following the expiry of the anti-dumping measures. Supporting information at Confidential Appendix 2 – file note of conversation between Orica Australia employee and customer seeking to source Russian AN].
- (c) [Commercially sensitive information concerning offer of Russian AN by exporter into Australian market – volume and timing. Refer Confidential Appendix 3 – quotation from shipping agent concerning supply of Russian AN].

This information ‘relates to’ all of the information provided to the investigation concerning the capacity of Russian exporters to export to Australia and their interest in doing so.

It is noted that [redacted] submissions during the investigation that all of Russia’s spare capacity of ammonium nitrate would be absorbed by the domestic market). [Commercially sensitive information [redacted].

Further, given the short time frame between the expiration of measures and imports being actively progressed into Australia, this also calls into question the ADC’s acceptance of the assertions made [redacted] that there was little spare capacity in Russia and that any spare capacity would be absorbed in the Russian domestic market. Clearly ammonium nitrate is readily available for export from Russia and at dumped prices based on the Commission’s own conclusions.

[Commercially sensitive information relating to sourcing of Russian AN post Minister’s decision]. It also highlights the flawed conclusions by the Commissioner in relation to the likelihood of future exports to Australia. Product is readily available to export and will occur, as competitors seek lower costs.

## 2. Evidence of Increased Capacity

Since the Minister’s decision, there has been confirmation of plans by Russian exporters to expand their ammonium nitrate facilities.

This further information clearly ‘relates to’ the information collected in the investigation concerning production capacity of AN in Russia. More broadly, it relates to all of the information concerning the ability of Russian exporters to supply the Australian market and their interest in doing so.

We set out the further evidence below:

### (a) Launch of new ammonium nitrate capacity by Kemerovo (+200ktepa)

On 31 May 2021 (seven days after the publication of the Minister’s Decision), SBU AZOT announced completion of its expanded nitric acid facility (Appendix 1) which produces an additional ammonium nitrate capacity of 200ktepa (the **Announcement**).

This expansion was foreshadowed to the ADC by Orica in its submissions during Investigation 565 (refer Orica Australia Commercial-in-Confidence submission of 25 March 2021 in response to SEF 565). The Announcement confirms the reality of the threat of this capacity coming to global markets, as SBU AZOT’s Kemerovo facility is a noted exporter to global markets from Eastern Russia, which also provides an economic advantage (and hence larger dumping margin) over other Russian exporters in the western part of the country.



**(b) Announcement by Shchekinoazot of new ammonium nitrate capacity (+340ktepa)**

On 4 June 2021, Business World Magazine reported that Shchekinoazot was in the process of completing the commissioning of 340ktepa ammonium nitrate capacity in a new facility in the Tula region of Russia (Expansion). Refer Non-Confidential Appendix 5. The company's website ([http://n-azot.ru/investment/current\\_projects?project\\_id=195&lang=EN](http://n-azot.ru/investment/current_projects?project_id=195&lang=EN)) states that the project will have one objective, namely :

*"Expanding the company's presence on the global and domestic markets, entering new sales markets, creation of an import-substituting product"*

Additional photographic material on the company's website indicates that the project is very well advanced in terms of construction.

This new capacity is in addition to:

- (a) the 400Ktepa capacity noted by the European Commission in its decision to continue measures in late 2020; and
- (b) the additional expansions noted to the ADC by Orica in submissions (refer Orica Australia Commercial-in-Confidence submission of 25 March 2021 in response to SEF 565) as part of Investigation 565.

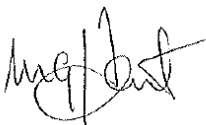
Orica has made the ADC aware of the ability and current practice of Russian producers swinging capacity across products to meet seasonal demand which has the effect of creating more spare capacity during certain periods of the year than on an average basis. This expansion adds significant increased capacity onto global markets and thus increases the likelihood of Russian exports to Australia, particularly when other global markets, including the European Union, have measures to protect their local industries against dumped AN from Russia. In order to justify the expansion, Shchekinoazot will need to sell its ammonium nitrate in competition with goods that are already at dumped, so that the likelihood of dumped Russian AN reaching Australia in significant volumes is greatly increased.

Orica submits that it is appropriate for the Anti-Dumping Review Panel to take these key developments into consideration in its merits review of the Minister's Decision to cease measures against Russia. Each is in substance an update on information provided to the investigation and can be considered without opening up new areas of controversy. Each is also plainly relevant to the correctness of key conclusions reached by the Commissioner. It would clearly be undesirable for those conclusions to be upheld while information to the contrary was known to be available, but excluded from consideration.

Orica understands that the statutory mechanism for the information to be taken into account is for it to be received at a conference under s 269ZZHA of the Act. Orica requests the convening of a conference and would be pleased to participate, or otherwise to assist as required.

If you have any questions, please do not hesitate to contact me on (03) 9665 7309.

Yours faithfully,



Malcolm Hart

Senior AN Market Manager - APA

## Non-Confidential Appendix 4: Announcement by SBU AZOT 31 May 2021

Source

Factiva news Service: Business World Magazine

# RUSSIA: KEMEROVO AZOT LAUNCHES NEW **NITRIC ACID PRODUCTION**

Business World Magazine

31 May 2021

98 words

English

BUWMAE

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Kemerovo Azot (a part of SDS Azot) has launched a new technological complex for the **production** of **nitric acid** with a capacity of 500 tons per day. Its construction took two years.

With the new complex, Kemerovo Azot intends to increase the **output** of **ammonium nitrate** (**nitric acid** is a raw material for its **production**).

The enterprise is one of the largest producers of nitrogen fertilizers in Russia. It produces ammonia, **ammonium nitrate** and carbamide-ammoniac compound. The company includes 50 main and auxiliary shops. (Fertilizer Daly/Business World Magazine)

Business World Agency

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