



Australian Government
Department of Industry, Science,
Energy and Resources

Anti-Dumping
Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Member Leora Blumberg
Anti-Dumping Review Panel
c/o- ADRP Secretariat
By e-mail: ADRP@industry.gov.au

Dear Member Blumberg

**ADRP Review No. 134: Ammonium nitrate exported from the
Russian Federation**

I write with regard to the notice under section 269ZZI of the *Customs Act 1901* (Cth) (the **Customs Act**) published on 19 July 2021. This notice advised of your intention to review the decision of the Minister for Industry, Science and Technology (the **Minister**) that (the **Reviewable Decision**):

- anti-dumping measures applying to ammonium nitrate exported to Australia from the Russian Federation would expire on 24 May 2021.

I have considered the applications submitted by CSBP Ltd, Dyno Nobel Asia Pacific Pty Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd for a review of the Reviewable Decision and make submissions, pursuant to section 269ZZJ(aa) of the Customs Act, at **Attachment A** (public version).

The Commission remains at your disposal to assist you in this matter and, would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bradley Armstrong'.

Dr Bradley Armstrong PSM
Commissioner, Anti-Dumping Commission
18 August 2020

COMMISSIONER, ANTI-DUMPING COMMISSION SUBMISSIONS

Introduction¹

1. The following entities made applications for merits review (described below) to the Anti-Dumping Review Panel (the **ADRP**):

CSBP Ltd (**CSBP**);
Dyno Nobel Asia Pacific Pty Limited (**Dyno Nobel**);
Orica Australia Pty Ltd (**Orica**); and
Queensland Nitrates Pty Ltd (**QNP**)

referred to collectively as the **Applicants**.²

2. Mr Dale Seymour, the then Commissioner of the Anti-Dumping Commission (the **previous Commissioner**) received one application on behalf of CSBP, Orica and QNP to carry out a continuation inquiry in respect of ammonium nitrate exported from the Russian Federation (**Russia**).³
3. I do not repeat the lengthy history of anti-dumping measures but refer to sub-chapter 2.2 of Report 565.⁴
4. Further, I submit the goods, the subject of anti-dumping measures and this appeal, are not in dispute. For ease of reference, refer to sub-chapter 3.3 of Report No. 565. The goods are described as:

'[a]mmonium nitrate, prilled, granular or in other solid form, with or without additives or coatings, in packages exceeding 10 kg' (the **goods**)

5. It is not necessary to go through the history of the continuation inquiry that leads to the publication of Report 565. Relevantly, the consequence of my inquiry was that the Minister for Industry, Science and Technology (the **Minister**) decided not to continue anti-dumping measures that applied to the goods. The Minister's decision was declared by way of public notice (the **Reviewable Decision**).⁵

¹ All statutory references in this submission are to the *Customs Act 1901* (Cth) ('the Act') unless otherwise indicated.

² ADRP Review 134 – *Anti-Dumping Review Panel*, Application – by each of the Applicants, published 19 July 2021.

³ Application – (Australian industry) CSBP Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd. EPR 1.

⁴ Inquiry into the Continuation of anti-dumping measures applying to ammonium nitrate exported from the Russian Federation either directly or via Estonia. EPR 50.

⁵ EPR 51.

6. My submissions address each of the grounds of review set out in the Applicants' submissions. I also rely upon my findings in Report 565 supported by its annexures and attachments.
7. I refer to the ADRP's Notice under section 269ZZI dated 19 July 2021, which outlines the Applicants' grounds of review as follows:
 - (a) The Minister wrongly determined the dumping margin in respect of the goods and should have found that the expiration of the anti-dumping measures would have lead or would be likely to have lead to a continuation or recurrence of dumping in Australia;
 - (b) The Minister erred in failing to find that it was highly probable that exports of the goods from the Russian Federation would be dumped at significant margins; and
 - (c) The Minister should have been satisfied that the Australian Industry would incur or would be likely to incur a recurrence of material injury in the absence of the measures.
8. Commission staff are available to attend any conferences the ADRP wishes to hold under section 269ZZRA to answer any questions about these submissions and continuation inquiry 565 more broadly.

GROUND OF REVIEW

Ground 1 The Minister wrongly determined the dumping margin in respect of the goods and should have found that the expiration of the anti-dumping measures would have lead or would be likely to have lead to a continuation or recurrence of dumping in Australia

9. The Applicants appear to collectively take issue with:
 - (a) The weight given to specific documents such as 'The Cost of Russian Gas, A Benchmark Study on Russian Industrial Gas Prices' prepared by the Brattle Group and provided by EuroChem Group (**EuroChem – Brattle Report**) – I respond to this under the heading titled 'Sources of information'.⁶
 - (b) Information relied upon when determining the export price – I make submissions under the heading titled 'Export price' about the same.⁷

⁶ EPR 10, The Cost of Russian Gas – A Benchmark Study on Russian Industrial Gas Prices Prepared for EuroChem and Prepared by Dr Serena Hesmondhalgh, Denisa Mackova and Felix Schmidt, The Brattle Group dated 2 November 2020. This issue is raised, by way of example, on page 3, non-confidential attachment 2 in Orica's application to the ADRP.

⁷ In each of the Applicants' applications to the ADRP, they allege, on page 5, non-confidential attachment 2 'The export price information relied upon by the Commission is therefore "unverified", as it ignores export prices for all other Russian exporters and is uncharacteristic of the ADC's usual requirements for export price

- (c) The methodology adopted in arriving at the normal value – I make submissions under the heading titled ‘Normal value’ about the same.⁸

Sources of information

10. I do not accept undue weight was placed on the EuroChem – Brattle Report during the course of the continuation inquiry.
11. The only reliance the Commission placed on the EuroChem – Brattle Report was in relation to the netback price methodology for making relevant benchmark adjustments and the particular market situation assessment.⁹ The Commission’s basis for relying upon this methodology is set out in Report 565, Section C 4.3, page 102-103 and Report 565 C 4.2 pages 101–102.¹⁰
12. Report 565 sets out the contexts and origins of the EuroChem – Brattle Report:¹¹

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

information from the Russian port to a third country and includes an inland freight component, the price of which has not been disclosed’.

⁸ In each of the Applicants’ applications to the ADRP, they allege, on page 6, non-confidential attachment 2 that disparities ‘...emerged between the Commission’s findings in Report 312 and Report 565 reflect the adjustments made to the Russian gas price at the German border in the course of ascertaining a benchmark price’.

⁹ Report 565, section C 4, page 96, I concluded the EuroChem – Brattle Report included a netback comparison of the Russian exporter’s prices and the German hub price. No submissions were received from interested parties contesting the methodology applied in this report to establish a netback price prior to the publication of SEF 565. Refer also to Report 565, Appendix B, Section B-3, at pages 83-89. Broadly, the Commission did not accept many of the conclusions and assertions in the EuroChem – Brattle Report concerning prices in the Russian domestic market being set in accordance with market principles.

¹⁰ Report 565, Section C 4.3, page 102 provides: ‘The Commission observed that while NAK Azot sourced its gas from the Urengoy field in the Yamal region, Nevinka’s location meant that it could not source gas from the larger gas fields in the Yamal region that supply gas to Germany, but instead relies on the gas from the fields of Astrakhan. The gas from Astrakhan field is able to be exported to Europe economically only through the Ukraine route. The Commission accepted EuroChem – Brattle Report’s approach of only calculating one netback price for Nevinka based on the Ukraine route’.

¹¹ Report 565, footnote 208, page 83.

13. While relying on the EuroChem – Brattle Report in some respects when determining the dumping margin, the Commission still validated that report's information and data against primary sources.¹² Commission staff independently obtained the gas price series from Bloomberg (Report 565, Section C 3.5, page 97).
14. In fact, I departed from the EuroChem – Brattle Report, as necessary. The Commission:
- (a) used NetConnect Germany's (**NCG**) gas prices at 1-month ahead prices, but the EuroChem – Brattle Report used '1-day forward' and '1-month forward' NCG prices and Dutch TTF hub prices;¹³
 - (b) assessed the preferable benchmark to use and further considered the suitability of using German Gaspool prices.¹⁴
 - (c) did not use Gaspool prices because based on data available to the Commission, a larger volume of gas is traded on the NCG hub as opposed to the Gaspool hub (Report 565, Section C 3.4, page 95). The Commission also considered it preferable to use the NCG hub given the higher trading volumes (Report 565, Section C 3.4, page 96);
 - (d) relied on the cheapest relevant route for the transmission of gas from the Russian gas wellhead to the NCG gas hub for NAK Azot (as opposed to the EuroChem – Brattle Report that used multiple routes);¹⁵
 - (e) did not adopt the European transmission charges included in the EuroChem – Brattle Report and instead independently calculated the monthly gas transmission charges for each month of the 12 months of the inquiry period based on the tariff published by the Agency for Cooperation of Energy Regulators (European Union regulatory body for utility transmission);¹⁶
 - (f) independently determined the German hub neutrality charges based on information obtained from the NCG website, given that the Commission

¹² Refer to Report 565, Section C 4.2, pages 101–102. The discussion about validating information is also canvassed in sections C 4.3 to C 4.6 between pages 102-104.

¹³ Refer to Report 565, Appendix C. In particular, Report 565, page 95, sets out reasons why the NCG '1-Month' gas price was preferred against other indices. The EuroChem Brattle report also used other European and international gas prices in separate analysis in the report. The Dutch TTF hub prices were included in further EuroChem Brattle report information provided to the Commission. See '20210202 Additional Brattle Analysis Eurochem.pdf'.

¹⁴ Report 565, Section C 3.4, page 96. The month ahead Gaspool and NCG pricing was found by Commission staff to be consistent with the IndexMundi data provided by the Applicants, which is reflective of European gas prices.

¹⁵ The wellhead price is effectively an ex works price at the gate of the producer. Refer to Report 565, Section C 4.3, page 101.

¹⁶ Refer to Report 565, Section C 4.3, pages 102–103.

was unable to verify the EuroChem – Brattle Report’s use of this rate back to source evidence for the whole period of the inquiry;¹⁷ and

(g) was unable to verify a number of factors, assumptions and data the EuroChem – Brattle Report relied on to arrive at the transmission costs through Poland and Belarus on the Yamal route used for NAK Azot. The Commission instead chose to follow the transmission cost estimated for this part of the route in a report prepared by the Oxford Institute of Energy Studies (OIES).¹⁸

15. Further, the applicants assert that my assessment of the benchmark gas price was hindered by the absence of cooperation from the Government of Russia when determining the normal values of Russian ammonium nitrate.¹⁹ I address normal values more fully below.

16. While the Government of Russia did not respond to the questionnaires, it did make submissions in relation to the continuation inquiry,²⁰ on which the Commission relied.

17. I set out below, under ‘Export price’ why I relied upon information given by exporters JSC Nevinnomyssky Azot (**Nevinka**) and JSC Novomoskovsky Azot (**NAK Azot**).

Export price

18. I do not accept the criticisms of my approach to setting the export price. This is especially as the Act is silent as to which information I must use when setting an export price under section 269TAB(3) and which method for verifying the information I must have regard to when deciding what recommendation to put to the Minister.

19. The export price methodology applied in REP 565 is the same methodology used in SEF 565. I note that the Applicants raised no concerns in response to SEF 565 about the methodology the Commission used to establish export price. That methodology is set out in detail below.

20. Commission staff gave weight to information given by NAK Azot and Nevinka during the course of the continuation inquiry. Both participated in the verification of their exporter questionnaire responses. In the case of NAK

¹⁷ Refer to Report 565, Section C 4.3, page 102.

¹⁸ Refer to Report 565, Section C 4.3, page 103.

¹⁹ In Dyno Nobel’s application to the ADRP, they allege, by way of example, on page 3, non-confidential attachment 2 that the Government of Russia was unwilling to ‘... respond to the required Government questionnaires to establish the existence of a particular market situation [and that hindered] the Commission’s assessment of the benchmark gas price to be considered in the determination of Russian [ammonium nitrate] normal values’.

²⁰ Government of the Federation of Russia – submissions in response to the initiation of the continuation inquiry, 29 September 2020. EPR 3. Government of the Federation of Russia – submissions in response to the SEF, 25 March 2021. EPR 35. Government of the Federation of Russia - Position of MED of Russia for the meeting for interested parties on February 3, 2021, 5 February 2021. EPR 18.

Azot, it had exported to Australia in the period prior to the inquiry period and the Commission considered those exports.²¹

21. Commission staff examined the summaries of third country exports given by NAK Azot and Nevinka. These were not transactional sales listings. They were a summary of exports by country, trader, aggregate volume, aggregate value, product and sales terms. Individual sales were not listed in these spreadsheets.
22. Based on the information available to the Commission, it was not able to positively ascertain that the underlying sales were arms-length transactions. However, for the following reasons, I do not consider this to have been problematic. The Commission filtered the Russian export data for sales of the Russian tariff code relevant to ammonium nitrate and those countries that NAK Azot exported to during the inquiry period. Whilst NAK Azot and Nevinka provided the Commission with summaries of its export sales to third countries, these were sales to related traders.²²
23. The countries listed in these summaries of third country exports were used to filter data from TradeData International Pty Ltd (**TDI**) to countries relevant to each exporter. These countries were identified by Commission staff as countries NAK Azot and Nevinka exported to (via related traders) during the inquiry period. Commission staff examined the data reported by NAK Azot and Nevinka in their third country listings by matching this data to a sales report extracted through the data warehouse from their accounting records.
24. NAK Azot and Nevinka both exported goods via related trader entities.²³
25. It is now relevant to address the argument of the Applicants that the Commission failed to verify information by primary sources. The Applicants suggest that the 'requirement' of verification by primary sources of information is not displaced by a reliance on TDI's confirmation of the 'list of export sales'.
26. In investigating whether anti-dumping measures should be continued, the Commission carried out a process of verification. That verification included corroborating information and documents received from Australian industry participants during the course of the inquiry.
27. As stated above, I submit the Act does not mandate a particular method for verifying the information that I must have regard to when deciding what recommendation to put to the Minister.
28. The Commission has developed a number of methods for verifying information. In this inquiry, Commission staff compared data from TDI to

²¹ Report 565, page 39. The Commission did not receive exporter questionnaire responses from exporters who exported to Australia during the inquiry period.

²² Refer to Report 565, Section 6.5.2, page 44 and 6.6.2, page 46.

²³ In the case of NAK Azot, refer to sub-chapter 6.5.2, page 44, Anti-Dumping Commission Report No. 565. Refer also to sub-chapters 1.2.1, NAK Azot Verification Report. EPR 34.

another source of Russian ammonium nitrate export data, the *Russian Ammonium Nitrate (AN) Outlook 2020 Report* (the **Outlook Report**).

29. The Commission considered that the use of this TDI data is preferable. The TDI data reflects pricing from a range of exporters, including unrelated party transactions.
30. The TDI data was also relied on by Australian industry in support of their application for the continuation inquiry.²⁴
31. TDI is and was, to the best of my knowledge, a third party disinterested in the continuation inquiry. There was no evidence before me that the TDI data was biased or otherwise manipulated.
32. Commission staff established the reliability of this information (in the absence of export sales information from the 2-Russian exporters) by comparing it with the Outlook Report, which was sourced from the United Nations' Trade Statistics. That report corroborated the TDI data.
33. In determining the export prices for NAK Azot and Nevinka, the information relied upon identifies actual export prices. I rely on submissions above that TDI data is preferable because it reflects pricing from a range of exporters, including unrelated party transactions.
34. The Applicants questioned the Commission's reliance on the *Ammonium Nitrate (AN) – Russia Market Outlook 2021 Report by Merchant Research & Consulting Ltd* (**Merchant Report**).²⁵
35. The Merchant Report contains Russian export information that was considered during verification processes. Merchant Report data was ultimately obtained from the United Nations' Trade Statistics. Commission staff regularly benchmarks or compares data from independent sources to assess the reliability of data (for example, exporter benchmark reports).
36. Orica raised concerns about the reliability of the Merchant Report after SEF 565 was published. This reliability concern did not relate to the Merchant Report used by the Commission, but another Merchant Ammonium Nitrate report. The issue of reliability was addressed in Report 565 at pages 55–56.
37. Throughout verification processes followed by Commission staff, the export volumes and values in the TDI data matched the data in the Merchant Report, which (as I indicated above) was sourced from United Nations' Trade Statistics.²⁶

²⁴ Application – (Australian industry) CSBP Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd. EPR 1, refer to page 7 (including table 3) and Confidential Attachment 8 of the Australian industry application.

²⁵ Anti-Dumping Commission Report No. 565, Confidential Attachment 8 (Report – Merchant Research & Consulting Ltd – Ammonium Nitrate (AN) – Russia Market Outlook 2021); SEF 565, Confidential Attachment 8.

²⁶ Merchant Report, Table 14, pages 34–35.

38. The Commission conducted additional analysis of the United Nations' Trade Statistics for the purposes of this submission. Commission staff examined the methodology and framework used by the United Nations and considered that the practices, methods, and quality assurance framework are founded on established statistical principles. The Commission notes that the Russian Federation contributes data to these trade statistics.²⁷
39. The Commission considers that comparing the export prices determined with reference to the TDI data, to import prices recorded in the Customs Research Environment (**CRE**), would have been of limited utility, as it would have involved comparing data recorded at different times. The TDI data is monthly values, whereas the CRE data is transactional values which further complicates any attempt to compare or reconcile with any degree of accuracy. The Commission did not consider that a comparison between these 2 sets of data would reveal discrepancies with any accuracy given the temporal differences in the dates that the data recorded.
40. During the course of verification, the Commission obtained information on NAK Azot's inland freight costs in relation to its export port (St Petersburg) and its port costs relevant to establishing Free on Board costs for export sales. This information was used to make an upwards adjustments to the normal value for NAK Azot.²⁸
41. Commission staff first used the verified Free on Board costs from NAK Azot and Nevinka to adjust the normal value for export transport and export handling costs on the assumption that Nevinka exported from the same port as NAK Azot. After SEF 565 was published, Nevinka submitted that it exported from a closer port.
42. Nevinka provided evidence of exports from this port and evidence of its export inland transport and export handling costs from this port. The Commission reviewed and accepted the evidence provided. Consequently, the upwards adjustment for export transport and handling costs was changed to reflect that Nevinka exported from the closer port.²⁹
43. The export prices used by the Commission were based on monthly Free on Board prices provided in the TDI data.³⁰ Upwards adjustments were made to the normal values to account for export inland transport and other FOB export costs reflected in the Free on Board export prices.³¹ I therefore do not agree

²⁷ "International Merchandise Trade Statistics" Compilers Manual, Rev. 1, page v under "Acknowledgements" where it states "*Customs Union Commission (Belarus, Kazakhstan and Russian Federation)*" as members of the Expert Group for trade stats and collaborators of their stats. See: [UN Trade Stats Compilers Manual Rev 1](https://unstats.un.org/unsd/trade/publications/seriesf_87Rev1_e_cover.pdf). Also: UN Manuals: https://unstats.un.org/unsd/trade/publications/seriesf_87Rev1_e_cover.pdf and <https://unstats.un.org/unsd/trade/imts/methodology.asp#concepts>

²⁸ SEF 565, Section 6.5.3, page 40 and Report 565, sub-chapter 6.5.4, page 45.

²⁹ SEF 565, Section 6.6.3, page 42 and Report 565, sub-chapter 6.4.4 and 6.6.5, pages 46–47.

³⁰ Report 565, pages 44–45.

³¹ Report 565, pages 45–46.

that the export prices are overstated when compared to the adjusted normal value.

44. Finally, where the Applicants say '*the export prices for Russian AN exported to Australia are typically at the ex-factory level for exporters of subject goods*', I say that is inconsistent with the evidence before the Commission.

[confidential] purchased from [confidential] via traders before the period of inquiry. For those sales where [confidential] provided source documents, these source documents indicate that the sales were Free on Board and not ex works. [confidential] These [REDACTED] were provided to Commission staff by [confidential] during the inquiry.

45. The evidence of ex works export pricing before the Commission was limited. The third country export sales summaries specified that no ex work export sales were made by Nevinka, and ex work sales reflected less than [confidential] % of NAK Azot's exports:

NAK Azot
[confidential]

Nevinka
[confidential]

46. It is for these reasons that I submit the export price I determined was the correct and preferable export price based on the information I had in the circumstances.

Normal value

47. The Applicants claim that there are disparities between findings in Report 312 and Report 565 that reflect the adjustments made to the Russian gas price at the German border in the course of ascertaining a benchmark price, and that the appropriate methodology for a benchmark gas price for Russian gas is that which is reflected in Report 312. I do not accept there are disparities between findings in those two reports, although there was a difference in the information available to the Commission.

48. Report 565 at Figure 14, page 100 shows the Commission had observed a significant drop in the benchmark price between the inquiry periods in Inquiry 312 and Inquiry 565. The Commission considered that this reduction in the benchmark price should be reflected in the findings made in Report 565, (refer to pages 99–100).

49. In Report 312, the German border price was established using pricing data from the International Monetary Fund (IMF) database. The IMF ceased reporting this price series in 2017. Consequently, this price series was not available to the Commission to use in continuation inquiry 565 (refer to SEF 565 at page 83 and Report 565 at page 95).

50. In Report 565, it is explained that export costs (2016 data) and transmission costs (2014/15 data) used in Report 312 were not contemporaneous and were, therefore, not suitable to be used in continuation inquiry 565 (Report 565 at page 99).

51. I now address matters concerning export tax.

52. I note the Applicants say an 'export tax' is equivalent to the "Australia's Rent Resource Tax". I am unsure as to the significance of this point. However, it is a new argument that was not raised as an issue during the continuation inquiry 565. There was no information before me about the Government of Russia's objectives in imposing the export tax. I further say the tax applies only to sales from Gazprom because other independent gas suppliers are prohibited from exporting piped natural gas.

53. In terms of whether or not the Government of Russia's 'export tax' should be removed from the benchmark gas price, I rely on Report 565, section C 4.1.3, page 100, for the Commission's position in relation to the 30% export tax adjustment:

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

54. The market situation finding does not rely on, nor cite as a contributing factor, the 30% export tax levied on natural gas exports.

55. Further, the Applicants said the Russian domestic gas transmissions charges are determined by the Government of Russia and hence not free from that government's influence. I accept that may be correct. However, the Commission did not use a transmission rate set by the Government of Russia or Gazprom. The Commission used the reported unit prime cost of Gazprom to transport the gas. This prime cost reflects the actual cost to transport the gas, not the transmission tariff charged by Gazprom (refer to Report 565 at pages 103–104).

56. I accept that NAK Azot and Nevinka gave the Commission export sales documentation, including limited pricing information on ex factory sales to third countries (refer to paragraph 45 of these submissions).³² I submit, however, that the Commission obtained documentation to support the

³² This was put each of the Applicants' applications to the ADRP, on page 4, non-confidential attachment 2.

assessment of the export inland transport and port costs to establish upwards adjustments to the normal value.

57. Prior to SEF 565, NAK Azot provided documentation to support the assessment of the export inland transport and port costs. This information was used to establish an upwards adjustment to the normal value for both NAK Azot and Nevinka.
58. The Applicants also complain that the Commission deviates from its prior methodology for determining the (benchmark gas) price. I say in response the methodologies are essentially the same. Any difference in input relates to the information available in either inquiry to make the adjustments. For example, the Commission set out its reasons in Report 565 (at pages 97–99) for not using information from continuation inquiry 312.
59. The Applicants further say the derived benchmark gas price does not reflect a competitive market price for gas at the German border, but an internal gas price, influenced by the Government of Russia that benefits Russian ammonium nitrate producers.
60. The Commission explained the adjustments it made to the benchmark price in SEF 565 (pages 84–88) and Report 565 (pages 96–104) to ensure that it reflected a competitive market price. I rely on the explanation in those reports.
61. Commission staff considered more contemporaneous data available for making these adjustments. The more contemporaneous data was adopted by the Commission.³³
62. I considered that once the adjustments specified were made to the German benchmark a competitive market price for natural gas in Russia was determined (Report 565, Section C 1, page 93).
63. I refer to the Applicants' assertion that:
- '...[t]he finding that gas purchases for NAK Axot and Nevinka were "comparable to the competitive price benchmark during the inquiry period" is erroneous as it is premised on the AN producers' source of gas being from a private (non-Gazprom) source, which ignores the reality that the bulk of the [ammonium nitrate] industry would be purchasing lower priced gas from Gazprom...'
64. I submit that is not correct. The Commission's finding was that private suppliers would seek to price below the Gazprom regulated price (Report 565, Section B 3.6.2, pages 89–90). The information before me was that NAK Azot and Nevinka sourced gas from a variety of sources during the inquiry period, including [REDACTED]. The Commission's assessment was based on NAK Azot

³³ Refer to SEF 565, page 85 and Report 565, pages 101–102.

and Nevinka purchases of gas from both [confidential] and other [confidential] sources.

Ground 2 The Minister erred in failing to find that it was highly probable that exports of the goods from the Russian Federation would be dumped at significant margins

65. The Commission considered several factors that may act as an incentive for exporters to dump the goods in the future.

Excess capacity

66. Applicants for this review cite excess capacity of ammonium nitrate in Russia as one of the factors that may incentivise dumping. This factor must be considered in the context of the specific goods the subject of the inquiry, and the specific market for the goods in Australia. It is likely that there is excess capacity in Russia to produce high density ammonium nitrate (**HDAN**). However, there is no or limited excess capacity to produce low density ammonium nitrate (**LDAN**). The ammonium nitrate produced in Australia is predominantly LDAN.

67. REP 565 considered demand for ammonium nitrate in the Australian market. There is a mixed forecast for thermal and metallurgical coal, which affects the Australian ammonium nitrate industry members based on the east coast of Australia.³⁴ However, the DISER Iron Ore report cited on pages 29–30 of REP 565 forecast an increased global demand for iron ore, including in Australia. As the iron ore mining industry is a major user of ammonium nitrate, a corresponding increase in demand for ammonium nitrate is predicted. This is relevant to the Western Australian segment of the ammonium nitrate market, and the producers based there. The Commission considers that the DISER research is broadly consistent with CSBP's internal forecasts on ammonium nitrate demand.³⁵

68. The particular characteristics of ammonium nitrate strengthen this finding. The quality of ammonium nitrate degrades with time. Its product performance may be compromised the longer it is transported and stored. Ammonium nitrate is also considered a dangerous good that is subject to various regulatory and licensing requirements.³⁶ These characteristics of ammonium nitrate make it difficult to stockpile and store. Accordingly, when demand for ammonium nitrate increases, it is likely that users will purchase it and reduce any excess capacity in ammonium nitrate production, rather than relying on stored or stockpiled goods.

69. The Applicants note the European Commission's (**EC**) Regulation 2020/2100, which identified spare capacity in Russian ammonium nitrate producers of 440kt. The Applicants suggest that this is inconsistent with the Commission's

³⁴ See pages 29–30 of REP 565.

³⁵ See information provided by CSBP in the Commission's verification work program.

³⁶ See page 27 of REP 565.

findings that the EuroChem group of companies' operating capacity was over 100%.³⁷ This is addressed in REP 565 at 7.6.1.1.

70. The EC's quantification of spare capacity was an estimate. It was derived from data of sampled exporters in the sunset review,³⁸ with some adjustments made to reported values.³⁹ The Commission conducted additional analysis to supplement this information and better understand the nature of the spare capacity in Russia.

71. The EC's report did not distinguish between HDAN and LDAN. The EC sunset review and report appeared to focus more heavily on HDAN. It described the goods as "[a]mmonium nitrate is a solid nitrogen fertiliser commonly used in agriculture, but is also used for industrial purposes such as the production of explosives..." whereas ammonium nitrate imported to Australia is used almost exclusively in explosives. Explosives used in Australia predominately require a lower density of ammonium nitrate,⁴⁰ whereas fertiliser can use higher density ammonium nitrate, which suggested that the EC report focussed on HDAN. The EC found 440kt of excess capacity, but it was not possible for the Commission to determine whether the excess capacity was HDAN or LDAN.

72. As noted in REP 565 on page 52, excess capacity to produce LDAN would have been more relevant to the Australian market given the majority of sales of ammonium nitrate in Australia are LDAN. The Commission's verification of data from the EuroChem companies and the [confidential] submitted by Orica found that LDAN production in Russia is close to capacity.⁴¹

Substitutability of grades of ammonium nitrate

73. The Applicants reiterate that HDAN and LDAN are like goods and are substitutable. This issue was addressed in REP 565 at 7.6.1, between pages 52–60. The Applicants state that HDAN is a "direct substitute" to ammonium nitrate solution used for emulsion manufacture in Australia, and that, in some cases, LDAN is used for emulsion manufacture.

74. The Applicants assert that emulsion manufacture accounts for [REDACTED]% of the Australian ammonium nitrate market. However, the Commission's assessment is that emulsion manufacture accounts for a lower proportion of the market, between [confidential]%, depending on the particular industry member.⁴²

³⁷ Refer to each of the Applicants' applications to the ADRP, page 10, non-confidential attachment 2. I note that a plant can operate beyond 100% capacity due to efficiency gains over time and/or the purchase of new equipment or machinery since the plant was first established.

³⁸ See paragraphs 46–47 of the EC's Regulation 2020/2100.

³⁹ See paragraphs 102–104 of the EC's Regulation 2020/2100.

⁴⁰ See page 18 of REP 565, 3.3.1.

⁴¹ See page 56 of REP 565.

⁴² The Commission's conclusions are based on the sales figures provided by the applicants for the continuation inquiry, which are contained in Confidential Attachment 7 to REP 565.

75. To the extent that there is excess capacity in HDAN in Russia, and on the assumption that Russian exporters of ammonium nitrate could overcome other barriers (discussed in the submissions in relation to ground 3) to participate in the Australian market, I consider that any future exports from Russia wouldn't materially injure Australian producers. Russian exporters may export HDAN to Australia, but due to the reliance on LDAN in this market, HDAN exports would only compete with Australian producers of the goods in the emulsion manufacture and ammonium nitrate solution market segments. That is a relatively low proportion of the overall Australian market for ammonium nitrate.

Ability to 'swing' capacity

76. The Applicants referred to [confidential] and its observation that Russian producers can 'swing' capacity between various ammonium nitrate products to meet market needs. [confidential] noted that the capacity to supply technical grade ammonium nitrate was operating at 60%. The Applicants claim that this suggests there is significant spare capacity (in excess of 2 million tonnes pa) in Russia, and that the Commission has not sufficiently considered this information.

77. The Commission did consider this information and it is addressed in REP 565 in 7.6.1 between pages 52–60, particularly on page 56. [confidential] used the language of 'technical grade' ammonium nitrate. Page 7 of the [confidential] did indicate spare capacity in Russia to produce 'technical grade' ammonium nitrate. However, it defined 'technical grade' to include HDAN. It also demonstrated that there is little to no spare capacity in LDAN.⁴³ The Commission interprets this to mean that any spare capacity in Russia is unlikely to be in LDAN production, and more likely to be in HDAN production.

78. The Applicants have overstated the ability to harness excess capacity in one grade and redirect it to another grade. [confidential] does not support this claim. [confidential] showed that some Russian ammonium nitrate facilities produce several forms of ammonium nitrate, but it did not state that they can switch between production of various grades.

Maintenance of distribution links

79. This issue was considered in REP 565 in section 7.6.4. The Commission's factual finding on this point is more nuanced than suggested by the Applicants.

Expansion of ammonium nitrate production facilities

⁴³ [confidential].

80. The Applicants claimed that Russian ammonium nitrate plants are set to be expanded, with an increase of up to 420kt to be commissioned in 2021.⁴⁴ The Commission found that the expansion of ammonium nitrate plants in Russia appears to be primary redevelopment of or improvements to existing plants. This was discussed in more depth in 7.6.1.1 of REP 565.⁴⁵

Dumping of ammonium nitrate into other markets

81. The Applicants note that Russian ammonium nitrate producers continue to dump the goods into third countries. The Applicants cite the Australian industry's application to continue measures, which highlights that Russian ammonium nitrate exports to other destinations were at significantly lower FOB export values than the export prices to Australia for the August 2019 shipment. The Applicants also cite the EC's 2020 finding that Russian ammonium nitrate producers were dumping those goods into third countries.

82. The Commission did not consider the EC's finding to address the likelihood that the goods would be dumped in Australia if measures expired. In that regard, the Commission considered information in relation to ammonium nitrate that is likely to be exported into the Australian market, which was specific to the inquiry period. The inquiry period for the EC's sunset review was different to the inquiry period for this continuation inquiry. This issue is further addressed in 7.5.1 of REP 565 at page 51.

83. I note the claims about the pricing of Russian exports of ammonium nitrate into other markets. A decision to export ammonium nitrate at low FOB prices should not necessarily be equated with dumping. To estimate whether exports would have been dumped during the inquiry period, had they occurred, the Commission considered what the variable factors would have been.

84. The normal value used by Australian industry in their calculations was based on a constructed normal value. This constructed normal value estimated costs obtained from various sources. However, the Commission had access to NAK Azot and Nevinka's actual domestic sales data and cost data, and was able to verify the accuracy of this information. The Commission considered this information in the exporters' records to be more reliable and accurate than the Australian industry's estimates.

85. The export prices and dumping margins determined by the Commission were preferred to export prices and dumping margins estimated in the application for the continuation inquiry.⁴⁶ This is because:

⁴⁴ Refer to each of the Applicants' applications to the ADRP, page 10, non-confidential attachment 2: *The EC's Regulation 2020/2100 confirmed that its investigations identified spare Russian capacity of 440kt.*

⁴⁵ Report 565, Section 7.6.1.1, page 53 states: '*The [Government of Russia] submitted the new plants are an effort to upgrade old production facilities and in response to an increase in demand for fertilisers in the domestic market. As evidence it pointed to the Acron Group's increase of mineral fertilisers sold in the domestic market which it states increased by 93 per cent from 2019 to 2020.*'

⁴⁶ These estimates appear in Table 4, page 8 of the application to continue measures, as well as Table 3 on page 7.

- the Applicants' export prices were calculated for a period that was not the same as the inquiry period. The Applicants' estimates were only based on a 10-month period from July 2019 to April 2020 and did not include the final 2-months of the inquiry period (from May to June 2020).
- the export price used by the Commission ([confidential] for NAK Azot and [confidential] for Nevinka) was materially lower than the 1-export price to Australia during the inquiry period ([confidential], based on export price information in TDI data). The Commission considers that it was unable to rely on the export price to Australia derived from TDI data. As the form of measures at the time of the export was a floor price, it is likely the price is affected by the measures and is not reflective of a price in the absence of anti-dumping measures. The existence of a floor price duty form of measures means there is an incentive to export at or above the floor price to avoid paying dumping duties.
- NAK Azot and Nevinka were considered in this inquiry due to a lack of participation from exporters who did export during the inquiry period.⁴⁷ The applicants for the continuation inquiry provided a list of countries that Russia exports ammonium nitrate to (extracted immediately below – confidential columns redacted). As NAK Azot and Nevinka did not export to all the countries specified in the Applicants' listed export destinations, this list of countries was not relevant to determining export prices for NAK Azot and Nevinka. Export prices from other Russian ammonium nitrate producers were not reflective of NAK Azot and Nevinka's likely export prices to Australia.

Countries selected by the Applicants
India
Australia
Indonesia
Malaysia
Philippines
Peru
Chile
Brazil
Colombia
Estonia
Latvia
Lithuania

Ground 3 The Minister should have been satisfied that the Australian Industry would incur or would be likely to incur a recurrence of material injury in the absence of the measures

⁴⁷ See page 39 of REP 565.

86. If this ground of the review is upheld, the original decision will only be in error if the expiration of the measures would also lead to a recurrence of dumping. A recurrence of material injury alone – without a finding that dumping will also continue or recur – is not a sufficient basis to continue measures.

87. The Applicants claim that the Commission “confirmed” that landed Russian ammonium nitrate prices into Australia were the lowest of all countries during the inquiry period (REP 565, 7.7.1.1). The Applicants equate this pricing with the Russian Government’s influence on gas prices. The Commission did not make this finding (REP 565, pages 64–66). Rather, the Commission found that the Russian exporters’ gas costs were consistent with the gas benchmark.

Exports to third countries

88. The Applicants claim that Russian ammonium nitrate producers are prepared to supply third countries with significant volumes of ammonium nitrate at dumped prices, and that they could redirect this product to Australia, charge higher prices than they currently do but still “significantly” undercut existing prices in Australia.

89. It is unclear what evidence the Applicants rely on to support this claim. It is not clear which grades of ammonium nitrate Russia is supplying to third countries. If it is fertiliser grade HDAN, it is very unlikely to be redirected to Australia which imports largely LDAN for use in explosives. Furthermore, I note that the selling price of ammonium nitrate from Russia into certain third countries was not dumped during the inquiry period.

Contract negotiations

90. The Applicants referred to findings in REP 312 (previous inquiry into continuation of anti-dumping measures on ammonium nitrate exported from Russia) and REP 473 (investigation into dumping of ammonium nitrate from China, Sweden and Thailand). The Applicants noted that these inquiries found that the presence, and threat of supply, of low-priced imports are used by competitors and customers to apply pricing pressure during contract negotiations, which is not limited to the spot sale market.

91. The Applicants further claim that:⁴⁸

It is unrealistic to think that a customer or competitor would not use the availability of the lowest priced imports to reduce supply costs. This behaviour would result in a depressive price impact on the market ... It is also logical that competitors would seek to manage their profit risk by engaging in longer term supply contracts.

⁴⁸ Refer to each of the Applicants’ applications to the ADRP, on page 14, non-confidential attachment 2

92. I refer the ADRP to confidential appendices 4 and 5 of REP 565. Import prices appear to have minimal impact on contract negotiations.⁴⁹ There was also no evidence that Russian producers had tried to supply Australian contracts.

93. Additionally, the Commission found that export volumes of the goods are likely to remain low, limiting the ability of Russian exporters to service large ongoing contracts. This is discussed in 7.7.1.2 and 7.7.2 of REP 565. The Commission found that uncooperative exporters' exports may be dumped (see 7.5.1 of REP 565). It did not find that exports are likely to be dumped (see 7.5.2 of REP 565).

94. In relation to price adjustments to achieve parity with import prices in long-term contracts, I refer to the materiality assessment on pages 68–69 of REP 565.

Spot sales

95. The Applicants dispute my finding that any imports from Russia would have a greater impact on spot sales (REP 565, page 67). The Applicants note that this finding did not take into account information from Russian producers such as Uralchem, Acron and SDS Azot that account for 56.6% of Russia's total ammonium nitrate production.

96. These exporters did not participate in the inquiry or make submissions for the Commission to consider. However, the Commission did consider alternative data sources in the absence of information from a broader range of exporters, such as the [confidential].

97. Import volumes from all countries accounted for less than 10% of the Australian market, and less than 5% of imports once imports by the Australian ammonium nitrate industry are removed.⁵⁰ My submissions in relation to 'country-hopping', below, are also relevant to this point. Imports have not been able to capture a significant portion of the Australian market, even though it is to be expected that importers will generally seek out cheaper sources. This does not lend support to the suggestion that exports from Russia will "surge" in the absence of measures, and will be at dumped prices.

Maintenance of distribution links

98. The Applicants claim that Russian ammonium nitrate producers have maintained distribution links to Australia. However, the Commission observed that the distribution channels are only used sporadically, and for varying amounts of the goods. This points to the distribution channels being used for spot sales rather than evidence of an ongoing, consistent trading relationship.

⁴⁹ See page 68 of REP 565.

⁵⁰ See page 30 of REP 565.

[confidential]

99. [confidential].⁵¹ [confidential].⁵²

100. It is unclear what reliance should be placed on these claims, noting that they contradict the Applicants' other claims that HDAN and LDAN are substitutable, and that excess capacity in HDAN would be dumped into Australia. In fact, this claim appears to support the findings that ammonium nitrate is unlikely to be exported at dumped prices into Australia, and unlikely to be exported in significant quantities, because the majority of ammonium nitrate used in Australia is LDAN and there is limited spare capacity of LDAN in Russia to export to Australia.

Country hopping

101. The Applicants note that they have observed 'country hopping' behaviours since anti-dumping measures were imposed on exports of ammonium nitrate from Sweden, Thailand and China. The Applicants claim that, when Investigation 473 into allegations of dumping of ammonium nitrate from Sweden, Thailand and China started, importers sought alternative sources of supply, including Russia. It is claimed that imports from Russia increased in 2018–19 as a consequence of Investigation 473. I refer to Confidential Attachment 6 to REP 565, which analyses certain import data. In Confidential Attachment 6, there appears to be no overall impact from Investigation 473 on imports from Russia, and no aggregate increase in imports from Russia. The overall import volumes remained static. Confidential Attachment 7 to REP 565 provides further commentary and analysis.

102. Following the imposition of anti-dumping measures on Sweden, Thailand and China, the Applicants claim that imports from those countries have declined and have been replaced by low-priced imports from other countries such as Vietnam, Chile and Lithuania. The Applicant suggest that if the anti-dumping measures applying to Russian exports of ammonium nitrate were allowed to expire, it is likely that exports from that country will "surge". The Commission considered this issue in 7.6.2 of REP 565.

103. However, while the identity of exporting countries has shifted, the Australian ammonium nitrate industry's market share has remained stable. The Australian industry is also a significant importer of the goods. This may be because, in part, the Australian market for ammonium nitrate exceeds the Australian industry's capacity.⁵³

104. This observation led the Commission to conclude that even if, in the event that the anti-dumping measures applying to Russian ammonium nitrate expired, importers ceased current import patterns and started importing from Russia, this is unlikely to be at the expense of the Australian industry's

⁵¹ Please see page 4 of Confidential Appendix 4 to REP 565.

⁵² See page 15 of [confidential] application for review to the ADRP.

⁵³ See 4.4.1 of REP 565.

volumes or market share. This is particularly so when considered with the lack of excess capacity in Russia, which renders it unlikely to dramatically increase exports of LDAN. In addition, it is unclear how this claimed “surge” in sales would be at dumped prices.

Procedural issues

105. The Applicants note that there were “approaches made to industry applicants since the publication of the Minister’s decision”. It is claimed that these approaches are also relevant to the likelihood of exports from Russia to Australia increasing as a result of the expiry of the measures. This additional information was not before the Commissioner during the inquiry.
106. On 2 August 2021, the ADRP published a notice to interested parties inviting submissions about: (a) the power of the Review Panel to hold a further conference to formally obtain the Applicants’ further information; (b) how any discretion to hold a further conference to obtain the Applicants’ further information should be exercised; and (c) whether the Review Panel can have regard to the Applicants’ further information, once formally obtained, in making its recommendation to the Minister under section 269ZZK.
107. I note that some interested parties have made submissions on these issues. I will not be making submissions on these issues.