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**Australian Government**  
**Australian Customs and  
Border Protection Service**

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R E P O R T

**TRADE MEASURES BRANCH**  
**STATEMENT OF ESSENTIAL FACTS NO.169**  
**REVIEW OF ANTI-DUMPING MEASURES**  
**AMMONIUM NITRATE**  
**EXPORTED FROM**  
**THE RUSSIAN FEDERATION**

24 February 2011

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## 1. SUMMARY AND RECOMMENDATIONS

This review is in response to a request from Orica Australia Pty Ltd (Orica) and CSBP Limited (CSBP) to review the measures as they affect exporters of ammonium nitrate<sup>1</sup> from the Russian Federation (Russia) to Australia.

This statement of essential facts sets out the facts on which the delegate of the Chief Executive Officer (the delegate) of Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendations to the Minister for Home Affairs (the Minister).

### 1.1 Proposed recommendation

The delegate proposes to recommend to the Minister that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been ascertained. The result would be that the ascertained export price, normal value and non-injurious price for all exporters would increase.

### 1.2 Preliminary findings and conclusions

Based on all available information Customs and Border Protection's preliminary findings are:

- revised export prices for Russian exporters have been determined having regard to all relevant information (section 4.5);
- a price control situation exists in Russia due to government control of natural gas prices. Revised normal values for Russian exporters have been determined having regard to all relevant information, based on UK surrogate domestic sales data including appropriate adjustments (section 4.5) ;
- the goods exported by exporters from Russia to Australia during the review period were dumped (dumping margin 44 percent) (section 4.5);
- it is appropriate to determine separate measures for high density and low density ammonium nitrate;
- the non-injurious price for high density ammonium nitrate can be established by using the export price of ammonium nitrate from Russia during the period July 2009 to June 2010 and the non-injurious price for low density ammonium nitrate can be established using CSBP's selling prices for July 2009 to June 2010 (a period unaffected by dumping) for low density ammonium nitrate prill less any charges to the free on board (FOB) level. The non-injurious price is the operative measures for both high and low density ammonium nitrate; and
- there is no evidence to support the revocation of measures.

Based on these preliminary findings, and subject to any submissions received in response to this report and statement of essential facts No.168<sup>2</sup>, the delegate

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<sup>1</sup> A full description of the goods is at section 3.2.

<sup>2</sup> Statement of essential facts 168 relates to the inquiry into the continuation of measures on ammonium nitrate. This document was published on 24 February 2011.

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proposes to recommend to the Minister that the measures be varied for all exporters.

## **1.3 Final report**

The delegate's final report and recommendations must be provided to the Minister by **11 April 2011**.

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## 2. INTRODUCTION

### 2.1 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly the affected party may apply for, or the Minister may request that the CEO conduct, a review of those measures if one or more of the variable factors has changed. The Minister may initiate a review at any time, however, no other interested party may apply for a review to take place earlier than 12 months since the publication of the dumping duty notice or the publication of a notice declaring the outcome of the last review of the notice.

If an application for a review of anti-dumping measures is received and not rejected, Customs and Border Protection has up to 155 days, or such longer time as the Minister may allow, to inquire and report to the Minister on the review of the measures. Within 110 days of the initiation, or such longer time as the Minister may allow, Customs and Border Protection must place on the public record a statement of essential facts on which it proposes to base its recommendation to the Minister concerning the review of the measures.

In making recommendations in its final report to the Minister, Customs and Border Protection must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the delegate has had regard for the purpose of formulating the statement of essential facts;
- this statement of essential facts; and
- any submission made in response to this statement of essential facts that is received by Customs and Border Protection within 20 days of being placed on the public record.

Customs and Border Protection may also have regard to any other matter that it considers to be relevant to the inquiry.

In respect of a dumping duty notice, the delegate must provide a proposed recommendation to the Minister that the dumping duty notice<sup>3</sup>:

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained.

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<sup>3</sup> s. 269ZDA(1)(a) of the *Customs Act 1901* (the Act)

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Following the Minister's decision, a notice will be published advising interested parties of the decision.

## 2.2 Notification and participation

On 21 September 2010, CSBP and Orica, two of the three manufacturers of ammonium nitrate in Australia, lodged an application requesting a review of anti-dumping measures<sup>4</sup> applying to ammonium nitrate exported to Australia from Russia.

Customs and Border Protection examined the application and decided not to reject the application. A notice indicating this was published in *The Australian* newspaper on 7 October 2010, with ACDN 2010/34 containing additional information about the review.

Following an extension from the Minister, Customs and Border Protection is required to place the statement of essential facts on the public record on or before 24 February 2011. Interested parties are invited to lodge submissions in response to the statement of essential facts not later than 16 March 2011.

The final report to the Minister which outlines Customs and Border Protection's findings and recommendation is due on or before 11 April 2011.

At the commencement of the inquiry, Customs and Border Protection set 1 July 2009 to 30 June 2010 as the review period.

## 2.3 Responding to the statement of essential facts

Interested parties may wish to make submissions in response to this statement of essential facts. However Customs and Border Protection is not obliged to have regard to any submissions received after **16 March 2011** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

The Director  
Trade Measures Operations 1  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
AUSTRALIA

Submissions can be faxed to (02) 6275 6990 or emailed to [tmops1@customs.gov.au](mailto:tmops1@customs.gov.au).

Interested parties intending to respond to the statement of essential facts must include a non-confidential version of their submission for placement on the

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<sup>4</sup> In accordance with s.269ZA.

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public record<sup>5</sup>. Submissions provided in confidence must be clearly marked “**IN-CONFIDENCE**”.

The public record contains non-confidential submissions already received from interested parties, this statement of essential facts, non-confidential versions of Customs and Border Protection’s visit reports and other publicly available documents such as Customs and Border Protection’s initiation report, notices and other information. These documents should be read in conjunction with this statement of essential facts. The public record may be viewed at Customs House Canberra by contacting Trade Measures Branch administration on (02) 6275 6547.

All documents on the public record are available on Customs and Border Protection’s electronic public record which may be accessed on the internet at [www.customs.gov.au](http://www.customs.gov.au) by following the prompts for “anti-dumping”.

## 2.4 History of anti-dumping measures

On 11 May 2000, Customs and Border Protection initiated an investigation into ammonium nitrate exported from Russia, following an application by the Australian ammonium nitrate industry.

In Trade Measures Report No. 28 (REP 28), Customs and Border Protection concluded that:

- exports of the goods from Russia were at dumped prices;
- the Australian industry producing like goods had suffered material injury as a result of those dumped goods; and
- future exports from Russia may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

Customs and Border Protection recommended to the Minister that anti-dumping measures be imposed on the goods exported from Russia.

The Minister accepted Customs and Border Protection’s recommendation and published a dumping duty notice, on 24 May 2001, for ammonium nitrate exported to Australia from Russia. Notification of the Minister’s decision was given in ACDN 2001/29.

On 16 April 2002, Customs and Border Protection initiated an accelerated review of the measures applying to ammonium nitrate following an application by an exporter. As a result of the review the measures were varied. Notification of the revised measures was published on 27 September 2002 after the Minister accepted the recommendations of Trade Measures Report No. 61 (REP 61).

On 15 September 2005, following applications from CSBP and Orica, an inquiry into whether the continuation of measures for another five years was justified and a review of the measures was initiated. Subsequent to this inquiry and review, the Minister continued the anti-dumping measures on ammonium nitrate

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<sup>5</sup> In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

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from 24 May 2006. The Minister also revised the level of measures. Notification of the Minister's decision was given in ACDN 2006/19.

On 14 September 2010 the Australian industry lodged an application for a continuation of measures. Following the consideration of this application, a continuation inquiry was initiated on 7 October and runs concurrently with the review of measures.

If the measures are not continued they will expire on 24 May 2011.

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## 3. GOODS SUBJECT TO THE REVIEW OF MEASURES

### 3.1 Preliminary findings

The Australian industry produces ammonium nitrate that has characteristics closely resembling those of the goods under consideration and ammonium nitrate manufactured by the Australian industry are, therefore, like goods<sup>6</sup>.

### 3.2 The goods

The goods subject to anti-dumping measures are ammonium nitrate, prilled, granular or in other sold form, with or without additives or coatings, in packages exceeding 10 kg, exported to Australia from Russia.

Ammonium nitrate is broadly categorised into two grades – low density and high density. Low density ammonium nitrate is generally of solid prilled form and is typically used in the manufacture of explosive. It can be blended with fuel oil to make one of the most commonly used explosives in Australia.

Globally, high density solid ammonium nitrate, which can be in granular or prilled form, is generally used in the agricultural sector as a fertiliser. However, high density ammonium nitrate can also be used in the manufacture of explosives.

Ammonium nitrate exported to Australia from Russia is almost exclusively of the high density grade and typically used in the manufacture of emulsion explosives. The two typical means that both high and low density ammonium nitrate is used in the manufacture of explosives are:

Ammonium nitrate fuel oil explosive (ANFO) = Low density ammonium nitrate + fuel oil (typically diesel fuel)

Emulsion explosive = Ammonium nitrate solution or high density ammonium nitrate prill + fuel oil + surfactants

#### 3.2.1 Tariff classification

The goods are classified under tariff subheading 3102.30.00, statistical code 05, in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty on ammonium nitrate is 'free' from all sources.

#### 3.2.2 Like goods

The issue of like goods was considered during the original investigation, and in the 2005 continuation and review inquiry.

In REP 28 Customs and Border Protection determined that:

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<sup>6</sup> In terms of s.269T.

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*'...low density, high density AN<sup>7</sup> and AN solution are sub-sets of the product group of AN...all types of AN, irrespective of whether in solid or solution state, prilled or granular form, low density or high density, are like goods.'*

In reaching this conclusion, Customs and Border Protection found that although low density ammonium nitrate, high density ammonium nitrate and ammonium nitrate solution were not identical to the goods exported, they possessed physical characteristics closely resembling. It was also found that:

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

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

In the continuation inquiry and review of measures in 2005, Customs and Border Protection revisited the issue of like goods. In Trade Measures Report No 104 and 105 it was found that ammonium nitrate produced by the Australian industry were like goods to ammonium nitrate exported to Australia from Russia, irrespective of whether in solid or solution state, prilled or granular form, low density or high density.

Customs and Border Protection has again examined this issue in this continuation inquiry. The Australian industry no longer sells high density ammonium nitrate on the domestic market. The industry now only sells low density, or explosive grade, ammonium nitrate and ammonium nitrate solution.

Interested parties have raised the issue of firstly, whether the Australian industry produces a like good to the imported high density ammonium nitrate; and secondly, if not, how it is that the importation of these goods could cause injury to the Australian industry. This section will address the first of these points, the second point will be addressed in **section 6** regarding revocation of the measures.

Several interested parties have provided submissions on the issue of like goods, as listed below.

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<sup>7</sup> Ammonium Nitrate (AN)

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Downer EDI Mining – Blasting Services Pty Ltd submitted that:

- imported high density ammonium nitrate is used in the production of explosive emulsions and low density ammonium nitrate cannot be substituted for this purpose due to the physical characteristics of the different grades;
- the characteristics of high density ammonium nitrate make it unsuitable to use as a replacement for low density ammonium nitrate in explosives; and therefore
- high density and low density ammonium nitrate must be considered two distinct types of ammonium nitrate.

Incitec Pivot Limited submitted that:

- there are differences in the physical characteristics, performance characteristics, end use, customer perceptions, manufacturing methods, and industry specifications between high density and low density ammonium nitrate;
- there is very little substitutability in the market between the two grades; and therefore
- low density ammonium nitrate can not be considered to be a like good to the imported high density ammonium nitrate.

The Australian industry argues that:

- high density ammonium nitrate displaces locally produced ammonium nitrate solution in the manufacture of emulsions
- if prices were sufficiently low enough emulsions explosives could be used as a substitute for low density ammonium nitrate based explosives.

Subsection 269T(1) defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration'.

Customs and Border Protection considers, as in previous inquiries, that the high density ammonium nitrate exported from Russia falls within the description of the goods under consideration.

For the purpose of considering whether there is an Australian industry producing like goods, Customs and Border Protection makes this determination by considering the description of the goods as a whole. An assessment cannot be made as to whether the Australian industry produces like goods to certain sub-categories of the goods. That said, analysis of sub-categories of the goods may be relevant to assessing whether dumping has caused or can cause material injury to the Australian industry (see section 6 below).

In assessing like goods, Customs and Border Protection examines key factors such as physical likeness, commercial likeness, functional likeness and production likeness.

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Customs and Border Protection has found that low density and ammonium nitrate solution produced by the Australian industry are like goods to the exported goods because:

- The goods are physically similar, being ammonium nitrate with minor technical variations in density;
- There is a commercial likeness between the goods as they compete in the same market;
- The goods are functionally similar as they are all used in the manufacture of explosives; and
- The goods are produced using similar production methods.

Customs and Border Protection remains satisfied that low density, high density and solution ammonium nitrate are sub-sets of the product group ammonium nitrate, and all of these products are like goods. However, it is Customs and Border Protection's view that grades within the broader ammonium nitrate product group do not necessarily compete directly with each other. Two distinct markets for ammonium nitrate have been identified; low density ammonium nitrate; and high density ammonium nitrate (which competes with ammonium nitrate solution) and as a result individual measures should be set for each grade.

## 4. REVIEW OF VARIABLE FACTORS

### 4.1 Preliminary findings

- The export price for the goods exported by Russian exporters, can be determined having regard to all relevant information<sup>8</sup>;
- a price control situation continues to exist in Russia due to government control of natural gas prices. The normal value for Russian exporters can be determined having regard to all relevant information<sup>9</sup>, based on UK surrogate domestic sales data including appropriate adjustments to ensure fair comparison with export prices; and
- the goods exported by Russian exporters during the review period were dumped, with a dumping margin of 44%.

### 4.2 Importers

Customs and Border Protection examined data from its import database and found that one importer, Downer EDi Mining – Blasting Services Pty Ltd imported ammonium nitrate from Russia during the review period. Downer EDi Mining – Blasting Services Pty Ltd claimed to only import high density ammonium nitrate from Russia during this period.

Customs and Border Protection subsequently visited the company and gathered data relating to export price and importation expenses.

### 4.3 Australian Industry's claims

The Australian industry claims that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed<sup>10</sup>.

The applicants state that industry's selling prices for ammonium nitrate have increased from the prices established in the 2005 review of measures and that this has resulted in a change in the non-injurious price for the Australian industry.

The applicants also claim that the price of ammonium nitrate exported from Russia has fluctuated and is now higher than during the previous review period. Similarly, the normal value for ammonium nitrate in Russia is now higher than during the 2005 review of measures.

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<sup>8</sup> s. 269TAB(3) of the Act.

<sup>9</sup> s. 269TAC(6) of the Act.

<sup>10</sup> In accordance with s.269ZC(2)

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In the 2005 review, the normal value for ammonium in Russia was calculated using surrogate data from the UK (further information regarding the reasons for this approach and the methodology used is in **section 4.5.2**).

The applicants claim that since the last continuation inquiry, the selling price of ammonium nitrate in the UK has increased and as a result the normal value has increased.

## 4.4 Exporters

Exporter questionnaires were sent to two companies identified as suppliers of ammonium nitrate from Russia during the review period and to three companies that cooperated in the previous continuation inquiry and review .

Subsequently, it was discovered that the two suppliers were trading companies and not the producers of the exported goods. Where manufacturers who produced the ammonium nitrate supplied by these traders could be identified, the manufacturers were also provided with exporter questionnaires and invited to participate. Customs and Border Protection was also contacted by a Russian manufacturer who had not exported ammonium nitrate to Australia during the review period but wished to complete a questionnaire and one was accordingly supplied to this company.

One response was received from Joint Stock Company "Azot" Kemerovo (Kemerovo). The response was deemed to be incomplete. The response was deemed to be incomplete as key documents were not provided in English and no non-confidential version of the response was provided. However, as outlined below, some of the information provided has been used to calculate the normal value.

### 4.4.1 Export price

As discussed, a number of Russian entities were identified as possible manufacturers of ammonium nitrate exported to Australia during the review period. It was found that these ammonium nitrate producers subsequently sold the goods to intermediaries before it was purchased by the importer.

An intermediary who sold the ammonium nitrate to Australia was contacted to gather data relating to ocean freight and its gross margin on the relevant export sales. The company did not respond to the request for information.

As a result, sufficient information was not furnished or was not available in order for the export price for Russian exporters to be established using:

- the price paid or payable for the goods by the importer as it did not reflect the Free on Board (FOB) price paid to the exporter<sup>11</sup>;

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<sup>11</sup> s. 269TAB(1)(a) of the Act

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- the price paid at which the goods were sold by the importer less prescribed deductions<sup>12</sup> as the goods were not sold in the condition in which they were imported but rather manufactured into other products; or
- the price determined having regard to all the circumstances of the exportation<sup>13</sup>, as these circumstances were unknown.

The export price has therefore been determined having regard to all relevant information<sup>14</sup>.

A single weighted average export price has been calculated for high density ammonium nitrate exported to Australia from Russia during the review period using data obtained from Customs and Border Protection's import database relating to ocean freight and information gathered during the importer visit. Any part of the price that represented a charge in respect of the transport of the goods after exportation and any other matter arising after exportation has been excluded.

The export price has been calculated for high density ammonium nitrate only as there were no exports of low density ammonium nitrate during the review period.

## 4.4.2 Normal value

### **Normal value provisions for economies in transition**

For the purpose of anti-dumping investigations, Russia is regarded as an economy in transition. Australian anti-dumping legislation specifically provides for a situation where normal values are to be established in the country of export where the country is an economy in transition. The relevant provisions are those that existed in the legislation prior to the amendments of 2003 (pre-2003 legislation) - s. 269TAC(5D) to 269TAC(5J) inclusive.

### **The legislative framework**

Where a price control situation applies, normal value is to be established under the provisions of s. 269TAC(5D) (pre-2003 legislation) and will be such amount as is determined by the Minister 'having regard to all relevant information'.

Section 269TAC(5E) (pre-2003 legislation) defines a price control situation in relation to the domestic price of like goods as applying where the 'domestic selling price of those like goods is controlled, or substantially controlled, by a government (at whatever level) of that country'.

The legislation does not prescribe the characteristics of price control or the kind of activities that would constitute price control or substantial price control by a government.

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<sup>12</sup> s. 269TAB(1)(b) of the Act

<sup>13</sup> s. 269TAB(1)(c) of the Act

<sup>14</sup> s. 269TAB(3) of the Act

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Customs and Border Protection considers that price control may be exerted directly or indirectly. Direct control might be exerted through, for example, legislation that sets the level of the domestic price for like goods, or government ownership of the producers. Indirect control might be exerted through, for example, the government imposing limits upon the activities of business, or government control of prices for key raw material inputs.

## **Ministerial guidelines**

ACDN 2001/42 contains guidelines issued by the then Minister for Justice and Customs, that are relevant to addressing a price control situation in an economy in transition. The guidelines provide that regard may be had to a number of considerations in determining whether or not a price control situation applies.

In the case of ammonium nitrate from Russia, the review's principle consideration was:

- whether decisions of the relevant producers or exporters relating to prices, costs, inputs, sales, and investments are made in response to market signals and without significant state interference.

To assist in the assessment of this consideration, the guidelines point to the analysis of information relating to whether:

- major production inputs of the relevant producer or exporter are or are not supplied by state owned or controlled enterprises at prices which do not substantially reflect free market conditions. Inputs include, inter alia, raw materials, labour, energy and technology costs.

## **Previous findings relevant to the assessment of price control**

Customs and Border Protection concluded in its previous inquiries relating to ammonium nitrate that a price control situation applied in relation to domestic sales of ammonium nitrate in Russia.

In REP 28, concerning the original investigation, the price control finding was based on factors including the existence of legislation that provided for the government control and direction of prices for ammonium nitrate on the Russian domestic market. Customs and Border Protection understands that legislation did not apply in the review period for this inquiry, and no longer applies.

In REP 61, concerning the accelerated review, the price control finding was based on the existence of the same legislation discussed above and the government regulation resulting in natural gas and electricity being available at prices significantly below market prices thus exerting control or substantial control over the selling price of ammonium nitrate.

In the previous review of measures and continuation inquiry (REP 104 and 105), Customs and Border Protection found that the Russian Government controlled the price of natural gas and that the prices did not substantially reflect

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free market conditions. This was based on information provided the Russian Government which indicated that the price of natural gas can only be raised in accordance with the Russian Federal Tariff Department orders and that price did not vary in response to market signals (such as demand and supply factors) and without significant state interference.

Natural gas is the major raw material input into ammonium nitrate. It is used to manufacture the ammonia and nitric acid that is required in order to produce ammonium nitrate. Gas can also be used as a source of energy in the production process.

In this inquiry it was found that the majority of gas in Russia was supplied by Gazprom, a company in which the government had a controlling interest. The impact of the regulation of Russian domestic natural gas prices was found to be substantial with prices paid for natural gas supplied by natural gas producers other than Gazprom were significantly higher than prices for Gazprom natural gas. It was also evident from information gathered during these earlier investigations that Russian domestic selling prices for natural gas were much lower than Russian export prices for natural gas.

Customs and Border Protection found that the government control of prices for natural gas had the effect of holding natural gas prices at significantly lower levels than would have been achieved if they were not so controlled. The Government control of natural gas prices would, in turn, have had a strong depressing output price effect, resulting in lower ammonium nitrate prices in Russia.

Customs and Border Protection found an indirect price control situation was evident in respect of the domestic selling price of ammonium nitrate in Russia. A price control situation applied in relation to the domestic selling price of ammonium nitrate in Russia because these prices are controlled, or substantially controlled, by the Russian Government.

## **Price control assessment in the continuation inquiry and the review**

Customs and Border Protection provided the Russian Government with a questionnaire aimed at understanding the current state of the gas industry in Russia<sup>15</sup>. The information sought from the Russian Government would be used to assist in considering whether a price control situation exists.

### Natural gas prices

In response to questions regarding the current state of the gas industry, the Russian Government advised that:

- the President's Decree of February 28, 1995 No 221 and Government Resolution of March 7, 1995 No 239 continue to remain in effect. These

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<sup>15</sup> The Government of Russia's response to this questionnaire is available on the Public Record.

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pieces of legislation enable the Russian Government to regulate the price of goods and services produced by natural monopolies;

- the legal, economic and organisational principles in relation to gas supply in the Russian Federation is established in the Federal Law of March 31, 1999 No.69-FZ. This legislation provides the Russian Government with the authority to establish the principles in formulating gas prices;
- the Government Resolution of December 29, 2000 No.1021 was enacted which provides guidance on the governing of gas prices and tariffs for the transportation of gas on a cost plus profit basis.
- the price for gas continues to be calculated and regulated by the Federal Tariff Service taking into account:
  - recovery of economically justified costs covering gas production, gas transportation, gas processing, storage, distribution and supply;
  - recovery of economically justified profit;
  - recovery of all taxes and other legislatively obligatory payments; and
  - development of domestic competition in energy resources.
- the Federal Tariff Department Order of December 10, 2010 No.412-e/2 outlines the current wholesale gas prices produced by JSC Gazprom and its affiliated companies and sold to consumers in the Russian Federation. This order remains valid until 31 December 2011.
- a new pricing mechanism for gas supplied by JSC Gazprom was introduced as part of Government Resolution of May 28, 2007 No.333. The mechanism established a regulated price ceiling with minimum and maximum price levels for different consumer categories. The Federal Tariff Service sets a fixed gas price which establishes the minimum price for gas supplied by Gazprom. The maximum price levels are established according to regulated increases of 60% in 2007, 50% in 2008, 40% from 1 January 2009, 30% from 1 July 2009, 20% from 1 January 2010 and 10% from 1 January 2011. The right to negotiate and determine gas prices within these minimum and maximum limits is granted to suppliers and buyers.
- JSC Gazprom accounts for 83% of Russian gas production, with more than half of its gas sales being made to the Russian domestic market.
- Gazprom is Russia's largest joint stock company with several hundred thousand registered stockholders domiciled both in Russia and abroad. The Russian Government remains the largest shareholder of Gazprom with a controlling stake of 50.002% of the company.
- Gazprom continues to own Russian natural gas pipeline grids and storage facilities.

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## Accounting standards

The Russian Government also provided responses to questions regarding differences between Russian and International Accounting Standards. The Russian Government informed that Russian companies shall maintain their individual accounts in accordance with Russian Accounting Standards, which are based on International Accounting Standards. In the case of consolidated financial statements, each company is to decide which standards to comply with.

Since 2005, revisions have been made to almost all parts of the Russian Accounting Standards, with eight new Standards developed and introduced into Russian legislation on the basis of International Accounting Standards.

## Price control assessment

Customs and Border Protection considers that the information above demonstrates that the Russian Government continues to exert control of the Russian natural gas industry and regulates prices. The introduction of a new pricing mechanism in 2007, whereby buyers and sellers can negotiate a price for the supply of natural gas, appears to be a significant step towards allowing prices to be set according to market forces. This compares to the fixed gas pricing found to be in place in 2005. However, the new pricing mechanism applies only to new consumers that entered into supply agreements after 1 July 2007 and existing consumers that signed supply agreements for additional gas beyond previously agreed volumes.

Ultimately, the Russian Government continues to set a fixed minimum price and sets fixed maximum price increases above the fixed minimum price. It is likely that this interference by the Russian Government continues to distort the price for natural gas by not allowing prices to move in response to market signals such as supply and demand factors.

Customs and Border Protection also notes the announcement on Gazprom's website under the heading of "Deregulated Russian gas market". The company states:

*Starting from 2006 the Russian Federation Government has been taking steps on developing the Russian gas market in compliance with market-based principles.*

*In May 2007 the Russian Federation Government adopted Directive No.333 setting out a number of actions aimed at pricing liberalization in the gas industry, such as introduction since January 1, 2011 of the market-based gas price formula that would rely on equal profitability between the domestic and foreign gas supplies. The new gas pricing mechanism envisaged by Directive No.333 contemplates setting the regulated price thresholds (upper and lower) for separate consumer groups.*

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*This category involves new consumers that entered into supply agreements after July 1, 2007, as well as the present consumers that sign supply agreements for extra gas beyond the agreed volume.*

*Due to the crisis events observed in the global and Russian economies the Russian Federation Government, relevant ministries and agencies discussed in 2009 the issue of extending the pricing liberalization period. During the discussions, Gazprom proposed to calculate prices using a discounted formula during the transition period (2011–2013). It is necessary to gradually raise domestic gas prices to the level of equal profitability over this period. The proposal was backed by the relevant ministries and agencies. Thus, it is expected to fully transfer to equally profitable prices since 2014.*

*A timely transfer to domestic gas pricing based on the market principles will create the environment in which the domestic gas market will become a real driver for sustainable development of the gas sector and related industries as well as for the energy efficiency enhancement in the national economy in general.*

This announcement supports the view that the Russian Government continues to be actively involved in the regulation of gas prices supplied by Gazprom and also provides an indication that Gazprom's gas prices may continue to be unprofitable through to 2014.

It is reasonable to expect that the government control of prices for natural gas, a major input and cost in the production of ammonium nitrate, has continued to have the effect of holding natural gas prices at significantly lower levels than would have been achieved if they were not so controlled. In a market complying with market-based principles, it is unlikely that a producer that possesses such significant control over a product as Gazprom does (through its production volumes and ownership of gas pipelines), would continue to trade unprofitably for any extended period.

It is also reasonable to expect that the Government's regulation of gas prices has enhanced the high barriers to entry and dampened competitive market conditions. Given the high fixed capital costs associated with gas industries, it is unlikely that potential competitors would be willing to make the capital investment needed to enter the gas market, knowing that the existence of a regulated price ceiling would likely result in short and medium term unprofitable sales.

Customs and Border Protection continues to hold the view that the Government control of natural gas prices would, in turn, have had a strong depressing output price effect, resulting in lower ammonium nitrate prices in Russia. Therefore, Customs and Border Protection considers that an indirect price control situation is evident in respect of the domestic selling price of ammonium nitrate in Russia. A price control situation applies in relation to the domestic selling price of ammonium nitrate in Russia because these prices are controlled, or substantially controlled, by the Russian Government.

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## Normal value in the continuation inquiry

Given the finding that a price control situation applies, Customs and Border Protection had regard to all relevant information in order to establish a normal value for Russia.

Where the provisions of s. 269TAC(5D) are used to determine normal value, s. 269TAC(5F) provides that, without limiting the generality of subsection (5D), the Minister may have regard to the following in determining normal value:

- prices of goods produced and sold in a country determined by the Minister<sup>16</sup>;
- prices of goods produced in a country determined by the Minister and sold to a third country<sup>17</sup>;
- a value equal to the cost to make and sell, and profit, of goods produced and sold in a country determined by the Minister<sup>18</sup>; and
- prices paid for goods produced and sold in Australia<sup>19</sup>.

Customs and Border Protection considered the possibility of using some parts of Russian cost information in combination with substitute values for other Russian costs to construct normal value. In particular, the replacement of gas costs reported by the Russian producers with gas costs from another source was considered. However, insufficient information has been provided by Russian manufacturers to consider such an approach.

Other relevant information for determining normal value includes information on domestic selling prices and/or costs in relation to ammonium nitrate production and sales in the UK and/or Australia. Cost to make and sell data and sales data was verified for one ammonium nitrate producer in the United Kingdom (UK) and for two ammonium nitrate producers in Australia (Orica and CSBP).

Surrogate exporter questionnaires were sent to companies in Bulgaria, Canada, Czech Republic, Germany, India, Japan, Netherlands, Portugal, Spain, UK, United States of America and Belgium which invited them to participate in the investigation. GrowHow UK Limited (GrowHow), a manufacturer in the United Kingdom, was the only company to complete the questionnaire and allowed Customs and Border Protection to visit to verify the information.

Imports during the review period were high density ammonium nitrate. As the Australian industry does not produce high density ammonium nitrate, Australia

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<sup>16</sup> s. 269TAC (4)(c) of the Act (pre-2003 legislation)

<sup>17</sup> s. 269TAC (4)(d) of the Act (pre-2003 legislation)

<sup>18</sup> s. 269TAC (4)(e) of the Act (pre-2003 legislation)

<sup>19</sup> s. 269TAC (4)(f) of the Act (pre-2003 legislation)

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is not considered to be an appropriate surrogate for establishing a normal value for ammonium nitrate sold on the domestic market in Russia.

The UK market was also examined as a possible surrogate with the following factors being considered:

- similarity of products – the goods produced by GrowHow were high density ammonium nitrate and were found to be like goods to the goods exported from Russia to Australia;
- similarity of manufacturing processes – while Customs and Border Protection was unable to visit Russian manufacturers to observe their production process, it is understood that all ammonium nitrate is produced using similar process;
- market condition – prices in the UK market were set according to market factors and while GrowHow was the only manufacturer in the UK over half the market was supplied by imports resulting in significant levels of competition; and
- sales volumes – the volume of ammonium nitrate sold by GrowHow was at least 5% of the volume of ammonium nitrate exported to Australia from Russia.

Therefore the UK market is considered an appropriate surrogate for determining normal values of ammonium nitrate sold on the domestic market in Russia.

## GrowHow

Domestic sales information provided by GrowHow for the review period was verified and found to be in sufficient volume when compared to the exports to Australia. Sales by GrowHow were also at prices that were in the ordinary course of trade. In order to calculate the normal value, all sales at a certain level of trade to certain customers were used.

To ensure the normal value is properly comparable to the export price at a Free on Board (FOB) level, cash terms, adjustments will be made by deducting amounts reflecting GrowHow's delivery expenses, credit terms and packaging costs. An amount has also been added to estimate the margin achieved by intermediaries in the export transactions. This margin was calculated by reference to the ex-works price received by Kemerovo, as per its response to the exporter questionnaire and the FOB export price to the Australian importer.

It is recommended that the Minister determine a normal value for Russia under s. 269TAC(5D), having regard to all relevant information.

### 4.4.3 Dumping margin

Measurement of a dumping margin is not required for the purposes of revising the variable factors, however, it may be relevant to the consideration of whether measures should be revoked (refer section 6).

A dumping margin has been calculated for all exporters of ammonium nitrate during the review period by comparing the weighted average of export prices over the whole of the review period with the weighted average of corresponding

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normal values over the whole of that period<sup>20</sup>. Customs and Border Protection found a dumping margin of 44%.

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<sup>20</sup> Subsection 269TACB(2)(a).

## 5. NON-INJURIOUS PRICE

### 5.1 Preliminary findings

The delegate makes a preliminary finding that the non-injurious price can be established for high density ammonium nitrate by using the FOB export price of imports during the review period and for low density ammonium nitrate by using the price of ammonium nitrate sold by CSBP during the review period less any post exportation charges to the FOB level.

### 5.2 Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping<sup>21</sup>.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a non-injurious price is calculated in FOB terms for the country of export.

### 5.3 Methods of calculating non-injurious price

The method of calculating a non-injurious price is not given in the legislation, but it is generally derived from Australian industry's unsuppressed selling price. The unsuppressed selling price is a price at which the Australian industry might reasonably be able to sell the goods in a market unaffected by dumped imports.

Customs and Border Protection's preferred approach to establishing the unsuppressed selling price observes the following hierarchy:

1. Industry selling prices at a time unaffected by dumping (known as an unsuppressed selling price).
2. Constructed industry prices – industry cost to make and sell plus an appropriate profit.
3. Selling prices of undumped imports

Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

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<sup>21</sup> The non-injurious price is defined in s.269TACA.

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In the original investigation and subsequent review of measures, the unsuppressed selling price was determined using selling prices from the Australian industry. In the original investigation sales by QNP of low density ammonium nitrate and ammonium nitrate solution to a particular customer was used. In the 2005 review sales by Orica of low density ammonium nitrate prill to another particular customer was used.

## 5.4 Australian industry's claims

Orica submitted that the most appropriate method for determining the unsuppressed selling price was to use the selling price for ammonium nitrate to specific customers during the review period.

## 5.5 Customs and Border Protection's assessment

Customs and Border Protection understands that at times, prices for high and low grade ammonium nitrate tend to differ considerably. Given that the two grades are effectively sold and used in different segments of the mining explosives industry, separate non-injurious prices have been determined for each grade.

### High density ammonium nitrate

The preferred methodology listed at section 5.3 above and the views of Australian industry were considered.

Customs and Border Protection notes that the Australian industry does not produce or sell high density ammonium nitrate into the Australian market. It is considered unreasonable to base an unsuppressed selling price on sales or costs of low density ammonium nitrate without necessary adjustments to reflect a price for high density grade

The selling price of imports from other sources has also been examined however there is insufficient information about the grade of these imports.

Customs and Border Protection has found that the measures, which were effectively a floor price for imports, prevented injury during the review period by ensuring the price of imports did not drop to a level that would injure the industry. These measures were effective and as a result the price of exports of high density ammonium nitrate were non-injurious. Therefore, it is proposed that the export price of high density ammonium nitrate from Russia during the review be the basis for the non-injurious price.

### Low density ammonium nitrate

The preferred methodology listed at section 5.3 above and the views of Australian industry were again considered.

Customs and Border Protection does not consider it appropriate to use Orica's selling price to customers as this information included sales that were both Ex-

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Works and delivered and could not be verified to a satisfactory level as outlined in the Orica visit report.

Accordingly Customs and Border Protection considers it appropriate to use CSBP's Ex-Works selling price of all sales of low density prill to external customers during the period July 2009 to June 2010 as the basis for industry's unsuppressed selling price. Therefore, in order to determine the non-injurious price at the FOB level, deductions have been made from the unsuppressed selling price for:

- overseas freight and marine insurance;
- Australian landing and port charges;
- Customs and quarantine clearances; and
- delivery charges from the port to the warehouse.

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## 6 SHOULD THE MEASURES BE REVOKED?

### 6.1 Preliminary findings

Customs and Border Protection considers that if the anti-dumping measures to which this review relates had not been taken, the Minister would be entitled to take such measures.

### 6.2 Introduction

After reviewing the variable factors Customs and Border Protection considered whether a recommendation to the Minister should be made to revoke the dumping duty notice published under s.269TG(1) and (2) as it applies to a particular exporter or to exporters generally.

This section outlines the factors Customs and Border Protection considers relevant in drawing the preliminary finding stated at 6.1 above.

### 6.3 Likelihood of dumping continuing or recurring

The Australian industry has claimed that Russian manufacturers continue to have a cost advantage over other suppliers of ammonium nitrate due to the government control over natural gas and this advantage (highlighted in the form of dumping) is likely to continue into the future.

Using trade statistics the applicants were able to show that the price of ammonium nitrate exported from Russia to countries other than Australia is significantly lower than prices exported to Australia. This is evidence that the anti-dumping measures currently in place are having an impact on the price of imports into Australia. The industry also highlighted that the United States of America, European Union and the Ukraine continue to have anti-dumping measures in place for ammonium nitrate exported from Russia, and Russian exporters continue to maintain distribution links with the market.

#### Customs and Border Protection's Assessment

In the period of July 2009 to June 2010, ammonium nitrate from Russia has been exported at dumped prices with a dumping margin of 44%. Due to the indirect price controls evident in the Russian domestic market, it is reasonable to expect that manufacturers have, and will continue to have, a cost and price advantage.

The United States of America and the European Union continue to impose measures on ammonium nitrate exported from Russia, while the Ukraine has since lifted its measures. Nevertheless, the imposition of measures by other administrations indicates a propensity for exporters of Russian ammonium nitrate to sell at export prices that are less than normal value.

Trade statistics provided by the industry indicate that the measures have had an effect on the price of imports from Russia, as the price to Australia is

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significantly higher than the average export price. As the export price to Australia was based on a 44% dumping margin, the lower prices to other export destinations indicates even greater dumping elsewhere. Although there is little information about these other export markets and the degree of domestic competition between domestic producers and imports from other source countries, the trade statistics provide a strong indication that Russian exporters are prepared to export ammonium nitrate at prices significantly below the normal value and previously established non-injurious levels.

The current anti-dumping measure in place on ammonium nitrate from Russia is effectively a floor price with the non-injurious price being the operative measure and a zero fixed amount of interim dumping duty. Given that actual export prices have shown little deviation from this floor price, it further supports the argument made by the applicants that the measures are having the intended impact on import prices by ensuring that they do not fall below non-injurious levels.

Given the current level of dumping found, and the indications of low dumped prices for goods to other export destinations, Customs and Border Protection considers that in the absence of measures, export prices would have been lower and greater dumping margins would have occurred.

## **6.4 Likelihood of injury continuing or recurring**

Interested parties have submitted that the ammonium nitrate market in Australia is highly transparent with locally produced prices being set according to import parity.

The industry holds the view that the price of imports can be used to leverage lower prices from industry. The industry also considers that high density ammonium nitrate can be used as a direct substitute for locally produced ammonium nitrate solution. Therefore, it is claimed that dumped high density ammonium nitrate from Russia would cause injury through either price depression and/or suppression, or reduced sales volumes of ammonium nitrate solution.

Downer EDI Mining – Blasting Services submitted that imported high density ammonium nitrate is used in the production of emulsion explosives and that low density ammonium nitrate cannot be substituted for this purpose due to differences in their technical characteristics. It considered that the characteristics of high density ammonium nitrate make it unsuitable for use as a replacement for low density ammonium nitrate in explosives. Therefore it claimed that as high and low density ammonium nitrates have different applications, imports of high density ammonium nitrate could not injure the Australian industry producing low density ammonium nitrate.

Incitec Pivot Ltd (Incitec) claims that low density ammonium nitrate is not a like good to the imported high density ammonium nitrate due to differences in their physical characteristics and the applications in which they are used. As the Australian industry does not produce high density ammonium nitrate, imports of high density ammonium nitrate cannot cause injury.

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Incitec also submitted that a distinction should be made between ammonium nitrate exported for use by companies using it to manufacture other products, i.e. explosives, and companies importing it to sell into the market. The company does not consider that ammonium nitrate imported for the purpose of further manufacture can cause injury to the industry.

## 6.4.1 High density ammonium nitrate

Customs and Border Protection has determined that ammonium nitrate produced by the Australian industry are like goods to the goods under consideration (section 3.2.2). However, interested parties have argued that these products have different markets and end uses. As a result they claim that the importation of high density ammonium nitrate cannot injure the Australian industry.

Customs and Border Protection does accept that high and low grades of ammonium nitrate are not substitutable in their manufacture of explosives. However, it is evident that high density ammonium nitrate does compete and is substitutable for locally produced ammonium nitrate solution. Given the interchangeability between these products, Customs and Border Protection has assessed whether dumped imports of high density ammonium nitrate could have caused injury to the Australian industry's production of ammonium nitrate solution.

Evidence was provided by the Australian industry which showed that existing customers of locally produced ammonium nitrate solution had referenced import prices of high density ammonium nitrate in seeking parity pricing for ammonium nitrate solution offered by the industry. Whilst the evidence does not identify the source of imports, it is sufficient at least to support the view that:

- imported high density ammonium nitrate is a viable alternative to ammonium nitrate solution;
- that price is a key consideration in the customer's purchasing decisions, and therefore,
- it is possible that import prices of high density ammonium nitrate could cause price and/or volume related injury to the Australian industry.

Therefore, it must be determined whether dumped high density ammonium nitrate might have materially injured the Australian industry in the absence of measures by impacting its sales of ammonium nitrate solution.

There are logistical difficulties in the transportation and storage of ammonium nitrate solution as it must be maintained at a certain temperature to prevent it from solidifying. As a result, depending on the geographic location of the customer and the availability of ammonium nitrate solution in its vicinity, there may be difficulties in using ammonium nitrate solution for the manufacture of emulsions. However, Customs and Border Protection does not have any evidence to suggest that the cost of overcoming these difficulties would be unreasonable.

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In the absence of measures then, Customs and Border Protection is of the view that export prices of high density ammonium nitrate from Russia would have fallen significantly below current prices (as outlined in section 6.3). As a result, there would be a strong price incentive for customers to purchase dumped high density ammonium nitrate for use in emulsions even where there is access to locally produced ammonium nitrate solution. Ultimately, the transparent nature of the Australian market would have resulted in the Australian industry having to reduce its prices of ammonium nitrate solution to retain existing customers or risk losing existing and/or potential sales.

Incitec Pivot also argued that ammonium nitrate used by customers in the manufacture of other products cannot injure the Australian industry as this ammonium nitrate never enters the market as ammonium nitrate. However, the industry argues that the emulsions produced using high density ammonium nitrate and ammonium nitrate solution compete and when emulsions produced using dumped high density ammonium nitrate undercut emulsions produced by the industry this results in downstream injury.

The nature of the ammonium nitrate market in Australia is that both importers and the industry are also mining service providers. Customs and Border Protection considers that a significant level of competition between imports and locally produced ammonium nitrate is in the end product of explosives. Therefore, dumped importations of ammonium nitrate may injure the Australian industry even when it is consumed by the importer rather than sold in the market.

In regards to emulsions, Customs and Border Protection notes that high density ammonium nitrate is only one input and that emulsion explosives are generally offered as part of a package of mining services. As a result, price can be influenced by numerous factors other than the price of high density ammonium nitrate. Other factors which would influence the price may include, the cost of the low density ammonium nitrate input, the manufacturing costs, transportation costs and other services being offered. However, the low price of dumped high density ammonium nitrate would allow for some reduction in costs that would potentially undercut the industry's products.

As a result, in the absence of measures Customs and Border Protection considers there would be a causal link established between dumping and injury to the Australian industry's production and sales of ammonium nitrate solution.

## 6.4.2 Low density ammonium nitrate

The Australian industry claimed that historically, low density ammonium nitrate has been imported by large mining companies and these imports have displaced locally produced product.

With the forecasted growth in the Australian mining industry making it an attractive export market for ammonium nitrate producers, the industry holds the view that in the absence of measures it is likely that there would be an increase in the volume of ammonium nitrate from Russia at the expense of the industry's sales.

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The Government of Russia submitted that as imports from Russia are very low in volume, representing approximately 1% of the Australian market, it is unlikely to injure the Australian industry.

Customs and Border Protection examined claims that in the absence of measures, the volume of imports of ammonium nitrate from Russia would increase and as a result the industry would lose market share, thereby suffering injury.

Using information from Customs and Border Protection's import database the following observations can be made:

- in the 2008-09 financial year imports from Russia increased significantly but this was at the expense of imports from other sources;
- during the review period imports from Russia had a 1% market share;
- during the review period imports from Russia were the lowest priced high density ammonium nitrate available; and
- despite the low price of ammonium nitrate during the review period no company imported low density ammonium nitrate from Russia.

The lack of imports of low density ammonium nitrate during the review period indicates a customer aversion to Russian product that was not overcome by the low prices on offer. This is also confirmed by the pattern of imports in 2008-09. In this period ammonium nitrate exports from China were subject to a high export tax, effectively halting exports. There was also an increased world wide demand for ammonium nitrate for both explosives and fertiliser use. During this period ammonium nitrate attracted higher prices, for both locally produced product and product imported from Russia.

After the onset of the Global Financial crisis, however, and the easing of export taxes in China, prices were once again lowered. During this period of high demand and reduced supply from China, the volume of ammonium nitrate from Russia increased. However, import volumes subsequently decreased when supply pressures eased and during the review period no imports of low density ammonium nitrate from Russia were identified despite the drop in prices from this source.

Customs and Border Protection has found that the low volume of imports of ammonium nitrate is a historical trend. When measures were initially imposed, imports from Russia consisted of 2% of the market and during the 2005 continuation inquiry imports consisted of 1% of the market.

Customs and Border Protection is aware that the presence of measures can influence the purchasing behaviour of potential customers but the above trends indicate that other factors such as consumer preference are also influencing buyer behaviour.

Customs and Border Protection has found that there are certain disadvantages to buying ammonium nitrate from Russia. For example, ammonium nitrate can start to degrade when exposed to temperatures of 30 degrees or higher as is the case when shipments cross the equator. In addition, Orica has stated it did not consider Russian ammonium nitrate to be as high quality as locally

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produced product and its use would bring additional operational and safety issues<sup>22</sup>.

However, Customs and Border Protection has also found that in the absence of measures the price of ammonium nitrate from Russia will drop significantly. Given the competitive nature of Australian market it is possible that there is a price point at which it will be worthwhile for consumers to switch to sourcing ammonium nitrate from Russia, despite quality issues

Therefore, Customs and Border Protection is of the view that in the absence of measures, dumped imports of low density ammonium nitrate from Russia may have occurred, however, there is no evidence to suggest that the volume of imports would be significant enough to injure the Australian industry.

## 6.4.3 Conclusion

Customs and Border Protection's preliminary view is that the following factors support a finding that if the anti-dumping measures had not been taken, the Minister would have been entitled to take such measures because:

- during the period of July 2009 to June 2010 imports from Russia were found to have a dumping margin of 44%;
- other administrations have anti-dumping measures in place against ammonium nitrate exported from Russia which demonstrates a propensity to dump;
- significant dumping margins of Russian ammonium nitrate exports to third countries demonstrates a willingness by exporters of Russian product to sell at much lower prices;
- Russian manufacturers have a cost advantage due to a price control situation in the Russian domestic market and as a result, can sell ammonium nitrate at lower prices than they could otherwise;
- high density ammonium nitrate and ammonium nitrate solution are directly competitive and substitutable;
- dumped prices for high density ammonium nitrate would undercut industry's ammonium nitrate solution prices;
- the transparent nature of the Australian market leads to import parity prices for locally produced like goods, and
- there is evidence that import prices of high density ammonium nitrate are used to extract competitive prices for locally produced ammonium nitrate solution.

Therefore, subject to responses to the statement of essential facts, Customs and Border Protection recommends that the Minister does not revoke the measures.

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<sup>22</sup> Orica visit report

## 7. Effect of the review

As a result of this variable factors review, Customs and Border Protection considers that the export price and normal value for all exporters of the goods to Australia have increased since the 2006 review of measures. The non-injurious price has also increased.

From this review of the variable factors, the non-injurious price is the operative<sup>23</sup> measures for both high density and low density ammonium nitrate.

Customs and Border Protection recommends that the revised measures are in the form of a floor price, based on the non-injurious prices. The floor price for high density ammonium nitrate will be based on the export price of high density ammonium nitrate during the review period (with adjustments made to the FOB level) and the floor price for low density ammonium nitrate will be based on CSBP's selling price of low density prill during the review period (with adjustments made to the FOB level).

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<sup>23</sup> The operative measure is the lesser of the normal value or non-injurious price. The difference between the revised operative measures and the revised export prices provide for the fixed component of interim dumping duty per unit.