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Australian Government

**Australian Customs and
Border Protection Service**

R E P O R T

TRADE MEASURES BRANCH REPORT TO THE MINISTER NO.168

INQUIRY INTO THE CONTINUATION OF ANTI-DUMPING MEASURES

AMMONIUM NITRATE EXPORTED FROM THE RUSSIAN FEDERATION

11 April 2011

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**Australian Customs and
Border Protection Service**

Customs Act 1901 – Part XVB

AMMONIUM NITRATE

EXPORTED FROM THE RUSSIAN FEDERATION

Finding in relation to continuation inquiry

Public notice under sections 269ZHG(1) and (4)

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its inquiry, which was commenced on 7 October 2010, into whether the expiration of the anti-dumping measures applying to ammonium nitrate exported to Australia from the Russian Federation (Russia), would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent. Recommendations resulting from that inquiry, reasons for the recommendations and material findings of fact and law in relation to the inquiry are contained in Trade Measures Report No. 168 (REP 168).

I, BRENDAN O'CONNOR, the Minister for Home Affairs, have considered REP 168 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings and facts of law, therein that the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia should continue from 24 May 2011.

I have decided to take steps to secure the continuation of anti-dumping measures currently applying to ammonium nitrate exported to Australia from Russia. These anti-dumping measures were due to expire on 24 May 2011.

I determine that the dumping duty notice continues in force after 24 May 2011 for a further five years unless earlier revoked.

Copies of REP 168 will be sent to all interested parties that participated in the inquiry. Additional copies may be obtained by contacting Trade Measures Office Management on telephone (02) 6275 6547 or by fax on (02) 6275 6888. Trade Measures reports are also available on the Customs and Border Protection internet site at www.customs.gov.au.

Enquiries about this notice may be directed to Operations 3, Trade Measures Branch, Customs and Border Protection on telephone (02) 6245 5453, fax (02) 6275 6990, or by email to tmops3@customs.gov.au.

Dated this 12th day of April, 2011

A handwritten signature in blue ink, appearing to read 'Brendan O'Connor'.

BRENDAN O'CONNOR
Minister for Home Affairs

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1. SUMMARY AND RECOMMENDATIONS

This continuation inquiry is in response to an application by Orica Australia Pty Ltd (Orica) and CSBP Limited (CSBP) seeking the continuation of the anti-dumping measures applying to ammonium nitrate exported to Australia from The Russian Federation (Russia).

This report sets out the facts on which the delegate of the Chief Executive Officer of the Australian Customs and Border Protection Service (Customs and Border Protection) is basing his recommendation to the Minister for Home Affairs (Minister).

1.1 Applicable law

Division 6A of Part XVB of the Act¹ provides for the Chief Executive Officer of Customs and Border Protection (CEO) to alert interested parties to the impending expiry of measures and provide them with an opportunity, before those measures expire, to apply for a continuation of those measures. The Division:

- sets out the consequences if no application is made;
- outlines the procedure to be followed by the CEO in dealing with an application and preparing a report for the Minister;
- empowers the Minister, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of measures.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection ("the delegate").

It must not be recommended that the Minister take steps to secure the continuation of the anti-dumping measures unless the delegate is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

1.2 Recommendation

The delegate recommends that the Minister:

- 1 declare that he has decided to take steps to secure the continuation of anti-dumping measures in respect of the goods exported from Russia from 24 May 2011; and
- 2 sign the requisite notice² (**confidential attachment 1**).

¹ A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901 (Cth)*.

² Section 269ZHG(1).

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1.3 Findings and conclusions

After examining the information gathered in the course of the inquiry and assessing the arguments raised by interested parties Customs and Border Protection's has found that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping were intended to prevent due to the following factors:

- 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
- evidence that import prices of high density ammonium nitrate are used to extract competitive prices for locally produced ammonium nitrate solution.

Therefore, Customs and Border Protection recommends that the Minister takes steps to secure the continuation of the anti-dumping measures on ammonium nitrate exported from Russia.

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2. INTRODUCTION

2.1 Continuation inquiry process

Dumping duty notices (that have not been revoked) automatically expire five years after the date on which they were published, unless the Minister decides to continue them³.

Not later than nine months before a dumping duty notice expires, Customs and Border Protection must publicly announce that the measures are due to expire and invite certain interested parties to apply within 60 days for continuation of measures⁴. If no application for continuation of the measures is received by Customs and Border Protection within the period allowed, the measures expire on the specified date.

If an application for continuation of anti-dumping measures is received, and not rejected, Customs and Border Protection has up to 155 days, or such a longer period as the Minister allows, to inquire and report to the Minister on whether continuation of the measures is justified. Within 110 days of the initiation notice, or such longer period as the Minister allows, 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 continuation of those measures.

Before recommending the continuation of the measures, Customs and Border Protection must be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

Where the Minister decides to continue anti-dumping measures, the dumping duty notice will remain in force after the specified date for a further period of five years (unless the relevant notice is revoked before the end of that period).

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

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

³ Under section 269TM.

⁴ Under section 269ZHB.

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

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

2.2 Notification and participation

The current anti-dumping measures applying to ammonium nitrate from Russia are due to expire on 24 May 2011.

On 16 July 2010 Customs and Border Protection published a notice inviting certain persons to apply to Customs and Border Protection for continuation of the anti-dumping measures applying to ammonium nitrate.

On 14 September 2010, CSBP and Orica, two manufacturers of ammonium nitrate in Australia, lodged an application for the continuation of measures.

Customs and Border Protection examined the application and decided not to reject it. Public notification of initiation of the continuation inquiry was made on 7 October 2010 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2010/34 was also published.

Following an extension from the Minister, Customs and Border Protection placed the statement of essential facts on the public record on 24 February 2011. Interested parties were 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 recommendations is due on or before 11 April 2011.

2.3 Responses to the statement of essential facts

Customs and Border Protection received responses to the statement of essential facts from:

- Australian Nitrogen Management Pty Ltd
- Incitec Pivot Limited
- The Australian industry
- Rio Tinto Limited
- The Government of Russia
- Xstrata Coal Pty Ltd

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;

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

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

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3. GOODS SUBJECT TO THE CONTINUATION INQUIRY

3.1 Findings

The Australian industry produces ammonium nitrate that has characteristics closely resembling those of ammonium nitrate manufactured in Russia and exported to Australia therefore ammonium nitrate manufactured by the Australian industry are like goods⁵.

3.2 Submissions in response to the statement of essential facts

Incitec Pivot argues that the Australian industry does not produce like goods to imported high density ammonium nitrate. In addition to reiterating its earlier arguments, it rejects the view that high density ammonium nitrate are like goods to ammonium nitrate solution. This point is addressed in the section below. The Russian Government also argues that high density ammonium nitrate should be excluded from the measures as the Australian industry does not produce this grade. However, no grounds were provided as to why high density ammonium nitrate was not like goods to ammonium nitrate solution. Australian Nitrogen Management also asserts that the Australian industry does not produce like goods to the Russian imports but no new points, other than those already considered, have been raised.

3.3 The goods and like 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)

⁵ In terms of s.269T.

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

ANFO explosives are the most commonly used explosive in the mining industry. Emulsion explosives on the other hand are more expensive and are generally only used in wet conditions or for extremely hard ground.

3.3.1 Tariff classification

The goods are classified under tariff subheading 3102.30.00, statistical key 05, in Schedule 3 to the *Customs Tariff Act 1995*. The rate of Customs 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:

'...low density, high density AN⁶ 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 were technically more suited to the manufacture of different explosives but that the essential characteristics of different ammonium nitrate products were 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 (REP 104 and 105) it was found that ammonium nitrate produced by the Australian industry were like goods to ammonium nitrate exported to Australia from Russia, irrespective of whether in solid or solution state, prilled or granular form, low density or high density.

⁶ Ammonium Nitrate (AN)

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Customs and Border Protection has again examined this issue in this continuation inquiry. The Australian industry still produces, but no longer sells high density ammonium nitrate on the domestic market. The industry now only sells low density 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 8** regarding the likelihood of injury continuing or recurring.

Several interested parties have provided submissions prior to the statement of essential facts on the issue of like goods, as listed below.

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'.

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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, which is:

'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.'

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 8 below).

In the case of ammonium nitrate, the density, form (prilled or granular) and state (solid or solution) of the goods are physical characteristics that are significant and distinguishing attributes in the eyes of those who use ammonium nitrate in the explosives industry. These characteristics, especially the density, are linked with the performance expectations of the product and are reflected in the relative prices. Accordingly, Customs and Border Protection considers low density ammonium nitrate, high density ammonium nitrate and ammonium nitrate solution are not identical goods.

Having assessed the three types of ammonium nitrate are not identical to each other, it is necessary to consider whether any of the Australian ammonium nitrate types are identical to the Russian ammonium nitrate. Having regard to the differences in technical specifications between the locally manufactured and imported ammonium nitrate Customs and Border Protection considers there are sufficient physical differences to reasonably conclude the Australian and Russian ammonium nitrate forms and states are not identical.

In the absence of identical goods, Customs and Border Protection must establish if the locally manufactured ammonium nitrate types have characteristics closely resembling the imported Russian ammonium nitrate. In this broader context, Customs and Border Protection looks initially to physical characteristics, but also considers it is reasonable to have regard to the commercial likeness, functional likeness and production likeness.

Whilst the Australian low density ammonium nitrate may comprise slightly different technical specifications, its physical characteristics closely resemble those of the Russian low density ammonium nitrate. Irrespective of its origin or minor specification differences, the vast majority of low density ammonium nitrate is used as the dry additive in manufacturing explosives.

In considering whether the Australian ammonium nitrate solutions are like goods to the high and/or low density ammonium nitrate imported from Russia, Customs and Border Protection accepts the obvious differences in state (ie. solution versus solid). It also accepts that solid ammonium nitrate is a result of a further significant process in ammonium nitrate manufacturing, that being the prilling or granulating processes. However, Customs and Border Protection has found that the imported solid high density ammonium nitrate from Russia is used mainly for melting down in the manufacture of emulsions. These emulsions

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compete directly with, and may be substituted for emulsions made from ammonium solution.

The ability to use either high density ammonium nitrate or ammonium nitrate solution in the manufacture of emulsions demonstrates that the essential characteristics of different ammonium nitrate products are not changed by the variations in density, state or form.

Therefore, 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.

After considering the arguments raised by interested parties 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). This is discussed further in section 8.

4. AUSTRALIAN INDUSTRY

4.1 Findings

There is an Australian industry producing like goods, comprising of Orica, CSBP and Queensland Nitrates Pty Ltd (QNP).

4.2 Manufacturing process

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia⁷.

CSPB and Orica account for more than 85 per cent of the total ammonium nitrate production capacity in Australia. The remaining local production capacity is contributed by QNP Limited (QNP is a joint venture of CSBP and Incitec Pivot Limited). QNP has not provided information in the course of this inquiry. No other interested party has claimed to be an Australian producer of ammonium nitrate.

Verification visits were undertaken to CSBP and Orica. The visit reports⁸ detail verification of production costs, sales revenue and submissions made by these parties.

Customs and Border Protection considers that at least one substantial process in the manufacture of ammonium nitrate is carried out in Australia, and therefore ammonium nitrate is manufactured in Australia.

⁷ Subsections 269T(2) and 269T(3).

⁸ Orica Australia Pty Ltd and CSBP Limited reports are available on the Public Record.

5. EXPORTER ACTIVITY

5.1 Findings

Customs and Border Protection has found that ammonium nitrate from Russia has continued to be imported into Australia since measures were continued in 2006.

Customs and Border Protection gathered and assessed data for the purpose of ascertaining variable factors for the period of July 2009 to June 2010. This period is also referred to as the review period.

Customs and Border Protection has found that an indirect price control situation continues to exist in the Russian domestic market in regards to the price of natural gas. As a result, normal value has been determined using information from the United Kingdom as a surrogate.

During the review period a dumping margin of 44% has been found. This margin applies to exports of high density ammonium nitrate.

5.2 Pattern of imports

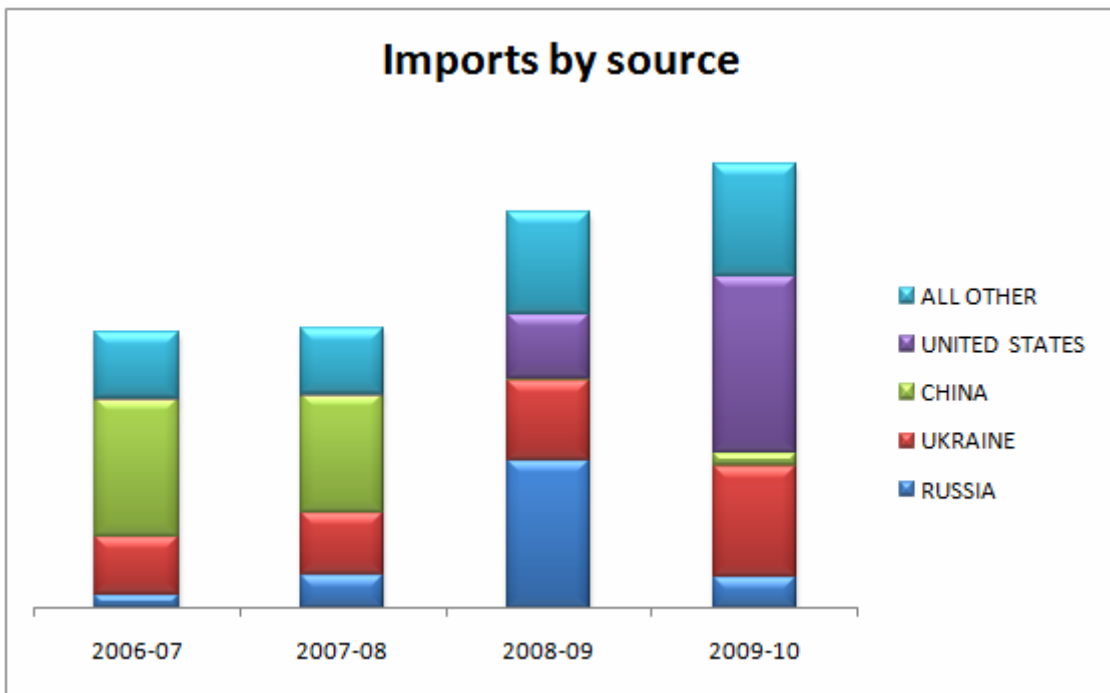
Interim dumping duties on ammonium nitrate exported to Australia from Russia were imposed on 24 May 2001 and continued on 24 May 2006. In 2000-01 less than 10,000 tonnes of ammonium nitrate was imported into Australia. Imports from Russia accounted for about a quarter of these imports, or 2% of the total market at the time.

In the four years to 2004-05, the volume of imported ammonium nitrate increased from a very small base to hold 15% of the market. Imports from Russia were negligible in 2001-02, 2002-03 and 2003-04, but accounted for 7% of imports in 2004-05. This was approximately 1% of the total market.

During 2009-10 imports of ammonium nitrate from Russia were again found to account for approximately 1% of the market.

During the last continuation inquiry the largest import sources of ammonium nitrate were found to be China, Lithuania, South Africa, the Ukraine and Russia. During this inquiry the largest sources have been found to be Ukraine, China, United States and Russia. Import volumes since June 2006 have been charted below (**confidential attachment 2**).

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This chart indicates that:

- imports from China decreased in 2008-09, largely attributable to the introduction of barriers to export by the Government of China;
- imports from Russia increased in 2008-09, which can be linked to the lack of supply from China, before decreasing to a level similar to that of 2007-08 in 2009-10;
- the volume of imports from the United States of America increased in 2008-09 and continued to increase in 2009-10; and
- the volume of imports from the Ukraine increased across the period.

Only one company, Downer EDI Mining and Blasting Services, imported ammonium nitrate from Russia during the review period. The ammonium nitrate imported by this company was found to be high density ammonium nitrate.

5.3 Price Trends

Customs and Border Protection analysed export prices of ammonium nitrate from Russia since the measures were imposed, as listed in Customs and Border Protection's import database. Prices of ammonium nitrate from Russia were relatively constant between 2006-07 and 2007-08. In 2008-09 prices increased significantly before decreasing again in 2009-10 to levels similar to that of 2007-08. The price of ammonium nitrate since July 2010 has remained stable.

Based on information from Customs and Border Protection's import database, imports from Russia were the lowest priced imports of ammonium nitrate during the period July 2009 to June 2010⁹ (**confidential attachment 2**).

⁹ In assessing export price Customs and Border Protection examined importations from countries that had a total export volume of over 100MT.

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5.4 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 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.

5.4.1 Export price

As discussed, a number of Russian entities were identified as 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 exporter¹⁰;
- the price paid at which the goods were sold by the importer less prescribed deductions¹¹ 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 exportation¹², as these circumstances were unknown.

The export price has therefore been determined having regard to all relevant information¹³.

¹⁰ s. 269TAB(1)(a) of the Act

¹¹ s. 269TAB(1)(b) of the Act

¹² s. 269TAB(1)(c) of the Act

¹³ s. 269TAB(3) of the Act

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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. These calculations are at **confidential attachment 3**.

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.

5.4.2 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.

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

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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 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.

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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 Russia¹⁴. 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 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.

¹⁴ The Government of Russia's response to this questionnaire is available on the Public Record.

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- 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.

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.

Submissions to the statement of essential facts

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In its submission to the statement of essential facts, Rio Tinto claimed that the Russian Government does not directly or indirectly control the domestic selling price of ammonium nitrate in Russia. Accordingly, normal values should be determined under s.269TAC(1) and not s.269TAC(5D) as outlined in the statement of essential facts.

It submits that no evidence is referred to in the statement of essential facts that:

- the Russian Government controls the price of ammonium nitrate sold in Russia;
- the Russian Government intends to control the domestic selling price of ammonium nitrate; or
- Russian producers of ammonium nitrate cannot sell ammonium nitrate in the domestic market at whatever price it can obtain in that market

Likewise, a submission from Xstrata put forward the view that:

There is no evidence provided in the SEF¹⁵ or on the Customs Public File that any examination or analysis was undertaken of sales of ammonium nitrate on the Russian domestic market to substantiate Customs view that ammonium nitrate is sold on the Russian domestic market at less than fair market value.

Xstrata also submitted that the legislation applying at the time of the original anti-dumping investigation in 2000-01 that provided for government control of prices of ammonium nitrate on the Russian domestic market did not apply during the current review and inquiry period, and no longer applies.

Customs and Border Protection notes that the Ministerial Guidelines outline procedures for assessing a price control situation in relation to an economy in transition. The guidelines make it clear that:

Relevant producers or exporters in an economy in transition are to be advised they have the opportunity to submit information to show that a price control situation does not apply to the goods under consideration. Such information is to be provided in the context of answers to questions contained with the exporter's questionnaire.

Adverse inferences may be drawn where there is failure by the producer or exporter to materially and substantially respond to the questions in the exporter's questionnaire.

Exporter questionnaires were sent to all known Russian exporters of ammonium nitrate. The questionnaires requested information readily available to the exporters to enable an assessment of the impact that the Russian Government's control of gas prices may have had on domestic selling prices of ammonium nitrate in Russia.

¹⁵ Statement of essential facts

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That assessment would have involved performing the ordinary course of trade test on domestic sales of ammonium nitrate made during the review period, using an adjusted cost to make and sell for ammonium nitrate. This adjusted cost of production would have included a substituted gas cost reflecting a gas price under competitive market conditions. The available options for a market gas price include information gathered and verified at either the Australian industry or the UK surrogate exporter.

However no Russian producers or exporters of ammonium nitrate provided substantially complete questionnaire responses. Therefore in the absence of domestic sales and the relevant cost of production by Russian exporters, Customs and Border Protection has made its price control determination on the basis of all relevant information and available facts as set out below.

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 Minister¹⁶;
- prices of goods produced in a country determined by the Minister and sold to a third country¹⁷;
- a value equal to the cost to make and sell, and profit, of goods produced and sold in a country determined by the Minister¹⁸; and
- prices paid for goods produced and sold in Australia¹⁹.

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 United Kingdom (UK) and/or Australia. Cost to make and sell data and sales data was verified for one ammonium nitrate producer in the 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

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

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

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

¹⁹ 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.

Incitec Pivot argues that GrowHow is not an appropriate surrogate for calculating normal value because the goods it produces are not like goods to the goods produced by Russian manufacturers and its business lacks similarities with Russian manufacturers. This has resulted in excessively high normal values.

Goods produced and sold by GrowHow were found to be like goods to the goods exported to Australia from Russia. Sales of ammonium nitrate by GrowHow are considered to be representative of a fair price for ammonium nitrate sold in Russia had competitive market conditions existed in the Russian domestic market.

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

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the exporter questionnaire and the FOB export price to the Australian importer. These calculations are at **confidential attachment 3**.

5.4.3 Dumping margin

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 normal values over the whole of that period²⁰. Customs and Border Protection found a dumping margin of 44% (**confidential attachment 3**).

²⁰ Subsection 269TACB(2)(a).

6. ECONOMIC CONDITION OF THE INDUSTRY

6.1 Findings

Industry's sales volume has increased following capacity expansion and market share maintained in line with an increase in the overall market for ammonium nitrate.

Industry profits have increased and profitability is at similar levels in 2010 to that of 2007.

Industry has not suffered price suppression and whilst there has been price depression this appears to be a normal part of the price cycle for ammonium nitrate.

6.2 Parameters of analysis

During the course of this continuation inquiry, Customs and Border Protection gathered information from Orica and CSBP. These companies account for approximately 85% of ammonium nitrate production in Australia. The information charted below is reflective of these two companies and does not include information relating to QNP unless otherwise specified.

Customs and Border Protection conducted additional analysis on the review period of July 2009 to June 2010.

Customs and Border Protection also gathered information from the importer regarding export price and into-store expenses.

6.3 Market structure

Ammonium nitrate is generally used in Australia in the manufacture of explosives used in the mining industry. The applicants consider that the ammonium nitrate market in Australia is expanding due to the mining boom.

The Australian market for ammonium nitrate is supplied by local production from Orica, CSBP and QNP and imports. Major source countries for imports include Sweden, the Ukraine, the USA and Russia.

The following companies have ammonium nitrate manufacturing facilities in Australia or propose to build facilities:

CSBP

CSBP operates a 520,000MT per annum plant in Kwinana, Western Australia. CSBP produces and markets broad acre fertilisers and chemicals for industry, mining and mineral processing.

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In 2008 CSBP completed an upgrade of its facilities increasing its production capacity from 260,000 to 520,000MT per annum. CSBP has announced another planned expansion at its Kwinana facility to increase production to 780,000MT per annum.

Orica

Orica operates two ammonium nitrate production facilities in: Yarwun, Queensland with a capacity of 548,000MT per annum and Kooragang Island Newcastle, New South Wales with a capacity of 430,000MT per annum. While Orica sells some ammonium nitrate directly to customers, the company considers itself to be a provider of mining services, rather than a seller of ammonium nitrate. Accordingly, the majority of the ammonium nitrate it produces is used to produce explosives and is sold as a package with its other products and services.

Orica has announced that it intends to expand the capacity of its Kooragang Island facility by a further 320,000MT per annum by 2014-15.

QNP

QNP is a 50:50 joint venture between CSBP and Dyno Nobel. Its plant is located in Moura, Queensland and has a capacity of 210,000MT per annum. QNP sells ammonium nitrate directly to customers and does not produce or sell explosives.

Dyno Nobel

Dyno Nobel, owned by Incitec Pivot Limited, is a supplier of industrial explosives and blasting services. Dyno Nobel is constructing an ammonium nitrate plant in Moranbah, Queensland with an expected capacity of 330,000MT. This plant is due to become operational in 2012.

6.3 Industry claims

In its application for the continuation of measures on the goods from Russia, Orica and CSBP claimed that:

- Russian exports of ammonium nitrate have continued in significant volumes since the previous continuation inquiry in 2006;
- the Australian industry has undertaken investment decisions to match the growth demands of the Australian market;
- the prospect of increased dumped exports of ammonium nitrate from Russia would threaten the returns on new and planned investments by the Australian industry; and
- Russian ammonium nitrate export prices in 2009/10 are generally below the other major sources of supply. Recent price declines for imported Russian ammonium nitrate would prevent the Australian industry from increasing its prices to reflect higher costs evident in 2009/10.

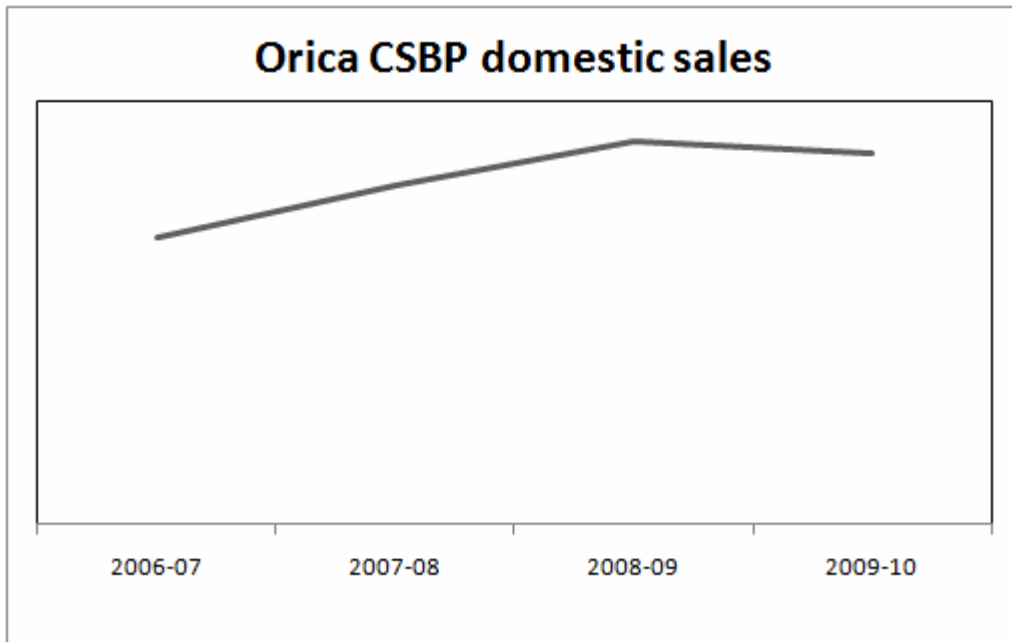
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Customs and Border Protection visited CSBP and Orica in October and December 2010 to verify the data provided in the application.

6.5 Volume effects

6.5.1 Sales volume

The annual volume of ammonium nitrate that CSBP and Orica has sold in the Australian domestic market is charted below:



The chart shows the volume of ammonium nitrate sold by the Australian industry increased from 2008 and has remained relatively stable since 2009 (**confidential attachment 4**).

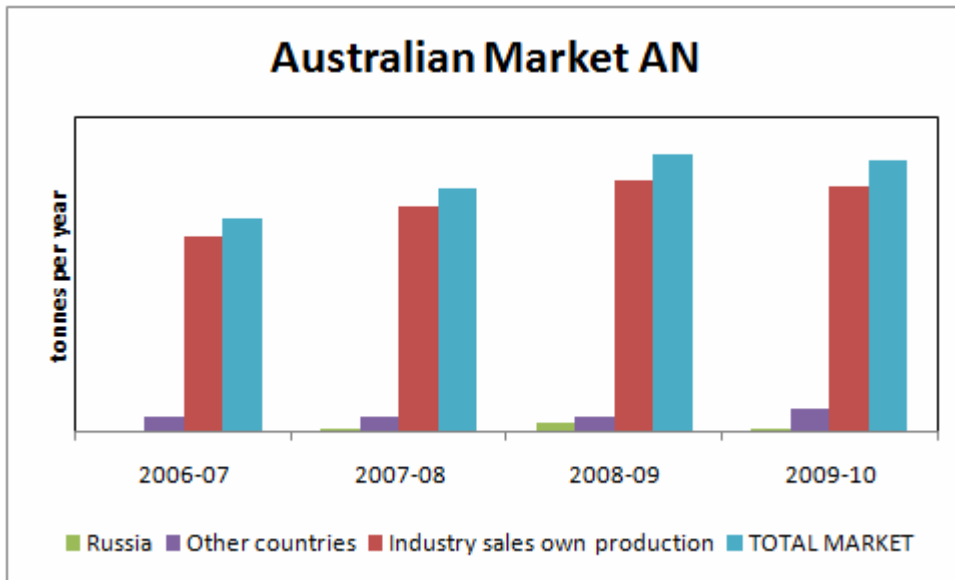
The increase in volumes of ammonium nitrate sold by CSBP and Orica is due to increased demand in the Australian market and the capacity expansion of CSBP's ammonium nitrate plant completed in 2008.

6.5.2 Market

To assess the market Customs and Border Protection used information from CSBP, Orica and data relating to exports from other countries extracted from Customs and Border Protection's import database. Customs and Border Protection also estimated annual sales by QNP using available public information and information from previous inquiries.

Customs and Border Protection's estimate of the Australian market is shown below.

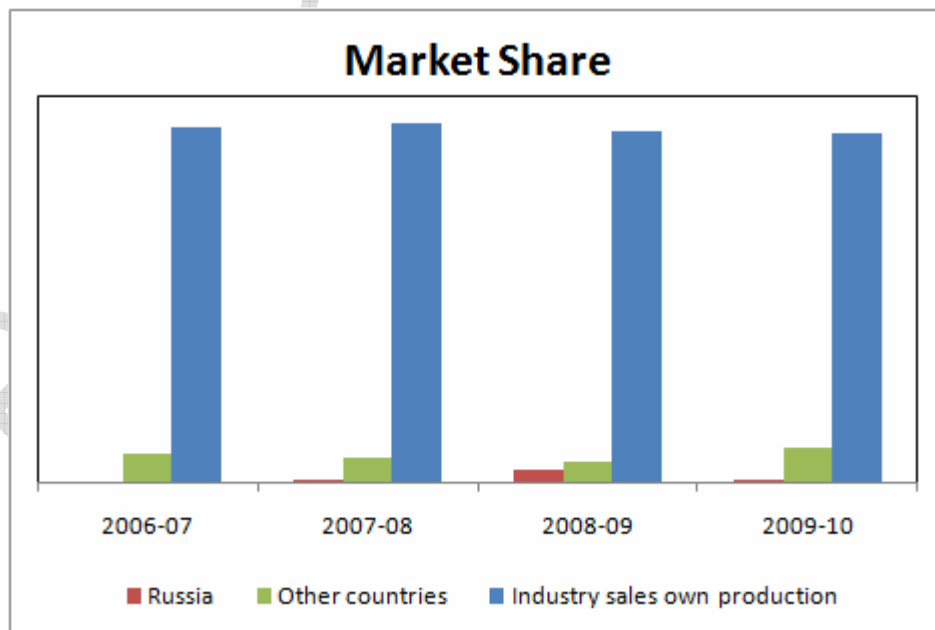
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Customs and Border Protection estimates that the Australian market for ammonium nitrate has increased from 1.2 million tonnes to over 1.5 million tonnes. Sales by the Australian industry have increased over the period as have sales of imports. Imports from Russia increased from 2006-07 to 2008-09 before declining in 2009-10 to levels approximate to that in 2007-08.

6.5.2 Market Share

Market share is shown in the chart below and includes estimates of sales by QNP as noted above.



The Australian industry's market share was relatively stable over the period. The market share of imports from Russia increased from 2006-07 to 2008-09 before declining in 2009-10 to levels approximate to that in 2007-08 (**confidential attachment 4**).

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6.6 Price effects

Price effects may be in the form of:

- price suppression, which occurs when price increases for a company's product, which otherwise would have occurred, have been prevented; and/or
- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price undercutting, which occurs when imported product is sold at a price below that of the Australian product in comparable sales.

6.6.1 Price suppression

Customs and Border Protection analysed price and cost data collected from Orica and CSBP for the financial years 2007 to 2010.

The data showed costs and prices increased at similar rates from 2006-07 to 2008-09 before decreasing in 2009-10. The increased costs to 2008-09 were due mainly to the gas shortage in Western Australia in 2008, higher ammonium prices and costs related to the capacity expansion by industry.

Customs and Border Protection is not satisfied based on the available information that the industry has suffered price suppression. There is no evidence to show that price increases should have occurred or were prevented from occurring.

6.6.2 Price depression

Customs and Border Protection examined selling prices by Orica and CSBP over the same period and notes that industry's selling prices increased from 2006-07 to 2008-09 and declined to 2009-10.

The price decline in 2009-10 is an indication of price depression; however no evidence has been presented for the price decline being outside the normal ebb and flow of business.

6.6.2 Price undercutting

Customs and Border Protection has found that imports during the review period were high density ammonium nitrate. The Australian industry, on the other hand, only sells low density ammonium nitrate and ammonium nitrate solution. The Australian industry considers that the price of its low density prill should be compared to the price of imported high density ammonium nitrate prill, as the most appropriate 'like-for-like' comparison.

Incitec Pivot argues that any price comparison should be between high density ammonium nitrate and ammonium nitrate solution. In addition, the extra costs of using high density ammonium nitrate in place of ammonium nitrate solution should be taken into account in any price analysis.

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Customs and Border Protection has found that imported high density ammonium nitrate competes with ammonium nitrate solution, not low density ammonium nitrate prill. Therefore, it is reasonable to compare the price of high density ammonium nitrate with ammonium nitrate solution, with adjustments made for the conversion of the high density prill to solution.

The four manufacturing plants that comprise the Australian industry sell ammonium nitrate to a range of locations around Australia. Depending on the destination, transportation of the product can add significantly to the price. Customs and Border Protection considers that conducting a price undercutting analysis on a delivered basis may distort the findings due to the varying amount of transportation costs included in the price.

Therefore, Customs and Border Protection has assessed the most appropriate point of price comparison to be:

- High density ammonium nitrate - landed but not delivered cost plus expenses for conversion to ammonium nitrate solution; and
- Ammonium nitrate solution – ex-works price.

This level of price comparison excluded delivery expenses as these vary from site to site but included the other expenses as provided by interested parties. At this level dumped imports of ammonium nitrate from Russia undercut the price with ammonium nitrate solution sold by the Australian industry during the review period.

Rio Tinto suggests that undercutting is not a result of dumping but rather a result of the low price of the goods. A comparison was conducted again with high density ammonium at an undumped price (ie. with the 44% dumping margin removed). The undumped price of high density ammonium (conversion costs included) was similar to the price of industry's ammonium nitrate solution. Therefore, high density ammonium nitrate undercuts the industry's selling prices because of dumping, rather than because it is a low cost product.

The price undercutting calculations are at **confidential attachment 5**.

6.7 Profits and profitability

Orica and CSBP's profits, a measurement of total profits on domestically sold ammonium nitrate, and profitability, net profits as a percentage of sales revenue, were examined over the same period.

The data showed that profits decreased from prior to industry's expansion in 2007-08, with profits increasing to 2008-09 and declining again to 2009-10. Profitability declined in 2007-08 which appears to be mainly related to increased ammonium and expansion costs as noted above, whilst profitability in 2009-10 is at similar levels to what it was in 2006-07 (**confidential attachment 4**).

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Based on the evidence the decrease in profitability in the intervening period has occurred for reasons related to a gas shortage, increased world prices for ammonia and increased costs to manufacture ammonium nitrate.

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7. LIKELIHOOD OF DUMPING OR INJURY RECURRING OR CONTINUING

7.1 Findings

The expiration of measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

7.2 Continuation test

Customs and Border Protection must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

7.3 Submissions in response to the statement of essential facts

The Australian industry agrees with Customs and Border Protection's findings that measures should be continued in respect of ammonium nitrate exported from Russia.

Incitec Pivot Limited argued that measures should be discontinued in regards to high density ammonium nitrate.

The Russian government, Rio Tinto, Xstrata and Australian Nitrogen Management argue that measures should not be continued as the expiration of measures would not lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the measures were intended to prevent.

7.4 Likelihood of dumping continuing or recurring

In the absence of completed responses from manufacturers in Russia and the finding of a price control situation Customs and Border Protection has examined all available and relevant information to determine the likelihood of dumping continuing or reoccurring.

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. Given that these manufacturers have maintained distribution links to Australia, it appears likely that ammonium nitrate from Russia will continue to be imported into Australia in the future.

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The Australian industry asserts that the tendency of Russian exporters to dump ammonium nitrate is demonstrated by the fact that the United States of America (USA) and the European Union (EU) also have measures on ammonium nitrate exported from Russia. Rio Tinto argues, on the other hand, that most export destinations for Russian ammonium nitrate do not have measures in place. Customs and Border Protection has found that some of these countries do not have a domestic ammonium nitrate industry and little information is known about the domestic market for those that do.

Rio Tinto also argues that, rather than a generalised assessment, the propensity of individual exporters to dump must be assessed. Due to the lack of information provided by exporters and manufacturers in Russia, Customs and Border Protection is unable to examine individual dumping. However, the imposition of measures by the USA and EU administrations indicates a propensity for exporters of Russian ammonium nitrate to sell at export prices that are less than the normal value.

Using trade statistics, the Australian industry was able to show that the average 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. Furthermore, 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 for 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 Australian industry that the measures are having the intended impact on import prices by ensuring that they do not fall below non-injurious levels. This information also indicates that the measures are a major factor affecting the price of ammonium nitrate to Australia and in the absence of these measures the price would be lower.

Interested parties have claimed that prices in the Australian market are above the global market making it particularly attractive. In addition Customs and Border Protection was contacted by a Russian manufacturer that wished to complete the exporter questionnaire even though it did not export ammonium nitrate during the review period. Therefore the available information shows that imports of ammonium nitrate from Russia will continue in the absence of measures.

Given the current level of dumping found, and the indications of low dumped prices for goods to other export destinations, it has been found that the

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expiration of anti-dumping measures on ammonium nitrate from Russia is likely to lead to a continuation of the goods being exported at dumped prices.

7.4 Likelihood of injury continuing or recurring

The Australian industry submitted that the ammonium nitrate market in Australia is highly transparent with prices for locally produced product being set according to import parity.

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.

However, interested parties such as Downer EDI Mining – Blasting Services, Incitec Pivot Limited and Australian Nitrogen Management argue that high density ammonium nitrate imported from Russia cannot injure the Australian industry as this grade does not compete with the ammonium nitrate produced by the Australian industry.

In addition, Rio Tinto, Xstrata and Australian Nitrogen Management argue that there are constraints in place that prevent loss of market share by the Australian industry and therefore prevent volume injury. These constraints include security restrictions, the structure of the market, port restrictions and transportation restrictions.

Rio Tinto and Xstrata also argue that there are factors other than the price of Russian imports that influence the price of ammonium nitrate in the Australian market and as a result, these imports will not cause injury to the Australian industry.

7.4.1 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 accepts that high and low grades of ammonium nitrate are generally not substitutable in the manufacture of explosives. However, interested parties have argued that high density ammonium nitrate and ammonium nitrate solution are also not substitutable.

Incitec Pivot argues that high density ammonium nitrate is required to undergo a significant conversion process before it becomes ammonium nitrate solution. This requires additional infrastructure and incurs additional costs. Incitec Pivot also argues that the transportation of high density ammonium nitrate and ammonium nitrate solution require completely different logistics. Imported high density ammonium nitrate must be transported complying with security requirements before it is melted down into ammonium nitrate solution. The

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transportation of ammonium nitrate solution, on the other hand, requires special trucks as it must be kept at a high temperature to prevent it from solidifying.

After considering these arguments Customs and Border Protection still holds the view that high density ammonium nitrate and ammonium nitrate solution possess common essential physical characteristics. The high density ammonium nitrate also competes with and is substitutable for locally produced ammonium nitrate solution. Customs and Border Protection accepts arguments that further processing is required to use high density ammonium nitrate in place of ammonium nitrate solution in the production of emulsions. However, Customs and Border Protection has found that:

- the high density ammonium nitrate imported into Australia is used to melt down for use in emulsions and ammonium nitrate solution is also used in the production of emulsions; and
- consumers consider using both high density ammonium nitrate and ammonium nitrate solution in the production of their emulsions and some consumers use both products but at different locations.

Therefore, Customs and Border Protection has found that high density ammonium nitrate and ammonium nitrate solution is ultimately substitutable. Given the substitutability between these products, Customs and Border Protection has assessed the likelihood of dumped imports of high density ammonium nitrate causing injury to the Australian industry's sales of ammonium nitrate solution. Customs and Border Protection has taken into account the different costs, processes and logistics associated with the use of high density ammonium nitrate as opposed to ammonium nitrate solution in this analysis.

The Australian industry argues that the Australian market is transparent as data from the Australian Bureau of Statistics is easily accessible, listing the quantity, source and free on board price of ammonium nitrate imports. As a result, import prices can and are used to negotiate lower prices with industry. However, several interested parties argue that this is not the case. Xstrata argues that the Australian market is part of the global market. It is these prices, rather than the price of specific imports that influence the domestic price of ammonium nitrate. It argues that Australian producers of ammonium nitrate must be competitive from all sources and that injury cannot be attributed to one source. Australian Nitrogen Management also argues that similar prices to Russian prices are also available from other sources, such as Iran and Egypt. Rio Tinto, however, argues that if import parity prices influenced prices in the Australian market the prices should be more reflective of global prices rather than being significantly higher.

Customs and Border Protection has considered these arguments raised by interested parties. The price of ammonium nitrate in the Australian market may not necessarily reflect the price of ammonium nitrate in the global market. The Australian market is predominately for explosive, while 90% of the global ammonium nitrate market is used in the fertiliser industry. Ammonium nitrate for explosive purposes is subject to additional processes and attracts a premium. In addition, there are different transportation costs and logistical costs for the Australian market (as discussed further down) that may effect the price. Therefore, the fact that prices in the Australian market do not reflect global

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prices does not mean that import parity pricing is not utilised as a negotiation technique.

As found in section 6.6.2, Customs and Border Protection found that the price of dumped high density ammonium nitrate from Russia undercut the price of the Australian industry. While imports of ammonium nitrate are sourced from a range of countries, Russian imports were the lowest priced during the review period and therefore these imports would put the most downwards pressure on the market if import parity pricing occurred.

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.

Customs and Border Protection has found that during the review period, the price of high density ammonium nitrate from Russia undercut industry's prices but no injury was demonstrated (**section 6**). It must therefore be determined whether it is likely that dumped high density ammonium nitrate from Russia might materially injure the Australian industry in the absence of measures by impacting its sales of ammonium nitrate solution.

Rio Tinto and Australian Nitrogen Management argue that there are constraints on the importation of ammonium nitrate into Australia due to the security requirements around the movement and possession of ammonium nitrate. As a result there are only a few ports in which ammonium nitrate can be imported and these ports have set limits on the quantity of ammonium nitrate that can be unloaded. The limitations on the volume of ammonium nitrate that can be imported into Australia will prevent injury to the Australian industry.

However, Customs and Border Protection has found that a significant quantity of ammonium nitrate is currently being imported. In addition, port restrictions are set by the state governments and port authorities can apply to the government with an appropriate security plan to allow ammonium nitrate to be imported through a port or for the permitted quantity to be increased. Therefore, while Customs and Border Protection accepts that there are barriers to the importation of ammonium nitrate into Australia it does not consider that these will prevent increased quantities of ammonium nitrate from being imported into Australia.

Rio Tinto and Xstrata also argue that the volume of ammonium nitrate that can be imported into Australia is capped and the price effect of imports is restricted because customers are required to commit to long term contracts with the Australian industry. As a result the price of imports does not affect the selling

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price of ammonium nitrate or the quantity purchased for contract customers. The only sales imports could affect are spot sales, which comprise only a very small portion of the market.

Customs and Border Protection notes that the Australian industry generally sells ammonium nitrate on a contract basis and that customers commit to contracts to purchase additional capacity before new plants are brought online. However, a significant number of contracts come up for renewal every year and customers can use import parity pricing to negotiate lower prices on new contracts.

Incitec Pivot argues that there are logistical considerations that need to be taken into account when choosing to use either ammonium nitrate solution or high density ammonium nitrate and these considerations, rather than price, may dictate which product is used. As ammonium nitrate solution must be maintained at a certain temperature to prevent it from solidifying, special trucks are required for its transportation. Depending on the distance between the factory to the delivery point this can add significantly to the costs. It also means that there is an increased level of risk in the transportation of solution as failure to deliver the product in time can result in loss of product due to solidification.

Customs and Border Protection accepts that the geographic location of the Australian manufacturers and the corresponding location of potential customers may add unreasonable costs to the purchase of locally produced ammonium nitrate in some instances.

However, in the absence of measures Customs and Border Protection is of the view that export prices of high density ammonium nitrate from Russia will fall significantly below current prices (as outlined in section 7.3). These prices will then undercut industry's prices to an even greater extent (as outlined in section 6.6.2). As a result, there will 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 will result 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 asserted that ammonium nitrate used by customers in the manufacture of other products cannot injure the Australian industry as the ammonium nitrate never enters the market in this form. 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

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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, other services being offered and market structure. Incitec Pivot argues that these and other factors are the price setters rather than the cost of inputs.

However, after considering these arguments Customs and Border Protection still considers that the low price of dumped high density ammonium nitrate would allow for some reduction in costs that would potentially allow importers to undercut the industry's products.

As a result, in the absence of measures it is likely that a causal link can be established between dumping and injury to the Australian industry's production and sales of ammonium nitrate solution. Customs and Border Protection has found that the price of these imports will drop and as a result of the transparency of the market there will be a sufficient price incentive for consumers to purchase dumped ammonium nitrate from Russia at the expense of industry's sales.

7.4.2 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 argues that in the absence of measures it is likely that there would be an increase in the volume of low density ammonium nitrate from Russia at the expense of the industry's sales. The industry asserts that there are several large producers of low density ammonium nitrate in Russia that have exported to Australia in the past. In addition, the price of imports of ammonium nitrate to, which must include low density ammonium nitrate, to Brazil, Russia's largest export destination, is the lowest in the world. The Brazilian market is also a mining market. The industry argues that in the absence of measures imports of low density ammonium nitrate will again commence at very low prices.

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.

Australian Nitrogen Management asserted that imports of low density ammonium nitrate from Russia would not injure the Australian industry as the Australian industry exports ammonium nitrate to other markets, such as

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Indonesia and Malaysia, where it successfully competes with Russian imports. Furthermore, one Australian company is planning to invest in significant ammonium nitrate manufacturing capacity in Indonesia despite competition from Russian imports and dumping duties in place.

Customs and Border Protection examined the claims regarding whether the volume of imports of ammonium nitrate from Russia would increase and injure the Australian industry in the absence of measures.

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 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 issues²¹.

However, Customs and Border Protection has also found that should measures expire, it is likely that 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.

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

7.4.3 Conclusion

After examining the information gathered in the course of the inquiry and assessing the arguments raised by interested parties Customs and Border Protection's has found that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping or countervailing measures were intended to prevent due to the following factors:

- 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
- evidence that import prices of high density ammonium nitrate are used to extract competitive prices for locally produced ammonium nitrate solution.

Therefore, Customs and Border Protection recommends that the Minister takes steps to secure the continuation of the anti-dumping measures on ammonium nitrate exported from Russia.

²¹ Orica visit report

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8. CONFIDENTIAL ATTACHMENTS

Confidential attachment 1	Section 269ZHG(1) notice
Confidential attachment 2	Import trends
Confidential attachment 3	Exports and dumping margin
Confidential attachment 4	Australian market
Confidential attachment 5	Price Undercutting

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