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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.169
REVIEW OF ANTI-DUMPING MEASURES
AMMONIUM NITRATE
EXPORTED FROM
THE RUSSIAN FEDERATION

11 April 2011

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Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 – Part XV B

AMMONIUM NITRATE EXPORTED FROM THE RUSSIAN FEDERATION

Finding in relation to a review of anti-dumping measures

Public notice under section 269ZDB(1)

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its review of anti-dumping measures applying to ammonium nitrate exported to Australia from the Russian Federation ("the goods"), which was commenced on 7 October 2011. Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in Trade Measures Report No. 169 (REP 169).

I, BRENDAN O'CONNOR, the Minister for Home Affairs, have considered REP 169 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 169. Under s. 269ZDB(1) of the *Customs Act 1901* (the Act), I declare, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* to the extent that anti-dumping measures concerning the goods involved the publication of a dumping duty notice that, with effect from the date of publication of this notice, the dumping duty notice is to be taken to have effect, in relation to exporters generally as if different variable factors had been fixed, relevant to the determination of duty.

To preserve confidentiality, the revised variable factors will not be published. Bona fide importers of the goods can obtain details of the new rates from the Regional Dumping Officer in their respective capital city.

Non-confidential copies of the REP 169 will be sent to all interested parties that participated in the review. Additional copies may be obtained by contacting Trade Measures Office Management, Canberra, on telephone number (02) 6245 5453 or fax number (02) 6275 6990 or tmops3@customs.gov.au. Trade Measures reports are also available on the Customs and Border Protection internet home page at www.customs.gov.au.

Enquiries regarding the outcome of the review may be directed to the case manager on telephone number (02) 6245 5453, fax number (02) 6275 6990 or tmops3@customs.gov.au.

Dated this

12th

day of

April,

2011

BRENDAN O'CONNOR
Minister for Home Affairs

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1. SUMMARY AND RECOMMENDATIONS

This review is in response to a request from Orica Australia Pty Ltd (Orica) and CSBP Limited (CSBP) to review the measures as they affect exporters of ammonium nitrate¹ from the Russian Federation (Russia) to Australia.

The Australian Customs and Border Protection Service (Customs and Border Protection Service) examined exports of ammonium nitrate from Russia to Australia during the period 1 July 2009 to 30 June 2010 (the review period) to determine if the variable factors relevant to the taking of the anti-dumping measures had changed.

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

1.1 Applicable law

Division 5 of Part XVB of the Act² enables affected parties to apply for the review of measures. The Division also empowers the Minister to initiate such a review. The Division, among other matters:

- sets out the procedures to be followed by the Chief Executive Officer of Customs and Border Protection (CEO) in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

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

After conducting a review of anti-dumping measures, the delegate must give the Minister a report containing recommendations³.

1.2 Recommendation

The delegate recommends to the Minister that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been ascertained. Given that current measures are based on a non-injurious floor price with zero interim dumping duty, the result of the review would mean a higher non-injurious floor price for low density ammonium nitrate and an unchanged non-injurious floor price for low density ammonium nitrate.

The delegate recommends that the Minister sign the attached schedules (**confidential attachment 1 and 2**) and sign the attached public notice

¹ A full description of the goods is at section 3.2.

² A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

³ Section 269ZDA(1).

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(**confidential attachment 3**) to declare that the dumping duty notice in respect of ammonium nitrate from Russia have effect in relation to exporters the subject of this review generally as if different variable factors had been ascertained.

1.2 Findings and conclusions

Based on all available information Customs and Border Protection has found that:

- revised export prices for Russian exporters have been determined having regard to all relevant information (section 4.5);
- a price control situation exists in Russia due to government control of natural gas prices. Revised normal values for Russian exporters have been determined having regard to all relevant information, based on UK surrogate domestic sales data including appropriate adjustments (section 4.5) ;
- the goods exported by exporters from Russia to Australia during the review period were dumped (dumping margin 44 percent) (section 4.5);
- it is appropriate to determine separate measures for high density and low density ammonium nitrate;
- the non-injurious price for high density ammonium nitrate has not changed since the 2005 review of measures; and
- the non-injurious price for low density ammonium nitrate can be established using CSBP's and Orica's selling prices to specific customers for July 2009 to June 2010 (a period unaffected by dumping) for low density ammonium nitrate prill less any charges to the free on board (FOB) level.
- the non-injurious price is the operative measures for both high and low density ammonium nitrate; and
- that in the absence of measures, grounds would now exist for the Minister to take such measures.

Based on these findings, the delegate recommends to the Minister that the measures be varied for all exporters.

2. INTRODUCTION

2.1 Review process

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

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

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

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the delegate has had regard for the purpose of formulating the statement of essential facts;
- 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.

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

In respect of a dumping duty notice, the delegate must provide a recommendation to the Minister that the dumping duty notice⁴:

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

⁴ s. 269ZDA(1)(a) of the *Customs Act 1901* (the Act)

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

2.2 Notification and participation

On 21 September 2010, CSBP and Orica, two of the three manufacturers of ammonium nitrate in Australia, lodged an application requesting a review of anti-dumping measures⁵ applying to ammonium nitrate exported to Australia from Russia.

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

Following an extension from the Minister, Customs and Border Protection 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 recommendation is due on or before 11 April 2011.

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

2.3 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;

⁵ In accordance with s.269ZA.

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

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

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3. GOODS SUBJECT TO THE REVIEW OF MEASURES

3.1 Findings

The Australian industry produces ammonium nitrate that has characteristics closely resembling those of the goods under consideration and ammonium nitrate manufactured by the Australian industry are, therefore, like goods⁶.

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 separate measures should be implemented on the goods depending on their end use.

3.2 The goods

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

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

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

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

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

Emulsion explosive = Ammonium nitrate solution or high density ammonium nitrate

⁶ In terms of s.269T.

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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.

3.2.1 Tariff classification

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

3.2.2 Like goods

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

In REP 28 Customs and Border Protection determined that:

'...low density, high density AN⁷ 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.

⁷ 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 5** regarding whether injury caused by dumping would have occurred in the absence of measures.

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 5 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.

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

A submission was received from Australian Nitrogen arguing that ammonium nitrate competed across three distinct market, with several submarkets, being:

- Agricultural use of high density ammonium nitrate
- Use in explosives including four subcategories
 - ANFO
 - Emulsions
 - ANFO emulsion blends
 - Water gel or slurry explosives
- Production of industrial gases.

Australian Nitrogen argues that individual duties should be established for each group and sub category and that no measures should be in place on high density ammonium nitrate for agricultural use or high density ammonium nitrate used in the production of water-gel explosives. This is because the products produced by the Australian industry (low density ammonium nitrate and ammonium nitrate solution) cannot be used for these purposes and therefore imports for these end-uses cannot injure the Australian industry.

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Customs and Border Protection does not determine measures based on end-use, given difficulties with compliance of such measures, but rather on the characteristics of the goods. In this instance, the most appropriate way to set measures is on high and low density grades.

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4. REVIEW OF VARIABLE FACTORS

4.1 Findings

- The export price for the goods exported by Russian exporters, can be determined having regard to all relevant information⁸;
- a price control situation continues to exist in Russia due to government control of natural gas prices. The normal value for Russian exporters can be determined having regard to all relevant information⁹, based on UK surrogate domestic sales data including appropriate adjustments to ensure fair comparison with export prices; and
- the goods exported by Russian exporters during the review period were dumped, with a dumping margin of 44%.

4.2 Importers

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

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

4.3 Australian Industry's claims

The Australian industry claims that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed¹⁰.

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

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

⁸ s. 269TAB(3) of the Act.

⁹ s. 269TAC(4)(c) of the Act (pre 2003 legislation).

¹⁰ In accordance with s.269ZC(2)

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

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

4.4 Exporters

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

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

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

4.4.1 Export price

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

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

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

- the price paid or payable for the goods by the importer as it did not reflect the Free on Board (FOB) price paid to the exporter¹¹;
- the price paid at which the goods were sold by the importer less prescribed deductions¹² as the goods were not sold in the condition in which they were imported but rather manufactured into other products; or

¹¹ s. 269TAB(1)(a) of the Act

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- the price determined having regard to all the circumstances of the exportation¹³, as these circumstances were unknown.

The export price has therefore been determined having regard to all relevant information¹⁴.

A single weighted average export price has been calculated for high density ammonium nitrate exported to Australia from Russia during the review period using information gathered during the importer visit and data obtained from Customs and Border Protection's import database relating to ocean freight. 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 4.**

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

4.4.2 Normal value

Normal value provisions for economies in transition

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

The legislative framework

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

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

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

¹² s. 269TAB(1)(b) of the Act

¹³ s. 269TAB(1)(c) of the Act

¹⁴ s. 269TAB(3) of the Act

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

Ministerial guidelines

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

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

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

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

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

Previous findings relevant to the assessment of price control

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

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

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

In the previous review of measures and continuation inquiry (REP 104 and 105), Customs and Border Protection found that the Russian Government controlled the price of natural gas and that the prices did not substantially reflect free market conditions. This was based on information provided the Russian

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

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

In this inquiry it was found that the majority of gas in Russia was supplied by Gazprom, a company in which the government had a controlling interest. The impact of the regulation of Russian domestic natural gas prices was found to be substantial with prices paid for natural gas supplied by natural gas producers other than Gazprom being 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 Russia¹⁵. 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;

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

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

Accounting standards

The Russian Government also provided responses to questions regarding differences between Russian and International Accounting Standards. The Russian Government stated that Russian companies shall maintain their individual accounts in accordance with Russian Accounting Standards, which

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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

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 SEF¹⁶ 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.

¹⁶ Statement of essential facts

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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.

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.

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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.

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

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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.

Normal value in the review of measures

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 Minister¹⁷;
- prices of goods produced in a country determined by the Minister and sold to a third country¹⁸;
- a value equal to the cost to make and sell, and profit, of goods produced and sold in a country determined by the Minister¹⁹; and
- prices paid for goods produced and sold in Australia²⁰.

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

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

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

¹⁹ s. 269TAC (4)(e) of the Act (pre-2003 legislation)

²⁰ s. 269TAC (4)(f) of the Act (pre-2003 legislation)

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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 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.

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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 costs²¹. An amount has also been added to estimate the margin achieved by intermediaries in the export transactions. This margin was calculated by reference to the ex-works price received by Kemerovo, as per its response to the exporter questionnaire and the FOB export price to the Australian importer. These calculations are at **confidential attachment 4**.

4.4.3 Dumping margin

Measurement of a dumping margin is not required for the purposes of revising the variable factors, however, it may be relevant to the consideration of whether measures should be revoked (refer section 5).

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 period²². Customs and Border Protection found a dumping margin of 44%.

Dumping calculations are at **confidential attachment 4**.

²¹ s. 269TAC(8) of the Act

²² s. 269TACB(2)(a) of the Act

5 SHOULD THE MEASURES BE REVOKED?

5.1 Findings

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

5.2 Introduction

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

This section outlines the factors Customs and Border Protection has found to be relevant in reaching the finding stated at 6.1 above.

5.3 Would dumping have occurred in the absence of measures?

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 occurring if measures had not been in place.

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

The 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.

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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.

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

5.4 Would injury caused by dumping have occurred in the absence of measures?

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.

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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 would not cause injury to the Australian industry.

5.4.1 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 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.

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

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.

It must therefore be determined whether it is likely that dumped high density ammonium nitrate from Russia would 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

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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 prevents 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 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 significant costs to the purchase of locally produced ammonium nitrate in some instances.

Customs and Border Protection conducted an undercutting analysis between high density ammonium nitrate and ammonium nitrate solution, with adjustments made for the conversion cost of high density prill into solution. In order to isolate the price effect geography has on cost, the price was assessed excluding delivery expenses.

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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.

At this level dumped imports of ammonium nitrate from Russia undercut the price of ammonium nitrate solution sold by the Australian industry during the review period. The price undercutting calculations are at **confidential attachment 5**.

In the absence of measures Customs and Border Protection is of the view that export prices of high density ammonium nitrate from Russia would have fallen significantly below current prices (as outlined in section 5.3). These prices would then have undercut industry's prices to an even greater extent.

As a result, there would be a strong price incentive for customers to purchase dumped high density ammonium nitrate for use in emulsions even where there is access to locally produced ammonium nitrate solution. Ultimately, the transparent nature of the Australian market would 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 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.

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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 would 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 would drop and as a result of the transparency of the market there would be a sufficient price incentive for consumers to purchase dumped ammonium nitrate from Russia at the expense of industry's sales.

5.4.2 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 Brazil, Russia's largest export destination, is the lowest in the world. The industry asserts that the Brazilian market is also a mining market and imports to this source must also include low density ammonium nitrate. The industry argues that in the absence of measures imports of low density ammonium nitrate would 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, they would be unlikely to injure the Australian industry.

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

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:

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- 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 produced product and its use would bring additional operational and safety issues²³.

However, Customs and Border Protection has also found that in the absence of measures, it is likely that the price of ammonium nitrate from Russia would 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.

²³ Orica visit report

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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.

5.4.3 Conclusion

Customs and Border Protection's has found that if the anti-dumping measures had not been taken, the Minister would have been entitled to take such measures as demonstrated by the fact that:

- during the review period imports 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;
- high density ammonium nitrate and ammonium nitrate solution are directly competitive and substitutable;
- dumped prices for high density ammonium nitrate undercut industry's ammonium nitrate solution prices;
- the transparent nature of the Australian market leads to import parity prices for locally produced like goods;
- there is evidence that import prices of high density ammonium nitrate are used to extract competitive prices for locally produced ammonium nitrate solution; and as a result, and
- lower export prices from Russia would have resulted in price depression and/or suppression, or reduced sales volumes of ammonium nitrate solution by the Australian industry.

Therefore, Customs and Border Protection recommends that the Minister does not revoke the measures.

6. NON-INJURIOUS PRICE

6.1 Findings

The delegate makes a finding that the non-injurious price for high density ammonium nitrate should remain the same as was established during the 2005 review of measures. The non-injurious price for low density ammonium nitrate can be established by using the price of ammonium nitrate sold by CSBP and Orica to certain customers during the review period less any post exportation charges to the FOB level.

6.2 Introduction

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

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping²⁴.

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

6.3 Methods of calculating non-injurious price

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

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

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

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

²⁴ The non-injurious price is defined in s.269TACA.

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

6.4 Australian industry's claims

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

6.5 Submissions in response to the statement of essential facts

In response to the statement of essential facts, the Australian industry has asserted that the unsuppressed selling price of ammonium nitrate solution/ low density ammonium nitrate should be used as the basis of the non-injurious price for high density ammonium nitrate. This is because:

- the industry does produce high density ammonium nitrate;
- high density ammonium nitrate has been found to be like goods to ammonium nitrate solution;
- Russian high density ammonium nitrate prices have been used to secure import parity prices from the industry;
- the imports of high density ammonium nitrate during the review period were injurious; and
- this was the methodology used in the previous investigations.

In regards to low density ammonium nitrate the Australian industry asserts that no "premium" for locally produced product should be included in the non-injurious price.

Incitec Pivot argues that using the export price of high density ammonium nitrate from Russia during the review period as the basis of the non-injurious price may not reflect long term price fluctuations. Incitec Pivot further argues that the proposed non-injurious price is not necessarily at the lowest level required to prevent injury.

6.6 Customs and Border Protection's assessment

Customs and Border Protection understands that at times, prices for high and low grade ammonium nitrate tends to differ considerably. As discussed below, Customs and Border Protection considers that separate non-injurious prices should be determined for each grade.

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High density ammonium nitrate

The preferred methodology listed at section 6.3 above and the views of interested parties were considered.

The Australian industry does not sell high density ammonium nitrate into the Australian market. Therefore, if industry's sales were used as the basis for the non-injurious price, sales of ammonium nitrate solution and/or low density ammonium nitrate would need to be used.

Sufficient evidence has been received from interested parties demonstrating that high and low density ammonium nitrate does not generally compete. As a result, it is considered unreasonable to base an unsuppressed selling price on sales or costs of low density ammonium nitrate without necessary adjustments to reflect a price for high density grade.

After considering the arguments put forward by Incitec Pivot and the Australian industry, Customs and Border Protection also considers that industry's selling price of ammonium nitrate solution does not take into account the conversion costs of using high density ammonium nitrate instead of ammonium nitrate solution. Therefore, it is not considered reasonable to use this as a basis for the non-injurious price either.

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

Customs and Border Protection has found that the current measures, which are an effective non-injurious floor price for imports, prevented injury during the review period by ensuring the price of imports did not drop to a level that would injure the industry. Despite the claims by the industry that the export price during the review period was injurious, no evidence has been presented that injury was sustained during this period. Furthermore, the industry's claim that Customs and Border Protection found that consumers used the import price of high density ammonium nitrate from Russia to negotiate import parity pricing is incorrect. Customs and Border Protection has found evidence that the price of imported high density ammonium nitrate can be used to negotiate import parity pricing. However, no evidence has been found to demonstrate that this is what occurred specifically in relation to Russian imports.

As outlined in the section above, Customs and Border Protection did not find imports during the review period to be injurious but rather concluded that in the absence of measures the price of these imports would drop to a level that was injurious. The measures have been effective and as a result the price of exports of high density ammonium nitrate have been non-injurious. Customs and Border Protection has found that in the absence of measures, the price will drop to a lower level that is injurious. Therefore, it is proposed that the non-injurious price of high density ammonium nitrate from Russia should remain at the same level as was established during the 2005 review of measures.

In the absence of further information Customs and Border Protection has found this to be the lowest price to avoid injury. Customs and Border Protection notes

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that the price of ammonium nitrate can fluctuate in response to global trends. However, it is appropriate to observe appropriate period matching when comparing variable factors. Therefore, the non-injurious will be set based on information from the review period. Interested parties can apply for a review of the measures, including the non-injurious price, 12 months after the publication of a notice declaring the outcome of the last review²⁵.

Low density ammonium nitrate

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

The first preference in Customs and Border Protection's methodology is to use industry's selling prices at a time unaffected by dumping. As no imports of low density ammonium nitrate from Russia occurred during the review period Customs and Border Protection considers that this is a time unaffected by dumping.

Customs and Border Protection has found that there are different markets for ammonium nitrate based on geographical locations. Ammonium nitrate can be imported into any of these markets. Therefore, Customs and Border Protection considers it is appropriate to take an average of the selling price of ammonium nitrate to different markets. This means that the unsuppressed selling price is based on the average of sales of low density prill by both CSBP and Orica to select customers during the period of July 2009 to June 2010.

In order to determine the non-injurious price at the FOB level, deductions have been made from the unsuppressed selling price for:

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

The non-injurious price calculations are at **confidential attachment 6**.

²⁵ Subsection 269ZA(2)(ii)

7. Effect of the review

As a result of this variable factors review, Customs and Border Protection has found that the export price for all exporters of the goods to Australia have increased since the 2005 review of measures while the normal value has decreased. The non-injurious price has also increased for low density ammonium nitrate but has remained the same for high density ammonium nitrate.

In the absence of imports of low density ammonium nitrate during the review period, Customs and Border Protection has recommended that normal values for low density ammonium nitrate be ascertained having regard to normal values ascertained during the 2005 review. In the case of export prices for low density ammonium nitrate, Customs and Border Protection has recommended that they be ascertained having regard to the non-injurious price for low density ammonium nitrate, as it was found to be less than the ascertained normal value.

From this review of the variable factors, the non-injurious price is the operative²⁶ measures for both high density and low density ammonium nitrate.

Customs and Border Protection recommends that the revised measures are in the form of a floor price, based on the non-injurious prices. The floor price for high density ammonium nitrate will remain the same as was established in the 2005 review of measures. The floor price for low density ammonium nitrate will be based on CSBP's and Orica's selling price to certain customers of low density prill during the review period (with adjustments made to the FOB level).

²⁶ The operative measure is the lesser of the normal value or non-injurious price. The difference between the revised operative measures and the revised export prices provide for the fixed component of interim dumping duty per unit.

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8. RECOMMENDATIONS

Customs and Border Protection recommends that the Minister considers this report, and if agreed, sign the attached schedules (**confidential attachment 1 and 2**) and sign the attached public notice (**confidential attachment 3**) to **declare**:

- under s. 269ZDB of the Act, that, for the purpose of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice, that, with effect from the date of publication of the notice, the notice is taken to have effect in relation to exporters the subject of this review generally as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

Customs and Border Protection recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for ammonium nitrate exported to Australia from Russia by all exporters the subject of this review to be ascertained under the preceding subsections of s. 269TAB of the Act and;
- in accordance with s. 269TAC(5D) of the Act (pre-2003 legislation), a price control situation exists for ammonium nitrate in Russia.

Customs and Border Protection recommends that the Minister **determine**:

- in accordance with s. 269TAB(3) of the Act, the export prices of ammonium nitrate for all exports to Australia from Russia by exporters the subject of this review is the amount having regard to all relevant information and;
- in accordance with s. 269TAC(4)(c) of the Act (pre-2003 legislation), the normal value of ammonium nitrate for all exports to Australia from Russia for exporters the subject of the review the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions.

Customs and Border Protection recommends that the Minister **directs**:

- in accordance with s. 269TAC(8) of the Act, in assessing normal value for all exporters that the price paid for like goods be adjusted for differences between domestic and export sales in relation to transport, packaging; and the export trader's margin.

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9. Confidential attachments

Confidential attachment 1	Schedule – determine
Confidential attachment 2	Schedule – direct
Confidential attachment 3	Section 269ZDB public notice
Confidential attachment 4	Export price and dumping margin
Confidential attachment 5	Price undercutting
Confidential attachment 6	Non – injurious price