



CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 312

APPLICATION FOR CONTINUATION OF ANTI-DUMPING MEASURES

AMMONIUM NITRATE EXPORTED FROM THE RUSSIAN FEDERATION (EITHER DIRECTLY OR VIA ESTONIA)

1 October 2015

CONTENTS

CONTENTS.....	2
ABBREVIATIONS.....	3
1 SUMMARY AND RECOMMENDATIONS.....	4
1.1 LEGISLATIVE FRAMEWORK.....	4
1.2 FINDINGS AND CONCLUSIONS	4
1.3 RECOMMENDATION	4
2 BACKGROUND.....	6
2.1 HISTORY OF THE ANTI-DUMPING MEASURES	6
2.2 THE GOODS	7
2.3 TARIFF CLASSIFICATION OF THE GOODS	7
2.4 AUSTRALIAN INDUSTRY PRODUCING LIKE GOODS.....	7
3 COMPLIANCE WITH SECTION 269ZHC.....	8
3.1 LEGISLATIVE FRAMEWORK.....	8
3.2 THE COMMISSION'S ASSESSMENT	8
4 CONSIDERATION OF REASONABLE GROUNDS	9
4.1 LEGISLATIVE FRAMEWORK.....	9
4.2 CONTINUATION OF EXPORTS.....	11
4.2.1 APPLICANT'S CLAIMS.....	11
4.2.2 THE COMMISSION'S ASSESSMENT	12
4.3 CONTINUATION OF DUMPING	9
4.3.1 APPLICANT'S CLAIMS.....	9
4.3.2 THE COMMISSION'S ASSESSMENT	11
4.4 CONTINUATION OR RECURRENCE OF MATERIAL INJURY CAUSED BY DUMPING	12
4.4.1 APPLICANT'S CLAIMS.....	12
4.4.2 THE COMMISSION'S ASSESSMENT	13
4.5 THE COMMISSION'S CONCLUSION	13
5 LIST OF APPENDICES AND ATTACHMENTS.....	14

ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicants	Orica Australia Pty Ltd (Orica) and CSBP Limited (CSBP)
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
EU	European Union
FOB	free on board
the goods	ammonium nitrate as per section 2.2 - the goods the subject of the application
REP 28	Trade Measures Report No. 28
REP 104	Trade Measures Branch Report No. 104
REP 168	Trade Measures Branch Report No. 168
Russia	the Russian Federation

1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the consideration of an application lodged by Orica Australia Pty Ltd (Orica) and CSBP Limited (CSBP), together ‘the applicants’, for the continuation of the anti-dumping measures¹ applying to ammonium nitrate exported to Australia from the Russian Federation (Russia).

1.1 Legislative framework

Division 6A of Part XVB of the *Customs Act 1901* (the Act) sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (Commissioner) in dealing with an application for the continuation of anti-dumping measures.²

Pursuant to subsections 269ZHD(1) and 269ZHD(2), the Commissioner must reject an application for the continuation of anti-dumping measures if he is not satisfied that:

- the application complies with subsection 269ZHC; and/or
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

1.2 Findings and conclusions

The Commission considers that the application complies with the requirements of section 269ZHC, in that it is in writing, in a form approved by the Commissioner for the purposes of this section, contains the information that the form requires, is signed in the manner indicated by the form, and was lodged with the Commissioner as prescribed in subsection 269ZHC(2).

Having regard to the applicant’s claims and other relevant information, the Commission is satisfied that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

1.3 Recommendation

The Commission recommends that the Commissioner not reject the application for the continuation of anti-dumping measures applicable to ammonium nitrate exported from Russia.

¹ A reference to anti-dumping measures is a reference to dumping measures and countervailing measures collectively.

² A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

PUBLIC RECORD

If the Commissioner accepts this recommendation, to give effect to that decision, he must sign the instrument at **Attachment 1** and publish a notice of his decision to initiate an inquiry into whether the continuation of the anti-dumping measures is justified.

2 BACKGROUND

On 13 July 2015, in accordance with subsection 269ZHB(1) of the Act, a notice was published in *The Australian* newspaper inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on ammonium nitrate exported to Australia from Russia.

On 10 September 2015, Orica and CSBP, members of the Australian industry producing ammonium nitrate, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes.³

2.1 History of the anti-dumping measures

On 11 May 2000 a dumping investigation into ammonium nitrate exported from Russia was initiated following an application by the Australian ammonium nitrate industry.

In this investigation, and as outlined in Trade Measures Report No. 28 (REP 28), it was found that:

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

Accordingly, it was recommended that the then Minister⁴ impose dumping duties on the goods exported from Russia. On 24 May 2001, the Minister published a dumping duty notice for ammonium nitrate exported to Australia from Russia. Notification of the Minister's decision was given in Australian Customs Dumping Notice No. 2001/29.

Following an application by one exporter for an accelerated review, the measures applying to the applicant were varied, effective for goods entered for home consumption on and after 17 April 2002.

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, the findings were reported in Trade Measures Branch Report 104 (REP 104). Subsequent to this inquiry and review, the Minister continued the anti-dumping measures on ammonium nitrate from 24 May 2006. The Minister also altered the dumping duty notice by fixing different variable factors.

On 5 October 2010, 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, the findings were reported in Trade Measures Branch Report 168

³ In accordance with subsection 269ZHB(1)(b).

⁴ Due to the period of time since first implementation of anti-dumping measures, the responsible minister has changed several times. As such, all instances of 'the Minister' refer to the Minister holding the decision-making function under the legislation at the time of the decision.

(REP 168). Subsequent to this inquiry and review, the Minister continued the anti-dumping measures on ammonium nitrate from 24 May 2011. The Minister also altered the dumping duty notice by fixing different variable factors.

Up to this point Russia had been treated as an economy in transition, and application of the legislation was done under the relevant provisions. Russia was granted admission to the World Trade Organization (“WTO”) in August 2012.⁵ As such, the economy in transition measures no longer apply when considering dumping duties.

The anti-dumping measures applicable to exporters of ammonium nitrate to Australia from Russia are due to expire on 24 May 2016.

2.2 The goods

The goods, the subject of the current anti-dumping measures, are:

ammonium nitrate, prilled, granular or in other solid form, with or without additives or coatings, in packages exceeding 10 kg.

2.3 Tariff classification of the goods

Ammonium nitrate, whether or not in aqueous solution, is classified within sub-heading 3102.30.00, statistical code 05.

The current rate of duty for the goods exported from all sources is 0 per cent. There is currently a floor price for imports of the goods from Russia and Estonia, which is subdivided into high density and low density ammonium nitrate.

2.4 Australian industry producing like goods

In the application, the applicants advised that they have a combined production capacity for ammonium nitrate representing over 70 per cent of the Australian industry. This satisfies the requirements of subsection 269ZHB(1)(b)(ii).

The applicants have provided production and sales data for ammonium nitrate. The Commission remains satisfied that there is an Australian industry producing like goods.

⁵ Russia is named in the *Customs (International Obligations) Regulation 2015, Schedule 2—Countries to which subsection 269TAC(5D) of the Act does not apply.*

3 COMPLIANCE WITH SECTION 269ZHC

3.1 Legislative framework

Subsection 269ZHC(1) specifies that an application under section 269ZHB must:

- (a) be in writing;
- (b) be in a form approved by the Commissioner for the purposes of this section;
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

Subsections 269ZHC(2) and (3) cover procedural matters in relation to lodgement of the application.

3.2 The Commission's assessment

The application received was in writing, in the form approved by the Commissioner for the purposes of section 269ZHC, contained such information as the form requires and was signed in the manner indicated in the form.

The applicant also provided a non-confidential version of the application. The non-confidential version of the application adequately reflects the reasons for seeking a continuation of the anti-dumping measures.

The non-confidential version of the application is available on the Commission's public record (which can be accessed electronically at www.adcommission.gov.au).

4 CONSIDERATION OF REASONABLE GROUNDS

4.1 Legislative framework

Subsection 269ZHD(2)(b) requires the Commissioner must be satisfied as to there being reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

4.2 Continuation of dumping

4.2.1 Applicant's claims

The applicants consider that it is likely that Russian exporters will resume exporting to Australia at dumped prices should anti-dumping measures be allowed to expire.

Market situation and input claims

The applicant claims that there is a situation in the Russian ammonium nitrate market that renders domestic Russian sales unsuitable for determining normal value under subsection 269TAC(1) (i.e. that a 'market situation' exists – see subparagraph 269TAC(2)(a)(ii)), and therefore constructed normal values should be used instead of domestic selling prices of ammonium nitrate for determining whether ammonium nitrate exported from Russia is sold at dumped prices (see paragraph 269TAC(2)(c)).

The applicant's primary claim is that the domestic selling price for ammonium nitrate sold in Russia is artificially low because:

- the cost of the primary raw material input⁶ into ammonium nitrate production in Russia is "*artificially low due to the intervention of the Russian government (via the [Federal Tariff Service (FTS)] to fix natural gas prices*"; and
- the intervention by the Russian government in natural gas prices "*impacts the selling prices of ammonium nitrate (whether sold domestically or for export)*."⁷

The application includes references to previous ammonium nitrate investigation findings involving the market in Russia, where it was found that a 'price control' situation applied in Russia in relation to domestic sales of ammonium nitrate as a result of the Russian government's intervention in the gas market.⁸ The applicant contends that the Russian government continues to influence the price of the raw material inputs in Russian production of ammonium nitrate through interventions that include:

- regulation of natural gas prices by the FTS;
- control through a majority shareholding by the Russian government of Russia's dominant domestic supplier of natural gas, Gazprom; and

⁶ The applicant claims that natural gas is the main raw material input in manufacturing ammonia and nitric acid. Ammonia and nitric acid are used for producing ammonium nitrate. Natural gas is also used as a source of energy for Russian manufacturers.

⁷ The applicant's non-confidential application, pg. 5, refers.

⁸ REP 168, REP 104 and REP 28, refer.

PUBLIC RECORD

- artificially low electricity prices to industrial customers in Russia, including producers of ammonium nitrate.

To demonstrate the effect of the Russian government's influence on ammonium nitrate input prices, the application includes a 2014 / 2015 comparison of:

- the Russian natural gas border price in Germany; and
- the Russian domestic natural gas price,

which shows a significantly lower price for the Russian domestic market. Gas and gas-produced electricity are major components of the production of the goods.

The applicant claims that:

The impact of government influence on natural gas and electricity prices in the total production cost of ammonium nitrate in the Russian Federation is such that the domestic selling prices of the ammonium nitrate sold in the Russian Federation are unsuitable for determining normal values under s.269TAC(1) of the Customs Act. The Applicants contend that market selling prices for ammonium nitrate in the Russian Federation are artificially low and that a 'market situation' for ammonium nitrate sold in the Russian Federation prevails.

The applicant also notes that Russia was granted admission to the World Trade Organization ("WTO") in August 2012 and that Russia is no longer an "economy-in-transition".⁹

Normal Value claim

The applicants advised that they have determined a normal value under subsection 269TAC(2)(c) using a production cost methodology. This is based on confidential information regarding Russian production methods and gas conversion efficiency. The price included a substituted 'normal' price for natural gas, based on the price at the German/Russian border excluding transfer charges, and included conversion and SG&A costs based on those from the Australian industry. This data is contained at **Confidential Attachment 1**.

The applicants compared its constructed normal value against the weighted average FOB price of exports to Australia derived from the ABS data. On the basis of this calculation the applicants determined that the weighted average price for exports of ammonium nitrate from Russia was at a dumped price in three of the four quarters commencing from 1 July 2014.

The applicants also provided information regarding the selling prices for ammonium nitrate in the Baltic region. These prices were below the cost of production calculated above, and if these FOB prices were offered in Australia they would significantly undercut the current prices. This data is contained at **Confidential Attachment 1**.

⁹ Russia is named in the *Customs (International Obligations) Regulation 2015, Schedule 2—Countries to which subsection 269TAC(5D) of the Act does not apply*.

The applicants contended that in the absence of the anti-dumping measures it is likely that Russian exporters of ammonium nitrate would reduce export prices to secure increased export volumes into Australia, and that those exports would be at dumped prices.

4.2.2 The Commission's assessment

The applicant relies on previous investigations' findings in relation to a price control situation for ammonium nitrate exported from Russia in its current claims on the existence of a market situation. Previous findings of a price control situation may be relevant because government ownership of suppliers and government control of prices in the country of export are indicia used by the Commission in assessing whether there is a market situation under current legislation.¹⁰

Based on an assessment of the information set out in the application and the information gathered by the Commission in previous investigations concerning Russian ammonium nitrate,¹¹ the Commission considers that it is appropriate to examine the applicant's market situation claims during the course of the investigation.

The applicants provided the Commission with CTMS data to support their normal value determination as well as the ABS data relied upon to determine weighted average export prices. The allegations regarding centrally-set gas prices have been reviewed for the wholesale price. The information regarding Baltic prices cannot be independently reviewed in the consideration period.

However, the Commission is satisfied that the information relied upon by the applicants to calculate their estimate of a current dumping margin is reasonable, for the purposes of initiation.

The Commission has compared the constructed normal value against the ABF import data for the period from 1 July 2014 to 30 June 2015 and, on this basis, has found instances which might indicate dumping of the goods from Russia. This data is contained at **Confidential Attachment 2**.

The Commission is satisfied that the information provided by the applicants showed that Russian exporters of ammonium nitrate might lower their export prices to secure more sales if anti-dumping measures are allowed to expire, and that there appear to be reasonable grounds for asserting that exports of the goods might be at dumped prices.

4.3 Continuation of exports

4.3.1 Applicant's claims

In the application, the applicants state that Russian exporters account for the largest source of ammonium nitrate globally. The applicants used Australian Bureau of Statistics (ABS) import data to demonstrate that there are existing distribution channels into Australia.

¹⁰ Pages 33-35 and 42-45 of the *Dumping and Subsidy Manual*.

¹¹ REP 168, REP 104 and REP 28, refer.

The applicants also noted that:

- the European Union (EU) extended the anti-dumping measures, first imposed in 1995, on exports of ammonium nitrate from Russia in September 2014; and
- measures in the United States of America (USA) have been applied to the goods since 1999, most recently continued in 2011.

The applicants asserted that, as the world's largest supplier of ammonium nitrate and with anti-dumping measures applicable in the USA and the EU, Russia has available capacity to increase exports of ammonium nitrate to Australia should the current measures be allowed to expire.

4.3.2 The Commission's assessment

The Australian Border Force (ABF) import database shows imports of ammonium nitrate from Russia have continued since measures were imposed, demonstrating that exporters have maintained distribution links in Australia. Additionally, ABS data shows that import volumes of ammonium nitrate from Russia over the period from 2011-2015 have accounted for up to 8 per cent of imports. This is sufficient to potentially cause material injury if exports resume at dumped prices

Due to the continuation of exports of ammonium nitrate from Russia with dumping duty measures in place, the Commission is satisfied that exports of the goods may continue after the expiration of the anti-dumping measures.

4.4 Continuation or recurrence of material injury caused by dumping

4.4.1 Applicant's claims

The applicants noted that there is an established industry in Australia producing the goods. There has been recent major investment in the industry, with a facility opening in Moranbah, QLD in the last year and a new facility in Pilbara, WA currently under construction. Due to this investment, Orica have announced publicly that there is a near term over-supply in Australia and have laid off staff in response.

The applicants prepared, in support of the application, financial data as per the Appendix A6.1 format for ammonium nitrate for each company for the period from October 2005 to June 2015. This data is contained at **Confidential Attachment 3**.

The applicants contend that the financial data indicates that declines in export prices with the removal of the existing dumping margin will result in price undercutting of Australian industry prices, causing price depression, price suppression and reduced profit and profitability on the levels achieved in the period July 2014 to June 2015.

The applicants claim that if the anti-dumping measures do not continue, it is likely that the oversupply position on the Australian market could be exacerbated by the injection of dumped goods from Russia. The applicants state that these would displace locally produced sales.

4.4.2 The Commission's assessment

Based on the ABF import data and other information provided by the applicants, the Commission considers that there are reasonable grounds to assert that, if the anti-dumping measures expire, future exports of ammonium nitrate from Russia at dumped prices may cause material injury to the Australian industry.

The applicant has provided sufficient evidence that an expiry of the measures might lead to reduced export prices which might lead to further price undercutting, price depression and suppression of the Australian industry's prices for ammonium nitrate. As a consequence of the likely adverse volume and price effects, there appears to be reasonable grounds for asserting that the Australian industry may experience reduced profits and profitability.

4.5 The Commission's conclusion

For the reasons detailed above, the Commission considers that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Accordingly, it is recommended that the Commissioner not reject the application. If the Commissioner accepts this recommendation, in accordance with subsection 269ZHD(4), a notice will be published, indicating that the Commission will inquire into whether continuation of the anti-dumping measures is justified.

For the purpose of this inquiry, the Commissioner will use the period 1 July 2014 to 30 June 2015 in considering whether the variable factors should be altered.

5 LIST OF APPENDICES AND ATTACHMENTS

Attachment 1	Delegate's instrument
Confidential Attachment 1	Calculation of Normal Value
Confidential Attachment 2	Calculation of dumping
Confidential Attachment 3	Applicants' financial data