



ANTI-DUMPING NOTICE NO. 2020/093

Customs Act 1901 – Part XVB

Ammonium Nitrate

Exported to Australia from the Russian Federation

Initiation of Continuation Inquiry No. 565

Notice under section 269ZHD(4) of the Customs Act 1901

I, Dale Seymour, the Commissioner of the Anti-Dumping Commission (the Commissioner), have initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of ammonium nitrate (the goods) exported to Australia from the Russian Federation (Russia)¹ is justified.

The anti-dumping measures are due to expire on 24 May 2021 (the specified expiry day).²

1. The goods

The goods the subject of anti-dumping measures, and therefore this inquiry, are:

'[a]mmonium nitrate, prilled, granular or in other solid form, with or without additives or coatings, in packages exceeding 10 kg'.

The goods include low and high density ammonium nitrate. Low density ammonium nitrate is generally in solid prilled form and is typically used in the manufacture of explosives. Solid high density ammonium nitrate is generally used in the agricultural sector as a fertiliser.

Ammonium nitrate, whether or not in aqueous solution, is generally classified within sub-heading 3102.30.00, statistical code 05 of Schedule 3 to the *Customs Tariff Act 1995*. This tariff classification and statistical code may include goods that are both subject and not subject to this inquiry. The listing of this tariff classification and statistical code is for convenience or reference only, and does not form part of the goods description. Please refer to the

¹ The current measures apply to goods exported directly from Russia or via Estonia.

² If not continued, the anti-dumping measures would no longer apply on and from 24 May 2021.

goods description for authoritative detail regarding goods that are the subject of this inquiry.

2. Background to the anti-dumping measures

On 24 May 2001, the then Minister for Justice and Customs accepted the recommendations in *Trade Measures Report No. 28* and published a dumping duty notice in relation to ammonium nitrate exported to Australia from Russia. Notification of the then Minister's decision was given in Australian Customs Dumping Notice No. 2001/29. Since the initial imposition of measures, the measures have been continued for a further five years on three occasions, being a further:

- five years from 24 May 2006, as a result of the then Minister for Justice and Customs accepting the findings and recommendations in *Trade Measures Branch Report 104*;³
- five years from 24 May 2011, as a result of the then Minister for Home Affairs accepting the findings and recommendations in *Trade Measures Branch Report 168*;⁴ and
- five years from 24 May 2016, as a result of the then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science accepting the findings and recommendations in *Anti-Dumping Commission Report No. 312 (REP 312)*.⁵

As a result of REP 312, interim dumping duty is currently calculated based on the floor price duty method.

In addition to the measures subject to this inquiry, anti-dumping measures on ammonium nitrate exported to Australia from the People's Republic of China, Sweden and the Kingdom of Thailand have applied since 4 June 2019.⁶

Further details on the goods and existing measures are available in the Dumping Commodity Register on the Anti-Dumping Commission's (the Commission's) website [here](#).

³ This was undertaken in conjunction with a review of the relevant anti-dumping measures (as outlined in *Trade Measures Report No. 105*).

⁴ This was undertaken in conjunction with a review of the relevant anti-dumping measures (as outlined in *Trade Measures Report No. 169*).

⁵ That inquiry also incorporated a review of the relevant anti-dumping measures, and assessed whether the variable factors relevant to the taking of measures had changed.

⁶ On 19 November 2019, the Anti-Dumping Review Panel (ADRP) requested that the Commissioner undertake a reinvestigation under section 269ZZL(1) of certain findings in *Anti-Dumping Commission Report No. 473 (REP 473)*. Following that reinvestigation, the Minister accepted the recommendation made by the ADRP in ADRP Decision No. 104 to affirm the reviewable decision. Further information is available via www.adreviewpanel.gov.au.

3. Application for continuation of the anti-dumping measures

Division 6A of Part XVB of the *Customs Act 1901* (the Act)⁷ sets out, among other things, the procedures to be followed in dealing with an application for the continuation of anti-dumping measures.

In accordance with section 269ZHB(1), I published a notice on the Commission's website on 28 May 2020.⁸ This notice invited the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures (section 269ZHB(1)(b)(i)); and
- persons representing the whole, or a portion, of the Australian industry producing like goods to the goods covered by the anti-dumping measures (section 269ZHB(1)(b)(ii)).

On 27 July 2020, an application for the continuation of the anti-dumping measures was received from CSBP Limited (CSBP), Orica Australia Pty Ltd (Orica) and Queensland Nitrates Pty Ltd (QNP). A non-confidential version of the application is available on the Commission's public record.

Having regard to the application and findings made most recently in REP 473, I am satisfied that CSBP, Orica and QNP are persons under section 269ZHB(1)(b)(ii) that represent a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures.

4. Consideration of application under section 269ZHD(1)

Pursuant to section 269ZHD(1), I must reject an application for the continuation of anti-dumping measures if I am not satisfied of one or more of the matters referred to in section 269ZHD(2). These are whether:

- the application complies with section 269ZHC (section 269ZHD(2)(a)); and
- 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 (section 269ZHD(2)(b)).

5. Assessment under section 269ZHD(2)(a) - compliance with section 269ZHC

I consider that the application⁹ complies with the requirements of section 269ZHC because it is in writing, in a form approved by me for the purposes of

⁷ All legislative references in this notice are to the *Customs Act 1901*, unless otherwise stated.

⁸ Anti-Dumping Notice No. 2020/052 refers.

⁹ A non confidential version of the application is contained on the case page of the Commission's website.

this section, contains the information that the form requires, is signed in the manner indicated by the form, and was lodged in a manner approved under section 269SMS, being by email to the Commission's email address provided in the instrument under section 269SMS.¹⁰

6. Assessment under section 269ZHD(2)(b) – reasonable grounds

Applicants' claims

Claims made by the applicants include:

- government influence in Russia is continuing to result in artificially low raw material gas input prices. As a result, a particular market situation continues to apply in the Russian market in respect of ammonium nitrate, such that normal values should be constructed under section 269TAC(2)(c);
- ammonium nitrate exported to Australia from Russia in August 2019 was at dumped prices;
- exporters in Russia have retained distribution links and channels of supply to the Australian market, as evidenced by the continuing import volumes;
- evidence suggests that Russia is a significant global source of ammonium nitrate (both high and low density);
- producers in Russia possess significant excess capacity to increase supply of ammonium nitrate to Australia should the measures be allowed to expire;
- Russian exports of ammonium nitrate to destinations other than Australia have been at free-on-board (FOB) prices below the FOB prices of exports to Australia. Should the anti-dumping measures be allowed to expire, it is considered likely that Russian export prices to Australia would decline sharply, consistent with those lower prices to other destinations;
- Australian market selling prices for ammonium nitrate are price sensitive and relatively transparent, meaning the emergence of exports at dumped prices will impact on future negotiations undertaken by the Australian industry;
- the European Union has had anti-dumping measures on ammonium nitrate exported from Russia since 1995;
- the anti-dumping measures on ammonium nitrate exported to Australia from Russia have been effective to date; and
- the returns on new and expanded capital investments made by Australian producers of ammonium nitrate, following the continuation of measures in 2016, will be at risk from the likely increase of dumped exports from Russia if the measures expire.

To support its claim that exports of ammonium nitrate to Australia from Russia were at dumped prices, the applicants have estimated the relevant variable factors as follows:

¹⁰ A copy of the instrument can be found on the Commission's website [here](#).

Variable factor	Details
Export price	The applicants have sourced information from the Australian Bureau of Statistics to estimate a weighted average FOB export price for Russia.
Normal value	<p>As outlined above, the applicants claim there is a situation that exists in the Russian market for ammonium nitrate, such that domestic prices are unsuitable for use in determining normal value under section 269TAC(1).</p> <p>The applicants have therefore constructed a normal value for the 12 month period ending June 2020 in accordance with section 269TAC(2)(c) using:</p> <ul style="list-style-type: none"> • average gas costs at the European border across a three year period sourced from an independent industry source, less an estimated amount to account for transmission costs to site; • average consumption ratios and other costs relating to the production of ammonia purchased from an independent industry source; • other fixed and variable costs based on average costs incurred by the applicants (then apportioned to account for the cost differential with Russia); • average selling, general and administrative (SG&A) costs incurred by the applicants; • an amount for depreciation; and • an amount of profit. <p>To ensure a fair comparison to the FOB export price, the applicants adjusted the normal value for bagging, export inland freight, storage and port handling costs.</p>

Table 1: Applicants' estimate of variable factors

Based on these variable factors, the applicants have estimated a dumping margin of 15.9 per cent.

The Commission's consideration

The Commission has examined information obtained from the Australian Border Force (ABF) import database and has found that exporters from Russia have continued to export the goods to Australia since the continuation of the anti-dumping measures in 2016. This confirms that at least some manufacturers in Russia have maintained distribution links into the Australian market.

The Commission observes that import volumes from Russia of goods subject to measures have fluctuated from year to year, with an increase in 2018/19¹¹ (to levels above 2016/17) and subsequent decrease in 2019/20. The Commission notes that Russia no longer appears to be a major source of ammonium nitrate in 2019/20 compared to countries such as China, Indonesia, Lithuania and Vietnam. However, in the absence of measures, the Commission considers it

¹¹ Based on the period July to June.

likely that imports from Russia could become more attractive, given there appears to be movement from year to year between sources of ammonium nitrate.

The Commission also found that the FOB export price of ammonium nitrate exported to Australia from Russia decreased in both 2017/18 and 2018/19, with a subsequent increase in 2019/20 to reflect the FOB export price in 2017/18. The FOB export price calculated from the ABF import database for 2019/20 is consistent with the FOB export price estimated by the applicants.

The Commission considers that it is appropriate to assess the applicants' claim of a market situation during the course of the inquiry, noting it is a key question to resolve in establishing the appropriate method to establish normal value. The Commission will seek the necessary information to assess these claims.

Having considered the applicants' estimate of gas costs used in the proposed normal value, the Commission is of the view there is no basis (in either the application, or in the methodology previously adopted in REP 312) to support the use of a three year average, as opposed to a one year average, at this time. Using the data submitted in the application, the Commission has therefore amended the applicants' calculation of gas costs for this purpose to reflect an average cost across the previous 12 month period, less the proposed amount for transmission costs. The Commission considers that the applicants' estimate of all remaining costs in the constructed normal value are relevant and reliable for this purpose. Having accounted for the change to estimated gas costs, the Commission has calculated a revised dumping margin of seven per cent.

A copy of the data relevant to the calculation of variable factors by the Commission is contained in **Confidential Appendix 1**.

The Commission considers that the abovementioned estimate of dumping demonstrates that it is likely Russian manufacturers have continued exporting the goods at dumped prices to Australia. On this basis, it is also indicative that Russian exporters may continue to export the goods to Australia in the future, and that these exports may be at dumped prices.

The Commission has found previously that ammonium nitrate is predominantly sold and purchased in accordance with fixed-term contracts, which are usually arranged following a tender process. While larger contracts can be exclusive, some fixed-term contracts do not guarantee exclusivity and allow the customer to source ammonium nitrate from other suppliers. In addition, the Commission has found the Australian market for ammonium nitrate to be relatively transparent.¹²

On this basis, the Commission considers that it is reasonable to conclude that any subsequent increase in the volume of goods being imported from Russia at relatively low prices, which might be expected to occur in the absence of measures, could exert pressure on the prices and volumes that the Australian

¹² Electronic Pubic Record No. 473, document 065, p. 26. Available via www.adcommission.gov.au.

industry might expect to negotiate with its customers, and therefore directly impact its economic condition.

Conclusion

For the reasons outlined above, I am satisfied that, in accordance with section 269ZHD(2)(b), 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.

Based on the above findings, I have therefore decided to not reject the application.

7. This continuation inquiry

For the purpose of this inquiry, I will examine the period from 1 July 2019 to 30 June 2020 (the inquiry period) to determine whether to recommend to the Minister that the dumping duty notice:

- (i) remain unaltered; or
- (ii) cease to apply to a particular exporter, or to a particular kind of goods; or
- (iii) have effect in relation to a particular exporter, or to exporters generally, as if different variable factors had been ascertained; or
- (iv) expire on the specified expiry day.

8. Proposed model control code structure

On 9 August 2018, the Commission advised in Anti-Dumping Notice (ADN) No. 2018/128 that a model control code (MCC) structure would be implemented in new investigations, reviews of exporters generally or continuations for cases initiated after this date.¹³

Attachment A to this notice outlines the Commission's proposed MCC structure. Proposals to modify the MCC structure should be raised as soon as is practicable, but no later than **28 September 2020**, the day submissions concerning the continuation of the measures are due.

Interested parties are encouraged to make submissions on whether proposed modifications to the MCC structure should be accepted by the Commission. Any changes to the MCC structure will be considered by the Commission and reported in verification reports, or in the statement of essential facts (SEF).

9. Public record

I must maintain a public record for this inquiry. The public record must contain, among other things, a copy of all submissions from interested parties.

¹³ Full guidance regarding the Commission's MCC structure is provided in ADN No. 2018/128 on the Commission's website.

Documents included in the public record may be examined on the Commission's website [here](#).

10. Submissions

Interested parties, as defined in section 269T(1), are invited to lodge written submissions concerning the continuation of the measures no later than the close of business on **28 September 2020**, being 37 days after publication of this notice. The Commission's preference is to receive submissions by email to investigations2@adcommission.gov.au.

Submissions may also be addressed to:

The Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601.

Interested parties wishing to participate in this inquiry must ensure that submissions are lodged promptly. Interested parties should note that I am not obliged to have regard to a submission received after the date indicated above if to do so would, in my opinion, prevent the timely placement on the public record of the SEF.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests; or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY". Interested parties must lodge a non-confidential version, or a summary of their submission, in accordance with the requirement above (clearly marked "PUBLIC RECORD").

11. Statement of essential facts

The dates specified in this notice for lodging submissions must be observed to enable me to report to the Minister within the legislative timeframe. I will place the SEF on the public record on or before **8 December 2020**, that is, within 110 days after the publication of this notice, or by such later date as I may allow in accordance with section 269ZHI(3). The SEF will set out the essential facts on which I propose to base a recommendation to the Minister concerning the continuation of the anti-dumping measures.

Interested parties are invited to lodge submissions in response to the SEF within 20 days of the SEF being placed on the public record. Submissions received in response to the SEF within 20 days of the SEF being placed on the

public record will be taken into account in completing my report and recommendation to the Minister.

12. Report to the Minister

I will make a recommendation to the Minister in a report on, or before **22 January 2021**, that is, within 155 days after the date of publication of this notice, or such later date as I may allow in accordance with section 269ZHI(3).

The Minister must make a declaration within 30 days after receiving the report, or if the Minister considers there are special circumstances such longer period, ending before the specified expiry day, as the Minister considers appropriate. If the Minister receives the report less than 30 days before the specified expiry day, the Minister must make the declaration before that day.

13. The Commission Contact

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2447, or email investigations2@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

20 August 2020

ATTACHMENT A

Proposed MCC structure

Details of the MCC structure for the goods are detailed in the table below.

Category	Sub-category		Sales data	Cost data
Density	H	High	Mandatory	Mandatory
	L	Low		
Form	P	Prilled	Mandatory	Optional
	G	Granular		
	O	Other solid form		

Table 2: proposed MCC structure

For example, low density ammonium nitrate in prilled form, would be given the MCC L-P.