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

TRADE MEASURES BRANCH
CONSIDERATION REPORT NO. 168

**APPLICATION FOR CONTINUATION OF
ANTI-DUMPING MEASURES**

AMMONIUM NITRATE
EXPORTED FROM
THE RUSSIAN FEDERATION

5 October 2010

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1 Summary and recommendations

This report provides the results of the consideration of an application lodged by CSBP Limited (CSBP) and Orica Australia Pty Ltd (Orica) for the continuation of anti-dumping measures that apply to ammonium nitrate exported to Australia from the Russian Federation (Russia).

1.1 Recommendations

It is recommended that the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) decide not to reject the application.

If the delegate accepts this recommendation, to give effect to that decision, the delegate must publish the attached notice at **Appendix A** indicating that Customs and Border Protection will inquire into whether the continuation of the anti-dumping measures is justified.

1.2 Application of law to facts

Division 6A of Part XVB of the *Customs Act 1901* (the Act¹) sets out among other things, the procedures to be followed by the CEO in dealing with an application for the continuation of measures.

The Division empowers the CEO to reject or not reject an application for continuation of anti-dumping measures.

Depending on the CEO's decision, it may be necessary for the CEO to publish a notice indicating that it is proposed to inquire whether continuation of the measures is justified.

The CEO's powers have been delegated to certain officers of Customs and Border Protection.

1.3 Findings and conclusions

CSBP and Orica's application for the continuation of anti-dumping measures applying to ammonium nitrate exported to Australia from Russia has been examined and considered.

The application lodged by CSBP and Orica complies with the requirements of s.269ZHC.

Having regard to the applicants' claims and other relevant information, there appears 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. This is based on Customs and Border Protection accepting that there are reasonable grounds for asserting that should measures expire, this might be likely to lead to an increase in the volume of dumped low priced ammonium

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

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nitrate from Russia that undercut the selling prices of the Australian industry and cause price suppression and depression. This in turn might be likely to lead to lost profit and profitability.

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2 Background

On 16 July 2010, Customs and Border Protection published a notice in *The Australian* newspaper to invite certain persons to apply to the CEO of Customs and Border Protection for the continuation of anti-dumping measures on ammonium nitrate exported from Russia².

On 14 September 2010, CSBP and Orica, two of the three manufacturers of ammonium nitrate in Australia, lodged an application for the continuation of the measures³.

2.1 Existing 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, 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 Minister impose anti-dumping measures 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 of the measures, measures applying to certain exporters 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.

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.

The current measures are due to expire on 24 May 2011. An application for a review of the current measures was lodged on 21 September 2010.

² In accordance with s.269ZHB.

³ In accordance with s.269ZHC(2).

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2.2 The goods subject to the measures

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 key 05, in Schedule 3 to the *Customs Tariff Act 1995*. The duty rate is free from all sources.

2.4 Australian industry producing like goods

CSBP and Orica (the applicants) and QNP Ltd (QNP) are the Australian producers of ammonium nitrate. The applicants stated that:

- Orica operates two plants: a plant at Yarwun, Queensland, with a capacity of 548,000 tonnes per annum; and a plant at Koorang Island, Newcastle, New South Wales, with a capacity of 430,000 tonnes per annum;
- CSBP operates a plant at Kwinana, Western Australia, with a capacity of 520,000 tonnes per annum; and
- QNP operates the remaining plant, which has a capacity of approximately 210,000 tonnes per annum (this plant is located near Moura in Central Queensland).

Accordingly, CSBP and Orica account for more than 50% of local ammonium nitrate production and are representative of the Australian industry.

2.5 Australian market

The applicants estimate the size of the market has increased from 1.2 million tonnes per annum during the last review in 2005 to approximately 1.5 million tonnes per annum. The market is supplied by the Australian industry and imports from a range of countries.

In 2009-10 the applicants estimate that 154,000 tonnes of ammonium nitrate was imported into Australia. The applicants consider that the major sources of imported ammonium nitrate are the Ukraine, Sweden, the United States of America (US) and Russia. In 2009-10 imports from Russia accounted for approximately 7.4% of total imports. An assessment of the volume of imports from 2006-07 using data from Customs and Border Protection's import database is at **confidential attachment 1**.

The majority of ammonium nitrate used in Australia is for explosives in the mining industry, while a relatively small amount is used for fertilisers. Due to the mining boom, the applicants consider that the ammonium nitrate market in Australia is expanding.

In response to the growing demand for ammonium nitrate, the applicants claim that plans are underway to increase the capacity of the Australian industry. Specifically:

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- CSBP is currently undertaking a feasibility study on the expansion of its Kwinana plant from 520,000 to 780,000 tonnes per annum;
- Orica has plans to increase the capacity of its Kooragang Island plant by a further 320,000 tonnes per annum by 2014-15;
- a new plant is being build in Mooranbah, Queensland, by Incitec Pivot, a joint venture partner in QNP. This is scheduled to be completed in 2011-12 and is expected to have a capacity of 330,000 tonnes per annum.

The Australian ammonium nitrate industry also exports ammonium nitrate to other countries.

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3 Compliance with section 269ZHC

The application lodged by CSBP and Orica complies with the requirements of s.269ZHC.

3.1 Legislative framework

Section 269ZHC(1) specifies that an application under s 269ZHB must:

- (a) be in writing;
- (b) be in an approved form;
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

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

3.2 Our assessment

The application lodged by CSBP and Orica was in writing, in the approved form, contained such information as the form required and was signed in the manner indicated in the form.

The applicants also provided non-confidential versions of the application for distribution to interested parties. The non-confidential version of the application adequately reflects the reasons for seeking continuation of the anti-dumping measures.

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4 Consideration of reasonable grounds

Having regard to the applicants' claims and other relevant information, there appear to be reasonable grounds for asserting that the expiration of 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.

4.1 Legislative framework

Section 269ZHD(2)(b) requires consideration of whether 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.

For the purposes of considering s.269ZHD(2)(b), the applicants' claims have been examined and assessed according to whether it is reasonable to assert that, in the absence of anti-dumping measures, exports of the goods might:

- 1) continue;
- 2) be at dumped prices; and
- 3) lead to a continuation of, or recurrence of material injury.

4.2 Is it reasonable to assert that exports of the goods might continue?

4.2.1 Applicants' claims

The applicants claim that exports of ammonium nitrate from Russia will continue as exporters have maintained distribution links to the Australian market and continued exporting since measures were imposed.

The applicants argue that Russia is the world's leading exporter of ammonium nitrate and manufacturers have substantial idle capacity that could be directed towards the Australian market.

The applicants also state that Australia is an attractive export market as it is the third largest market for explosive grade ammonium nitrate and growing. The two largest markets, the European Union and the USA, both have measures in place against ammonium nitrate from Russia.

The applicants advise that due to the above factors it is likely that in the absence of anti-dumping measures in Australia, exports of ammonium nitrate from Russia would not only continue but likely increase.

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4.2.2 Our assessment

Customs and Border Protection's import database shows imports of ammonium nitrate from the Russia have continued since measures were imposed demonstrating that exporters have maintained distribution links in Australia.

Furthermore, previous investigations and inquiries have found that manufacturers in Russia have significant available production capacity.

Therefore, it is reasonable to assert that imports to Australia of ammonium nitrate from Russia may continue after the expiration of the anti-dumping measures.

4.3 Is it reasonable to assert that exports of the goods might be at dumped prices?

4.3.1 Applicants' claims

The applicants argue that the price of ammonium nitrate in Russia is artificially low due to government control and as a result exports of ammonium nitrate from Russia are at dumped prices.

The applicants outlined the findings from the 2005 continuation inquiry regarding the price of natural gas, a key input in ammonium nitrate, provided by the government. In this inquiry, it was determined that the Russian Government controlled the price of natural gas and that the price did not reflect free market conditions. The low price of natural gas resulted in lower ammonium nitrate prices in Russia than there would have been otherwise. This led to a finding that the price of ammonium nitrate in Russia was also controlled by the government.

The applicants claim that the Russia Government continues to control the price of gas in the country. The applicants have provided evidence (in the form of a government pricing decree dated 18 December 2009) that the Russian Government continues to stipulate the level at which wholesale gas prices are to be set for gas produced by JSC Gazprom, the largest gas supplier in Russia. The applicants argue that as a result of this control the price of Russian ammonium nitrate is the lowest on the global market and does not reflect the full cost of production.

The applicants also argue that given excess capacity held by Russian manufacturers and the attractiveness of the Australian market it is reasonable to conclude that future exports would likely be at dumped prices should measures expire.

4.3.2 Our assessment

Based on previous findings in relation to government control of ammonium nitrate prices in Russia and the current gas price list provided by the applicants, it is reasonable to conclude at this stage that the price of ammonium nitrate in Russia may still be influenced by the government.

The normal value of ammonium nitrate in Russia has previously been calculated using data from a manufacturer in the United Kingdom (UK) as a

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surrogate. While CSBP and Orica were unable to provide Cost to Make and Sell data for a UK manufacturer in this application, they have provided domestic selling prices for the UK from an industry newsletter for the period January to September 2010.

A preliminary dumping assessment, using the price of ammonium nitrate in the UK as an indication of normal value and the ABS import data as an indication of export price, shows that the majority of ammonium nitrate imports from Russia were at dumped prices (**confidential attachment 2**). In the course of this inquiry, Customs and Border Protection will determine the most appropriate method of calculating the normal value in Russia.

An assessment of export prices from Russia (using both ABS data as provided by the applicants and data from Customs and Border Protection's import database) also shows that the price of ammonium nitrate from Russia is below that of other sources in 2009-10. Furthermore, it confirmed that the price of ammonium nitrate from Russia decreased in 2009-10 to levels similar to that of 2006-07 as claimed by the applicants (**confidential attachment 3**).

Therefore, there are reasonable grounds to for asserting that the expiration of measures might lead to dumping.

4.4 Is it reasonable to assert that exports of the goods might lead to a continuation of, or recurrence of material injury?

4.4.1 Applicants' claims

The applicants claim that the expiration of the anti-dumping measures in relation to ammonium nitrate (AN) might lead, or be likely to lead to a continuation of, or a recurrence of, the material injury the measures are intended to prevent because:

- *Russian AN export prices in 2009/2010 are generally below the other major sources of supply into Australia;*
- *recent price declines for imported AN would prevent the Australian industry from increasing its prices to reflect higher costs evident in 2009/2010;*
- *Russia remains a continued viable source of supply for AN at dumped prices;*
- *Russian AN manufacturers possess substantial excess capacity that is sufficient to supply a significant proportion of the Australian AN market – should the anti-dumping measures be allowed to expire;*
- *Russian exporters have maintained distribution channels in Australia since the measure were extended in May 2006;*
- *Russian AN exporters are faced with anti-dumping measures into the USA and European markets, which will likely impact the focus of Russian exporters on alternate markets; and*

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- *the Australian AN market is a growth market which is underpinned by significant ongoing investment by the local industry which would be jeopardized in the absence of measures on Russian AN.*

The applicants claim that due to these factors, the expiration of measures will likely lead to an increased volume of low price, dumped imports from Russia and due to price transparency in the market this will lead to reduced profits and profitability.

4.4.2 Our assessment

An examination of ABS import data and data from Customs and Border Protection's import database confirms the applicant's claim that the price of imports from Russia is generally below that of imports from other sources.

This data also shows that the export price of ammonium nitrate from Russia dropped by over 50% between 2008-09 to 2009-10 and during 2009-10 was at a similar level to that found in the 2005 review. Should measures expire, it is reasonable to assert that the price of ammonium nitrate from Russia might decrease further.

In the original investigation and the subsequent review, it was found that the Australian market for ammonium nitrate was competitive and transparent. Due to this transparency, if measures expire and the export price of ammonium nitrate from Russia decreases, it is reasonable for the applicants to assert that the domestic price for ammonium nitrate will decrease in competition with the low price of Russian ammonium nitrate.

Price undercutting by ammonium nitrate from Russia may result in price suppression and depression of the Australian industry's prices with in turn may lead to lost profit and profitability.

Therefore, there are reasonable grounds for asserting that should measures expire, it may lead to a reoccurrence of material injury.

4.5 Conclusion on "reasonable grounds"

There appear to be reasonable grounds for asserting that the expiration of anti-dumping measure 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 as the delegate of the CEO you are recommended not to reject the application.

In accordance with s 269ZHD(4) you will need to publish notice indicating that it is proposed to inquire into whether continuation of the measures is justified.

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5 List of Attachments

Appendix A	Public notice under s. 269ZHD(4)
Confidential Attachment 1	Volume of Imports
Confidential Attachment 2	Analysis of Import Data and Dumping Margins
Confidential Attachment 3	Export Price of Ammonium Nitrate from Different Sources

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Appendix A

Customs Act 1901 – Part XVB

Ammonium Nitrate

exported from the Russian Federation

Initiation of continuation inquiry and

Initiation of review of measures

Notice under s. 269ZHD(4) and 269ZC(4)

The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) will inquire into whether the continuation of anti-dumping measures in respect of ammonium nitrate, exported from the Russian Federation (Russia) is justified. The CEO will also undertake a review of these measures. The inquiry and review will both commence on 7 October 2010.

The goods subject to anti-dumping measures, in the form of a dumping duty notice, are ammonium nitrate, prilled, granular or in other solid form, with or without additives or coatings, in packages exceeding 10 kg.

Ammonium nitrate, whether or not in aqueous solution, is classified within sub-heading 3102.30.00, statistical key 05, in Schedule 3 to the *Customs Tariff Act 1995*. The duty rate is free from all sources.

The current anti-dumping measures were initially imposed by public notice on 24 May 2001 following the then Minister for Customs and Border Protection's (the Minister) consideration of Trade Measures Report No. 28. The measures are in the form of anti-dumping duties on all exporters from Russia.

In 2005, following applications from interested parties, a continuation inquiry and review of measures was conducted. Subsequently, these measures were continued from 24 May 2006 and the level of measures revised from 17 May 2006 after the Minister accepted the recommendations of Trade Measures Report No. 104 and 105.

Interested parties are invited to lodge written submissions concerning the continuation or review of the measures not later than **16 November 2010** with:

The Director
Operations 1, Trade Measures Branch
Customs and Border Protection
Customs House
5 Constitution Avenue
Canberra ACT 2601

or by email tmops1@customs.gov.au, or by facsimile number 02 6275 6990.

Confidential submissions must be clearly marked "in-confidence" and be accompanied by two non-confidential versions suitable for placement on the public record. All non-confidential submissions will be placed on the public record for this inquiry together with a copy of all relevant correspondence between Customs and Border Protection and other persons.

Statements of the essential facts (SEFs) for the continuation inquiry and review of measures, on which the CEO proposes to base the recommendations to the Minister will be placed on the public record by 25 January 2011, or such longer period as the Minister allows under s. 269ZHI of the *Customs Act 1901* (the Act). Interested parties are invited to lodge submissions in response to these SEFs within 20 days of those statements being placed on the public record. Submissions to the SEFs should also be lodged with Customs and Border Protection at the above mail, fax or email addresses.

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Reports and recommendations to the Minister, in relation to the continuation inquiry and review of measures, will be made on or before 11 March 2011 (or such longer period as the Minister allows under s. 269ZHI of the Act).

Unless the Minister, after considering that report, decides to take steps to secure the continuation of the anti-dumping measures, they will expire on 24 May 2011. Therefore, on and from 25 May 2011, the anti-dumping measures would no longer apply.

Particulars of the reasons for the decision to initiate this inquiry and review are shown in Consideration Reports No. 168 and 169 (CON 168 and 169) held on the public record. Interested parties wishing to examine the public record may do so on the internet at adpr.customs.gov.au/Customs or at Customs House, 5 Constitution Avenue, Canberra ACT during business hours by contacting Trade Measures office management on telephone number 02 6275 6547. CON 168 and 169 and all Australian Customs Dumping Notices are also available on the Customs and Border Protection website at www.customs.gov.au.

Enquiries about this notice may be directed to the case team on telephone number 02 6245 5453 or email tmops1@customs.gov.au.

John Bracic
Delegate of the Chief Executive Officer

5 October 2010

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