

PUBLIC RECORD



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

TRADE MEASURES BRANCH
CONSIDERATION REPORT NO. 169

**APPLICATION FOR THE REVIEW OF
ANTI-DUMPING MEASURES**

AMMONIUM NITRATE
EXPORTED FROM
THE RUSSIAN FEDERATION

5 October 2010

PUBLIC RECORD

PUBLIC RECORD

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 review of anti-dumping measures that apply to ammonium nitrate exported to Australia from the Russian Federation (Russia). The applicants have applied for a review of all variable factors – non-injurious price, export price and normal value.

1.1 Recommendations

The delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) is recommended to 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 it is proposed to review the measures covered by the application.

1.2 Application of law to facts

Division 5 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 review of measures.

The Division empowers the CEO to reject or not reject an application for review 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 review the measures covered by the application.

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 review of anti-dumping measures applying to ammonium nitrate exported to Australia from Russia has been examined.

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

Having regard to the applicants' claims and other relevant information, there appears to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed. The applicants have demonstrated changes in variable factors - the non-injurious price, export price and normal value - since the measures were last revised in 2006.

¹ 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

2 Background

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 measures² applying to ammonium nitrate exported to Australia from Russia. This meets the requirements under s. 269ZA(2) because more than 12 months has lapsed since the publication of the last notice.

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 the continuation of measures was lodged on 14 September 2010.

2.2 The current review application

The applicants lodged an application for review of the measures on 21 September 2010. Section 269ZA(2) states, inter alia, that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a notice declaring the outcome of the last review of the anti-dumping notice. More than 12 months has lapsed since the publication of

² In accordance with s.269ZA.

PUBLIC RECORD

the last notice and therefore affected parties are entitled to apply for a review of the measures.

Pursuant to s. 269ZC(1) the CEO must examine the application and, within 20 days after the lodgement date, decide whether to reject the application. The decision must be made no later than 11 October 2010.

Section 269ZC(2) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- the application complies with s. 269ZB; and
- there appear to be reasonable grounds for asserting either:
 - (i) that the variable factors relevant to the taking of anti-dumping measures have changed; or
 - (ii) that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.

If the CEO is not satisfied, having regard to the application and to any other relevant information, of one or more matters referred to in s. 269ZC(2) the application must be rejected.

2.3 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.

2.4 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.

2.5 Imports

Since the last revision of measures, Russia exporters have continued to supply the Australian market with ammonium nitrate. Customs and Border Protection's import database details imports of ammonium nitrate from Russia. Details of the imports for the period 1 July 2009 to 30 June 2010 are at **confidential attachment 1**.

The applicants have provided names and addresses of exporters from Russia and key importers and sellers of like goods who are likely to have an interest in the review.

2.6 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,

PUBLIC RECORD

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).

PUBLIC RECORD

PUBLIC RECORD

3 Compliance with Section 269ZB

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

3.1 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Section 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount.

Section 269ZB(3) and (4) 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 a review of the anti-dumping measures.

PUBLIC RECORD

4 Consideration of reasonable grounds

Having regard to the applicants' claims and other relevant information, 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 changed.³

4.1 Legislative framework

For a review of measures to be undertaken, applications must demonstrate that there appear to be reasonable grounds for asserting either:

- that the variable factors relevant to the taking of anti-dumping measures have changed; or
- that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.

The applicants have asserted that the non-injurious price, export price and normal value have increased since measures were imposed.

4.2 Grounds for asserting variable factors have changed

4.2.1 Non-Injurious price

Applicants' Claims

The applicants claim that the non-injurious price has increased since the 2005 review because industry's selling price has increased. In the 2005 review of measures, the non-injurious price was determined based on the Australian industry's selling price during the period 1 July 2004 to 30 June 2005. Specifically, Orica's selling prices of low density ammonium nitrate prill to an independent customer across the period were used as an unsuppressed selling price.

The applicants state that since 30 June 2005 the Australian industry's selling price has increased by approximately 25%. CSBP and Orica provided selling price information to support this claim.

Our assessment

Using information provided by CSBP and Orica as part of the current application and information gathered as part of the 2005 review, the Australian industry's selling prices in both 2004-05 and 2009-10 were compared (**confidential attachment 2**). It is evident that selling prices have increased since the last review.

In addition, the Australian industry's costs in the same periods were compared and have also increased since the last review period (**confidential attachment 2**).

The non-injurious price is generally derived from the Australian industry's selling prices at a time unaffected by dumping, or from a constructed price. Deductions for post-exportation costs are made from this price to arrive at a non-injurious

³ In accordance with s.269ZC(2)

PUBLIC RECORD

price. The applicants did not provide details of relevant deductions. However, the changes in overall sales price and costs are sufficient to demonstrate reasonable grounds for asserting that the non-injurious price has changed.

4.2.2 Export Price

Applicants' claims

The applicants claim that the export price of ammonium nitrate from Russia has fluctuated and is now higher than during the previous review period.

CSBP and Orica provided average ammonium nitrate export prices for each financial year since measures were imposed using the Australian Bureau of Statistics (ABS) import data as tabled below:

Year	Unit A\$/Mt
2005-06	\$ 249.63
2006-07	\$ 294.31
2007-08	\$ 346.06
2008-09	\$ 785.66
2009-10	\$307.72

The applicants state that because revised measures were implemented in May 2006, the effect of the updated measures was not evident until the 2006-07 financial year. The applicants observe that the export price of ammonium nitrate from Russia has increased since 2005-06 and peaked in 2008-09. The applicants claim that the high price in 2008-09 was a result of a decline in the availability of ammonium nitrate from other import sources, as well as an increase in the price of raw ammonium. In 2009-10, the export price of ammonium nitrate decreased, although it was still above the level of 2005-06.

Our assessment

The export prices in the application reconcile with the ABS import data provided by the applicants and show an increase in the export price of ammonium nitrate from Russia since the 2005 review.

An assessment of data from Customs and Border Protection's import database also shows that the current export price of ammonium nitrate from Russia has increased since 2005 (**confidential attachment 3**).

Therefore, there are reasonable grounds for asserting that there has been a change in the export price of ammonium nitrate from Russia.

PUBLIC RECORD

4.2.3 Normal value

Normal value for an economy in transition

In the original investigation in 2000 and the continuation inquiry and review in 2005, Russia was considered to have an economy in transition. Australian anti-dumping legislation specifically provides for a situation where normal values are to be established for a country that has an economy in transition. The relevant provisions are those that existed prior to the 2003 amendments of s. 269TAC(5D) to 269TAC(5J) the *Customs Act 1901* (pre-2003 legislation). This is because those amendments only apply to anti-dumping measures applied for after those amendments were made. As the ammonium nitrate anti-dumping measures were applied for before amendments, the pre-2003 provisions apply.

Under the pre-2003 provisions, where a price control situation applies, normal value is to be established under the provisions of s. 269TAC(5D) 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'.

In the original investigation and subsequent review and continuation, a price control situation was found due to government control of natural gas, the major input into ammonium nitrate.

As a result of the price control, the normal value was determined using a surrogate country. Ammonium nitrate manufacturers in a number of countries were contacted and asked to provide information. Manufacturers in the United Kingdom (UK) responded and data from these manufacturers was used to determine normal value.

Applicants' claims

The applicants claim that a price control situation continues to exist in Russia and as a result the normal value can again be determined using information from the UK. The applicants argue that the selling price of ammonium nitrate in the UK, and therefore the normal value, has increased since 2005.

In the current application, the applicants claim that the Russia Government continues to control the price of gas in Russia as demonstrated by a government pricing decree dated 18 December 2009. This document stipulates the level at which wholesale gas prices are to be set as of 1 January 2010 for gas produced by JSC Gazprom, the major supplier in Russia.

PUBLIC RECORD

The applicants argue that this demonstrates that a price control situation remains and that normal values can be determined on the basis of surrogate information from the UK.

The applicants provided industry pricing data that indicated the following delivered prices for ammonium nitrate in the UK.

- July 2005 £142 per tonne
- September 2010 £220-235 per tonne

The applicants provided copies of the publications from which the data was obtained. This data indicates that domestic prices increased by over 50% since the last review. Therefore, the applicants consider that the normal value of ammonium nitrate exported from Russia has increased.

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 claim that a price control situation exists in Russia will be examined further in the course of this review.

Due to the possibility of continued price control in Russia, it is reasonable to assess changes in the normal value using selling prices in the UK. The price of ammonium nitrate quoted by the applicants for ammonium nitrate in the UK in 2005 is consistent with the findings of the 2005 review. The increase in the price in 2010, as quoted in an industry publication, provides reasonable grounds for asserting that the normal value has changed.

4.3 Conclusion on “reasonable grounds”

There appears to be reasonable grounds for asserting the non-injurious price, export price and normal value have changed.

Accordingly, it is recommended that you as delegate of the CEO decide not to reject the application.

You will need to publish a notice indicating that it is proposed to review the measures covered by the application⁴.

⁴ s. 269ZC(4)

PUBLIC RECORD

5 List of Attachments

Appendix A	Public notice under s. 269ZC(4)
Confidential Attachment 1	Details of imports from Customs and Border Protection database – 1 July 2009 to 30 June 2010
Confidential Attachment 2	Changes in applicants selling price and costs since 2005 review
Confidential Attachment 3	Analysis of export price

PUBLIC RECORD

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.

PUBLIC RECORD

Submissions to the SEFs should also be lodged with Customs and Border Protection at the above mail, fax or email addresses.

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