GLENCORE

NON-CONFIDENTIAL
For inclusion on the Public Register

5 October 2023

The Director, Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

By email: investigations4@adcommission.gov.au

Dear Director,

Ammonium nitrate exported from China, Sweden and Thailand: submission in response to recent developments

Glencore Coal Assets Australia Pty Ltd (**Glencore**) makes this interested party submission under section 269TEA(3)(iv) of the *Customs Act 1901* (**the Act**).

1. Introduction

There have been several developments both on and off the public record that we feel compelled to respond to before the Statement of Essential Facts is published. These developments relate to the publication of the applicants' questionnaire responses, their additional submission, as well as developments in the Australian market.

In sum, the applicants have not provided any coherent reason as to why they consider exporters would seek to dump goods into Australia, nor any reason why the Australian industry would be beholden to match the pricing of imported goods (regardless of whether they are dumped or not). The Australian industry is far more robust than it would have the Commission believe, and wields a significant degree of price power.

The call to continue these measures when the applicants have no spare capacity, are importing significant volumes of AN themselves and have not provided any coherent basis to consider material injurious dumping is a likely consequence of the revocation of measures, should be rejected entirely.

PUBLIC RECORD COPY

Private Mail Bag 8, Singleton, NSW 2330
567 Broke Road, Singleton, NSW 2330
T + 61 2 6570 2416 F + 61 2 6570 2520 www.glencore.com

Glencore Coal Assets Australia Pty Limited (ACN 163 821 298)

2. There is still no basis to consider that dumping will recur

We have addressed the applicants' arguments regarding the likelihood of a recurrence of dumping in detail in our initial submission to this inquiry. In their submission, the applicants' double-down on their position that dumped exports will recur because of declining ammonia costs.

We consider the applicants' concern regarding ammonia costs are feigned. The fact these costs are decreasing is not surprising – it was unlikely that ammonia costs would stay at the historic highs they achieved in the last few years. Like many commodities, the price of ammonia is volatile, which is precisely why the use of "rise-and-fall" provisions is widespread throughout Australian and international markets.[1] In any respect, as the Commission has previously recognised, the cost of ammonia is somewhat agnostic to whether dumping is likely to continue, or in this case, recur, because those costs impact both export prices and domestic prices equally.[2]

To make their argument the applicants focus on the recent price trend of Lithuanian ammonium nitrate. However, this does not support their call to continue the measures because, firstly, Lithuanian imports are not subject to this inquiry and, secondly, the Commission recently found that the applicants had not suffered material injury as a consequence of dumped imports from Lithuania over the period 1 April 2021 to 31 March 2022. Dumping alone is no basis to impose anti-dumping measures: absent any material injury Lithuanian AN could be imported for a dollar and no measures could be imposed. If the Australian industry's position is that there are imports from Lithuania that are cheaper than imports from Thailand, or some hypothetical resumption of imports from China or Sweden, we fail to see how that supports their call for the continuation of measures against Thailand, China and Sweden.[3]

We are compelled to make one further point. The applicants argue that "the reductions in import prices will once again be attractive to traditional importers and it is likely that importers would seek out previous sources of supply (including exporters in China, Sweden and Thailand) to secure competitively priced imported ammonium nitrate." We believe this is easily countered by the fact that imports have continued even when prices of ammonium nitrate were at historic highs. As will be further discussed in this submission, even when the Australian market is plagued with supply shortages and the price of imports is well above the non-injurious price set in the original investigation, imports from China and Sweden have not recommenced in any material sense.[4] Why would variations in the cost of ammonia, which impact the Australian industry as well as exporters of ammonium nitrate to Australia, change that?

Simply put, there is no basis for the Commissioner to be satisfied that the revocation of the measures would likely lead to a recurrence of dumping from Sweden, Thailand or China. Therefore, there is no basis to continue the measures.

---

[1] *Termination Report 605 – Ammonium nitrate – Lithuania and Vietnam*, page 9.

[2] *Termination Report 605 – Ammonium nitrate – Lithuania and Vietnam*, page 73.

[3] As is further discussed below we understand that [redacted] ***Confidential text regarding Australian industry imports***. How does this justify their fears concerning the supposed impact of any resumed exports Thailand, Sweden or China?

[4] [redacted] ***Confidential text regarding import statistics***

3. The Australian industry's imports are not "temporary"

In their questionnaire responses, the applicants accept that imports are necessary, at times, to fulfil supply contracts and cover plant shutdowns.[5] The applicants refer to Yara Pilbara's recent shutdown, which impacted the supply of ammonium nitrate in Australia over the last 12 months. According to CSBP and Orica, the shutdown necessitated imports so that supply contracts could be fulfilled, but that imports are only a temporary measure.[6]

This explanation sits uncomfortably with the Commission's previous findings, which illustrate Australian industry imports are a consistent and ongoing trend. This is illustrated very succinctly in an analysis that the Commission undertook of imports between FY2016 and FY2020: in each of these years the Australian industry imported ammonium nitrate in volumes equivalent to imports by all other parties.[7] This practice continues. Most recently, in Investigation 605, the Commission found that both CSBP and QNP had imported ammonium nitrate and were operating above capacity.[8] Characterising what is evidently an ongoing practice as "temporary" is outlandish.

Ongoing Australian industry imports are also evident from recent import statistics. For example, while complaining about [redacted] ***Confidential text: volume*** of AN imported from Thailand between April and July 2023, the Australian industry fails to disclose that it has imported at least [redacted] ***Confidential text: significantly higher volume*** of AN in that same period.[9] The prices of Thai AN are higher than those which we believe the Australian industry imported, as illustrated comparing the details of imports on a monthly basis:[10]

Confidential table: comparison between imports from Thailand and Australian industry imports in April 2023

The price from Thailand is [redacted] ***Confidential text: percentage*** higher than the price of Australian industry imports from [redacted] ***Confidential text: country***. Note, of course, on import of the goods from Thailand, a duty liability of 13.5% arises, further expanding the differential faced between imports from the two sources. This is replicated again in July 2023:

Confidential table: comparison between imports from Thailand and Australian industry imports in July 2023

In July 2023, the price from Thailand was [redacted] ***Confidential text: percentage*** higher than the Australian industry imports from [redacted] ***Confidential text: country***. So why are they concerned about Thai imports which they do not consider have been dumped, a trickle of imports from China and non-existent imports from Sweden?

The simple fact is that the Australian industry does not want anyone else to import into Australia. It wants to supply everybody, and when it is unable to do so, it wants to control imports itself. This is what

---

[5] See pages 16 and 17 of CSBP's questionnaire response and page 17 of Orica's questionnaire response.

[6] Page 17 of CSBP's questionnaire response and page 17 of Orica's questionnaire response.

[7] *REP 565 – Ammonium Nitrate exported from Russia – Continuation inquiry*, page 31.

[8] *Termination Report 605 – Ammonium nitrate – Lithuania and Vietnam*, page 70 fn 106.

[9] [redacted] ***Confidential text regarding logic for identifying applicant's imports***

[10] These figures are based on ABS import statistics.

informs their participation in anti-dumping investigations and what motivates their call for the continuation of measures. This intent is evident from the following statement in their submission:

> *The measures had the desired impact with no exports to Australia from Sweden and Thailand over the period 2019/20 to 20221/22 inclusive.*[11]

The applicant's goal is not to redress injurious dumping; it is to stop imports it does not directly control. But that is not the purpose of anti-dumping measures, and would be an incredibly reckless basis to continue these measures. As we have advised the Commission previously, moves to protect this highly profitable and dominant industry have harmed Australia's reputation globally, and have made other suppliers of ammonium nitrate less willing to trade with Australia. The repercussions of this would be all the worse in circumstances where the Australian industry cannot satisfy demand with its own product, which is currently the case.

4. The Australian industry cannot satisfy market demand

In Termination Report 605, the Commission found that the Australian industry was at capacity, and was not always able to meet domestic demand for ammonium nitrate.[12] That remains the case. This is a matter of some significance to this continuation inquiry. We are aware of the following instances that illustrate this problem:

- [redacted] ***Confidential text regarding recent Glencore interactions with applicants***.
- [redacted] ***Confidential text regarding supply to Glencore site***.
- [redacted] ***Confidential text regarding inability of applicants to supply market.***
- [redacted] ***Confidential text regarding recent Glencore purchases of AN***.
- [redacted] ***Confidential text regarding growing trend in exports of ammonium nitrate from Australia***.
- [redacted] ***Confidential text regarding recent Glencore interactions with applicants***.
- [redacted]

[11] Australian industry submission of 20 September 2023, page 2.

[12] *Termination Report 605 – Ammonium nitrate – Lithuania and Vietnam*, page 70.

[redacted] ***Confidential text regarding further likely imports by applicants***.

- [redacted] ***Confidential text regarding lack of supply in Australian market***.

The inescapable conclusion is that the Australian industry is unable to satisfy demand in the Australian market. Such shortages are, sadly, not unusual. [redacted] ***Confidential text regarding Glencore supply arrangements and interactions with applicants.***

So, the Australian industry is calling for the continuation of measure in circumstances where they are not able to satisfy demand in the Australian market, and in circumstances where they have no problem importing their own AN and sourcing it from countries that they have previously, unsuccessfully, argued have caused them grievous injury. In these circumstances we see no rationale for considering there would be any risk of material injury. The Australian industry is not at risk of losing market share, and the surplus of demand would actually provide them pricing power that exporters do not have.

5. The Australian industry has pricing power

The fact that total imports of ammonium nitrate are a fraction of the Australian market is well established and known to all, as is the fact that the Australian industry is responsible for, or benefits from, these imports. It is commonly known that the Australian industry itself produces and supplies approximately 95% of all ammonium nitrate sold in the Australian market, and in excess of that when its imports are considered. It is readily apparent that the Australian industry cannot meet current market demand. Yet, the Australian industry continues to maintain that it is somehow at the mercy of imports when it comes to pricing.

We reject entirely the proposition that the applicants are somehow price-takers,[13] or would otherwise be significantly impacted by import prices from any future imports from Sweden, Thailand or China.

The Australian industry is made of disparate producers of ammonium nitrate and, as appropriate, they do compete amongst themselves. Yet, they would have us believe they are more concerned with imports than the prices offered by their largest competitors. They would have us believe, for example, that Orica is more concerned with imports from [redacted] ***Confidential text regarding imports*** rather than the approximately 600,000 tonnes made by other producers in the same state as Orica's Yarwun facilities? That does not make any sense. Their position entirely ignores the Commission's previous finding that competition between Australian industry members had a "significant" impact on the Australian industry as a whole.[14]

Competition in the east coast market is fairly uncontentious, and the Commission is already aware of CSBP selling its product [redacted] ***Confidential text regarding competition in various markets***. So, if there is any form of price pressure, it is price pressure as a result of inter-domestic industry competition. Why would they concern themselves with imports whose volumes amount to a rounding-error?

[13] Page 9 of QNP's questionnaire response.

[14] *Termination Report 605 – Ammonium nitrate – Lithuania and Vietnam*, page 58.

That noted, we do not believe there would be such pricing pressure at present. As a matter of basic economic principle, the surplus of demand in the market means that the Australian industry has pricing power. Miners and the explosive producers need ammonium nitrate; the Australian industry cannot satisfy that need, and so can raise prices on the ammonium nitrate that is not already subject to contract. The Australian industry does not need to chase volume by pricing lower, because they have no volume to spare. The Commission is well aware of the limitations on how much ammonium nitrate can be received at a designated port at any one time, which does limit the ability to import, so the only form of competition is narrow.[15] The Australian industry, when considered as a whole, therefore has significant pricing power. The idea that they somehow need to follow import pricing when they are already selling their full capacity simply makes no sense.

This is why we believe the Australian industry struggles to make a cohesive, evidenced argument for the supposed impact of imports on their prices. They claim that ammonium nitrate imports affect the prices they are able to obtain from Australian customers.[16] [17] Supposedly, this is because they price their goods based on some form of "import parity". But they never provide any real explanation of that claim and never explain how they justify their own imports, whose prices are presumably just as transparent to the market. Significantly, the most recent consideration of these claims found only one isolated instance in a three-year period of the Australian industry's prices being affected by imports.[18] So some scepticism of these unsupported assertions is necessary. This is particularly so in circumstances where the Australian industry is at capacity, is responsible for a significant proportion of imports, and are their own biggest source of competition.

The applicants do not really care about imports from Sweden, Thailand and China – [redacted] ***Confidential text regarding imports***. All they are trying to do is further entrench their market power, by restricting customers access to the small volume of imports those customers need. At a time when the Australian industry cannot satisfy demand in the market, this is nothing short of economic vandalism.

6. These measures should not be continued

The applicants have not met the test for the continuation of measures. They do not point to any positive evidence demonstrating the likely recurrence of dumping and injury. There position appears to be simply that "you found we were injured by these imports before, so just do that again".

That does not work in a continuation inquiry. The requisite satisfaction needed to recommend the continuation of measures must be based on positive evidence. For the reasons discussed in our initial submission to this inquiry, there is no basis to find a probable recurrence of dumping because of the revocation of measures. Even if there was, Investigation 605 highlights how a finding of dumping does not automatically result in a finding of material injury. Noting that:

a) the applicants have no evidence of a widespread or consistent "import parity pricing" practice.
b) the Commission's recent analysis only found one isolated instance in three years where applicants prices were influenced by imports.
c) how the applicants choose to set future prices is a matter within the industry's full control.

[15] Incidentally, in a short market, why would exporters seek lower prices for their product, when they can achieve a good return at the market price. Prices in Australia are currently substantially higher than elsewhere in the world.

[16] See, for example, page 17 of Orica's questionnaire response.

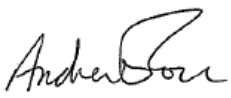
[17] Page 8 of Dyno Nobel's questionnaire response, page 13 of CSBP's questionnaire response and page 9 of QNP's questionnaire response.

[18] There is no inherent need to adopt such an import-based pricing model. There are different levels of trade for ammonium nitrate in the Australian market – and sales of ammonium nitrate are often tied to a bundle of products and services. The Australian industry could set prices on a cost plus reasonable margin basis. This would mean that local supplies remain attractive to purchasers, and that the Australian industry is safeguarded from import prices, whether such imports are from the subject countries or not, and whether the goods are dumped or not.

d) the applicants have a historic and continuing practice of importing ammonium nitrate into the Australian market.
e) the largest source of competition for each of the applicants is the other applicants.
f) the applicants are at capacity and have no additional tonnage of their own production to meet the surplus demand.
g) even after import prices reduced recently due to lower ammonia costs[19], domestic sales prices remain well above non-injurious levels.

It is the industry that is arguing that they should be protected from any potential imports from Sweden, Thailand and China for an additional five years. They need to justify that position. They need to do so on the basis of positive evidence. The continuation of these measures is not justified. We trust that the Statement of Essential Facts will reflect that.

Yours sincerely



Andrew Rose
Glencore Coal Assets Australia Pty Ltd

[19] Although ammonia costs have declined, as mentioned by the Australian industry, it must also be recognised that they have increased sharply recently, with the Fertecon Far East ammonia price (high point) increasing by US$315/t between 1 June 2023 and 28 September 2023, equivalent to a 93% increase.