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12 March 2024

The Director
Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2601

By email

Dear Director,

Continuation Inquiry 629
Yara AB – submission regarding the Statement of Essential Facts

We act on behalf of Yara AB ("Yara") in relation to this inquiry.

Yara welcomes the Commissioner's preliminary recommendation in Statement of Essential Facts 629 ("the SEF"). Yara disagreed with the imposition of the measures in 2019 and so is pleased with the rigor and analysis that the Commission applied to the Applicants' claims that there was a necessity to continue the measures for an additional five years. It is evident from the public record and the conclusions in the SEF that there is no basis to be satisfied that the expiry of measures would lead, or be likely to lead, to a continuation or recurrence of dumping and material injury from the subject countries. As the threshold stipulated by section 269ZHF(2) of the *Customs Act 1901* (Cth) ("the Act") has not been met, the measures must be allowed to expire.

With respect to Sweden, we note the following conclusions that call for the discontinuation of the measures:

- When Yara did export to Australia between 2014 – 2019 it had only one Australian customer. That customer is now affiliated with a different ammonium nitrate producer(s), and has been importing ammonium nitrate from countries that are not subject to measures and never found to have been dumped.[1]

[1] Page 49 of the SEF.

- The circumstances upon which the Commission determined Yara's original dumping margin no longer exist and are not likely to recur.[2] Contrary to the Applicants' claims, Yara has not maintained distribution links with the Australian market.[3]
- If Yara had wanted to pursue additional distribution channels within Australia, it could have done so during the inquiry period when ammonium nitrate prices were significantly higher than the long-term average. Evidently, this did not occur.[4]
- Any excess production capacity at Yara's Köping plant is *"driven by the company's decision to cut production in response to high gas prices"* rather than any increased and underused productive ability.[5] Yara would add that it is estimated that the Köping plant will operate at [CONFIDENTIAL TEXT DELETED – number] per cent plant loading in 2024, well above the figures the SEF is based on. In any respect, Yara does not consider production capacity is relevant in this instance. Capacity utilisation was not a driver of exports to Australia in the Original Investigation and is not to be a genuine predictor of Yara re-entering the Australian market now. In any respect, as we have noted, Yara's production of the goods under consideration represented only a fraction of its production in Köping. Whatever capacity utilisation rate Yara has does not change this basic fact.

Given these findings, it is not strictly necessary for Yara to address the SEF insofar as it considers the likelihood of a recurrence of material injury. Nonetheless, the material injury findings in the Original Investigation caused Yara some significant consternation, and so Yara would like to make a few comments in that respect.

The SEF reports an industry that is robust and healthy. Since 2019, the Australian industry has increased its volume and market share and profit and profitability;[6] its prices have risen faster than costs, no mean feat given the inflation prevalent around the globe.[7] It is notable, then, that between calendar years 2020-23, the prices of all Australian imports, including those from China and Thailand, were higher than the prevailing prices reported by the Australian industry.[8] Prices from China and Thailand have been described to be "significantly higher" than those of the Australian industry.[9] Given these outcomes, Yara is forced to question the accuracy of the industry's repeated chorus that import prices are influential to their own. The trends reported in the SEF do not support this.

On that note, it is self-evident that existing contractual arrangements will not be effected by those hypothetical imports in the future; Yara welcomes the Commission's clear statement in that respect with regard to continuing exports from Thailand.[10] This must surely mean that the bulk of Australian industry sales are, in essence, protected from the prices of imports and so, dumping likelihood or otherwise of dumping recurring, protected from material injury.

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2 Pages 9, 48 - 50 of the SEF.

3 Pages 9, 38, 46 and 49 of the SEF.

4 Pages 50 - 51 of the SEF. See also page 49 of the SEF and page 6 of EPR 4.

5 Page 53 of the SEF.

6 Page 31 of the SEF.

7 Pages 34 - 35 of the SEF.

8 Page 59 of the SEF.

9 Page 56 of the SEF.

10 Page 72 of the SEF.

Respectfully, we do consider a consideration of future negotiations to be too remote to be relevant to the task prescribed by section 269ZHF(2) of the Act. Negotiations hinge on far too many unquantifiable factors and unpredictable circumstance to suggest that one's outcome would be effected by the expiry of measures. In Yara's view, the continuation of measures should not be based on speculation regarding these unknowables. That noted, while Yara disagrees with the premise in principle, Yara does agree with the ultimate conclusions drawn in the SEF. The infrequent and low volumes available from China means import from China are unlikely to be viewed as a realistic and reliable option for Australian buyers of ammonium nitrate. Similarly, the potential volume of Thai ammonium nitrate that could be directed to Australia is equal to approximately 1% of the Australian market robbing such exports of any value as a form of leverage in dealings with the Australian industry.[11] In other words, continued exports from these destinations is not likely to lead to a recurrence of material injury.

Australia relies on ammonium nitrate imports to meet domestic demand. This is because Australian industry members are operating at 90 per cent capacity utilisation, which is unlikely to change in the foreseeable future, and have been unable to fully supply the Australian market (including their own demand) for several years, despite increasing their capacity.[12] Ammonium nitrate imports from all countries only account for approximately 5 per cent of the Australian market share.[13] The presence of imports in the Australian market is due to necessity, rather than the price of the imports.[14]

Accordingly, Yara believes the Commission has come to the correct conclusion regarding the improbability that future imports to materially injure the Australian industry producing like goods.

Noting these factors, we submit that there is no basis upon which the Commissioner can be satisfied that the expiration of measures would lead, or be likely to lead, to a continuation, or recurrence of, the dumping and material injury that the measures are intended to prevent. There is no factual or legal basis to continue the measures insofar as they relate to Yara. Accordingly, the Commissioner must not recommend the continuation of measures.

If the Commission requires any further information to support the proposed recommendation that the measures be allowed to expire, please do not hesitate to contact us.

Yours sincerely

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11 Page 71 of the SEF.

12 Pages 28, 36, 55 - 56 of the SEF.

13 Page 28 of the SEF.

14 Page 56 of the SEF.