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Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia
+61 2 6163 1000

Brisbane
Level 4, Kings Row Four
235 Coronation Drive
Milton, Brisbane
QLD 4064 Australia
+61 7 3367 6900

Melbourne
Level 50
120 Collins Street
Melbourne
VIC 3000 Australia
+61 3 8459 2100

moulislegal
commercial + international

8 March 2024

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

By email

Dear Director

AECI Australia
CON 629 - Ammonium nitrate from China, Sweden and Thailand
Comments in response to SEF

We make the following submission on behalf of our client, AECI Australia Pty Ltd ("AECI"), in response to the publication of the Statement of Essential Facts ("SEF").

AECI supports the Commissioner's proposed recommendation to *"allow the measures on ammonium nitrate exported to Australia from China, Sweden and Thailand to expire on 3 June 2024"*.[1]

In summary, the Commission has found only isolated examples of dumped imports from Thailand during the inquiry period and is rightly unconvinced that Thai imports would cause or would be likely to cause material injury to the Australian industry to recur. In this regard the Commission correctly acknowledges that the Australian industry holds upward of 95% of the market; is operating at full capacity, subject to maintenance and outages; and is experiencing strong economic performance.

AECI has the following observations about certain aspects of the SEF that support the discontinuation of measures.

1 Changes to conditions of competition

In the SEF, the Commission refers to ammonium nitrate generally being procured pursuant to long term contracts with either the Australian producers themselves, or via their affiliated explosives and blasting

[1] SEF, page 5.

services providers, or by independent explosives and blasting services providers.[2] That dynamic has not changed since the measures were imposed.

What has changed, and what AECI has pointed out to the Commission, is that the supply/demand balance has been "restored" or "addressed" by the commissioning of an additional large scale facility in the Pilbara, Yara Pilbara Nitrates.[3] That magnitude of investment is not engaged in lightly, especially with respect to a product which is so inherently difficult to export. The decision by Yara and Orica to invest in that facility was made with a keen eye to addressing the shortfall in ammonium nitrate availability in the Australian market but, we suggest, not with any intention to exceed same.

In addition to that market change, notable mining company/ies have explored and implemented new ways of approaching their procurement practices in order to contain costs across the full line of consumables, facilities and services required.[4] That market change has brought about increased competitive interactions amongst Australian industry members and the downstream service providers that provide the explosive and blasting services the mining companies require. The market change has not involved overseas ammonium nitrate supply for the purposes of reducing prices of locally produced ammonium nitrate, nor in a way that would have that effect. It is therefore plain that injury to the Australian industry has not occurred by reason of dumping, and that it is not at all probable that it would recur in the future.

These changing market behaviours indicate that end users are actively moderating all their costs through the promotion of domestic competition. The level of competition amongst Australian ammonium nitrate and the demand/supply balance means that overseas supply, such as that with which AECI has been involved from Thailand, is now only required at the margin between domestic availability and interruption of same, and in small quantities. From the perspective of end users, it is not the pricing of Thai imports that is their attraction.

Further, the difficult nature of the product, from the perspective of logistics and storage, and the easy usage of anti-dumping complaints by the Australian industry, makes any suggestion that the Australian industry's large scale long-term contracts are threatened either as to their pricing or volume quite far-fetched. Quantities that are realistically required for those large contracts are simply not available from Thailand, where the sole manufacturer has very little product to offer after satisfying their domestic and regional customers, and where the volumes required in Australia would be logistically impossible to deliver. No importer or end user would put itself in the position of risk entailed by the potential imposition of dumping duties on their major or only supply line.

2 Reality of competition between Australian industry members

The Commission has found that, in circumstances where the Australian industry supplies upward of 95% of Australian demand for ammonium nitrate, Australian industry members compete amongst themselves for contracts.[5]

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2 SEF, page 27.

3 Refer to the presentation materials AECI provided to the Commission on 6 September 2023 and EPR 18 for a non-confidential summary of same.

4 Ibid.

5 SEF, pages 26-28.

The Australian industry has arranged its affairs such that it can acquit all production for domestic consumption. Whether one considers that this almost exact demand/supply balance is good for the purposes of price competition depends on the degree to which that competition actually takes place. The pricing of imports, in the present circumstances and with respect to the product concerned, does not impact on that competition. The Australian industry is well-shielded from any injurious effects of imports.

In the SEF, the Commission has found that dumped Thai imports could only injure the Australian industry to the extent that ammonium nitrate pricing returns to pre-pandemic levels and is used in Australian industry contract negotiations.[6] Given that customers with volume requirements exceeding Thai volumes would not necessarily be able to leverage the price of imports during negotiation, the Commission concludes that the potential injury suffered would be immaterial.[7]

This is a logical conclusion and is supported by AECI's earlier submissions. When the market is so tightly held by local producers, and when it is the local producers that determine those ammonium nitrate prices, whether through their own internal competition or the combination of the tight supply/demand balance and the logistical restrictions that confront imports, the potential and likelihood of importers leveraging ammonium nitrate prices to their advantage is limited or nil.

In contrast, the upwards price leverage able to be exerted by local producers has been highly successful, as demonstrated by the Australian industry's strong economic performance.[8]

3 Thai imports help assure supply security

The Commission has accepted that the Australian industry has an average capacity utilisation of 90% and is unable to fully meet Australian market demand.[9] We refer to our earlier comments about the Australian industry increasing its capacity via new production capacity of Yara Pilbara Nitrates being brought fully online in 2021.[10] Users of ammonium nitrates are *"required to import ammonium nitrate to make up for the volume that is unavailable out of Australian facilities"*.[11]

The presence of Thai imports in the Australian market in the inquiry period was brought about by cautious and sensible business behaviour on the part of end users. The objectives of this have related to the top-up supply of ammonium nitrate and not the price of such imports.[12] Australian industry members being unable to satisfy local demand bears out the Commission's finding that domestic buyers are willing to import ammonium nitrate at prices *"significantly higher than the prevailing selling*

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6 SEF, pages 60-61. We would add, for future reference, that the allegation of the "use" of such prices in those negotiations would have to be convincing and not a contrivance.

7 SEF, page 71.

8 Please see page 1 of Orica's ASX Announcement of 15 February 2024 (accessible https://company-announcements.afr.com/asx/ori/5b10812d-cb7f-11ee-be79-0abdb9403284.pdf), where Orica notes *"the momentum that underpinned Orica's strong financial performance in FY2023 has continued into the first four months of FY2024, reflecting the continued execution of Orica's strategy and strong demand for products and services across the mining value chain"*.

9 SEF, page 55.

10 SEF, pages 29, 36 and 56-57.

11 SEF, page 57.

12 SEF, page 61.

price amongst the Australian industry".[13] In these prevailing market conditions, uninterrupted supplies of ammonium nitrate are paramount. The costs of not having supply far outweigh the extra cost of guaranteed supply.

Paradoxically, the Australian industry has sought to exclude Australian buyers from obtaining imported ammonium nitrate to address this issue, when they themselves are required to regularly import large quantities of ammonium nitrate in order to make up for the volume that is unavailable from their own Australian facilities.[14]

AECI also supports the Commission's findings with respect to China. As per section 6.6.1 of the SEF, the Chinese Government's National Development and Reform Commission has imposed logistical and other restrictions which strictly limit the export of ammonium nitrate.

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We appreciate the Commission's investigative diligence and clear logic in proposing to recommend the expiry of measures with respect to Thailand, China and Sweden.

This letter may be placed on the public record of the investigation.

Yours sincerely

Daniel Moulis
Partner Director
+61 414 221 224

13 SEF, page 56.

14 SEF, page 57.