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

By email: Investigations4@adcommission.gov.au

Dear Director,

We refer to Statement of Essential Facts 629 ("SEF").

We note and support the preliminary findings that the Commissioner is **not** satisfied that *the expiry of the measures on ammonium nitrate exported to Australia from China, Sweden and Thailand would lead, or be likely to lead to a continuation of, or a recurrence of, dumping and the material injury that the measures are intended to prevent*.

The Commission's finding that the Australian industry has not been able to produce sufficient ammonium nitrate to meet domestic demand is entirely consistent with Glencore's experience. In addition, we support the finding that *the issues that are driving [90% capacity utilization] are unlikely to be alleviated after the measures expire*[1]. The Commission's conclusion is entirely consistent with targets stated by Orica that continuous manufacturing plants (which include ammonium nitrate plants) should achieve an Overall Equipment Efficiency (or OEE) of >85%[2]. Whilst we recognize OEE is a slightly different measure to capacity utilization, it does confirm that that such production plants cannot run at full capacity all of the time. With respect to insufficient domestic supply to meet demand, we also highlight that the Australian industry chose to export over 43,000t during the inquiry period, despite import costs being higher than their own[3]. The volume exported is far greater than the ~16,000t imported in the same period from China, Thailand and Sweden, with exports and imports (from China, Thailand and Sweden) being almost balanced for the period from 1 April

[1] SEF, section 6.6.5, page 57.
[2] Refer to page 29 of Orica's 2021 full year results presentation, and to page 55 for a definition of OEE: https://www.orica.com/ArticleDocuments/303/2021%20Full%20year%20Results%20Investor%20Presentation.pdf.aspx.
[3] The Commission found, on p.64 of the SEF that *Without the change in prices predicted by the Australian industry, a continuation of the prices for ammonium nitrate imported during the inquiry period would unlikely support a claim of material injury continuing or recurring.*

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2023 to 31 December 2023[4]. Such circumstances appear to further confirm the Commission's preliminary finding that the expiry of measures will **not** lead to any material injury[5].

We wish to request that the Commission re-confirm one conclusion. The Commission concludes that *it appears reasonable to conclude that the price of Australian ammonium nitrate imports will likely return to the lower levels observed for 2019 and 2020*[6] [Glencore emphasis added]. However, when reviewing figures 14 and 15 together with the reasoning set forth in the 'Import Price" section, it appears that the conclusion reached is that ammonia prices will likely return to the lower levels observed for 2019 and 2020, but that ammonium nitrate prices will not. The reason for questioning this is that although ammonia prices are observed to be trending towards 2019 and 2020 levels in figure 14 (before increasing in later 2023), ammonium nitrate import prices in figure 15 are clearly shown as remaining well above the 2019 and 2020 levels, with an upwards trend being observed. With such movements being highlighted, the conclusion of a return to 2019 and 2020 price levels appeared incongruous. Glencore's experience, and that highlighted by Orica[7], is that ammonium nitrate prices are trending higher, independently of the underlying cost drivers, thus increasing margins for producers. Such a scenario reinforces the conclusion that *the commission **does not** consider that a continuation of exports from China and Thailand would be likely to lead to a continuation or recurrence of material injury with respect to the Australian industry prices*.[8]

Whilst we agree with the Commission that a continuation of imports from China and Thailand will not lead to, and will not be likely to lead to, material injury to the Australian industry, we wish to add that the evaluation summarized in the SEF[9] could also consider the costs to import, unload, move and store ammonium nitrate, in addition to the landed import prices. Evaluating the total cost involved with imports would further support the Commission's findings and provide an 'apples with apples' comparison.

We note that the Commission has found that the price of imports from Thailand are unlikely to impact existing contractual arrangements and so would be unlikely to lead to a continuation or recurrence of price injury, or factors related to price, e.g. revenue and profit,

[4] Data has been sourced from the Australian Bureau of Statistics, which we assume the Commission has access to, but can provide if required.
[5] SEF, section 6.1, page 37.
[6] SEF, section 6.8.2, "Import price", page 67.
[7] When explaining increased EBIT in Australia/Pacific/Asia for 2023, Orica refer to "Strong growth driven by high demand and structural contract improvements", which we take to mean as higher underlying prices (refer page 7):
https://www.orica.com/ArticleDocuments/303/2023%20Full%20Year%20Results%20Investor%20Presentation.pdf.aspx.
[8] SEF, section 6.8.3, page 68.
[9] SEF, section 6.9.2, page 70.

with respect to existing arrangements in place for Australian industry members.[10] We observe that this finding is consistent with the findings in previous investigations.[11] [12]

The Commission has also found that imports from Thailand and China are unlikely to materially impact future Australian industry negotiations. We would add to the Commission's consideration of this point that there must necessarily be some circumspection about whether any reference to imports in future negotiations is likely. In our view it is not. We make this comment in the context that, based on public record information, only Orica has provided some information concerning any future negotiations.[13] Orica is only one member of the Australian industry, its productive capacity is not even half that of the Australian industry's. More significantly, at no point – whether in the original investigation,[14] the Russian continuation inquiry,[15] or Investigation 605[16] – has Orica established that its negotiations or agreements *have been* materially impacted by the relevant imports. Given Orica's historic inability to establish this point, and the inability or unwillingness of the other members of the Australian industry to provide any evidentiary support for such a proposition, we respectfully submit that such an outcome cannot be considered to be "likely" if the measures expire, assuming (as the Commission quite rightly identifies) that Orica would first have to accept, of

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[10] SEF, section 6.9.3, page 72.

[11] Termination Report 605 notes that: *imports from Lithuania and Vietnam have not affected long-term contracts for direct supply of ammonium nitrate*.

[12] Report 473 Ammonium nitrate – China, Sweden and Thailand, page 70 notes that :*..the applicants' selling prices and volumes observed during the investigation period mostly reflect the contract terms, including prices and volumes, negotiated and agreed to before the investigation period.*

[13] The CSBP visit report notes that: "*CSBP did not provide any specific examples of ongoing contract negotiations nor did it identify the specific contracts that are due to expire."* There is no suggestion elsewhere on the public record that CSBP has provided further evidence to the Commission and nowhere else is there an indication that any other member of the Australian industry producing like goods has either.

[14] Report 473 Ammonium nitrate – China, Sweden and Thailand identified which Australian industry members were allegedly impacted because of the investigated imports. Orica provided only two examples; Example 8 and Example 9. With respect to Example 8, at page 76, the Report finds that "[i]*n its assessment of the information relevant to this negotiation, the Commission found that there were factors other than dumping that caused Orica to reduce its prices*". With respect to Example 9, the Commission found at page 76 "…*the information provided by Orica indicates that the main price competition was from other Australian industry members (rather than imports). There was no incentive for Orica to reduce its price to match import pricing*."

[15] REP 565 – Ammonium Nitrate exported from Russia, page 68 notes "…*in respect to contract negotiations, in Investigation 473 the Commission assessed specific examples of contract negotiations being impacted by dumped prices that in turn reduced import parity pricing such that it caused material injury to the Australian industry.174 In contrast, in this inquiry, the Commission has not been provided with evidence of this kind*." In this inquiry, Orica apparently provided some evidence regarding existing contracts but the Commission concluded that any alleged future injury "*is contingent on several assumptions that would need to be realised for the imports to be injurious to a material degree*".

[16] As we have noted, in this investigation, with respect to the example that Orica submitted illustrated material injury, the Commission concluded at page 67 of Termination Report 605 that "*the example does not demonstrate, based on current information, a link between dumping and injury*". Further the Commission concluded at page 71 that "[t]*here was no evidence of material injury to the Australian industry caused by dumped goods during the investigation period*".

its own accord, to include the price of imports in the contract negotiation, and then to correctly evaluate the impact of such prices using the market intelligence available to it.[17]

This is a point we would like the Commission to take seriously. The applicants rely on this form of argumentation in every anti-dumping process they instigate. Not only do anti-dumping processes cause significant uncertainty in the ammonium nitrate market and negatively impact security of supply, but they also consume significant resources of many ammonium nitrate consumers, as well as of the Australian Government, to ensure that a balanced conclusion may be reached. Before allowing an anti-dumping process to proceed based upon applicants' claims of material injury as a result of negotiations where they ultimately secured the business, the inherently uncertain basis of such a claim within a complex commercial negotiation must surely first be evaluated.

In conclusion, we find the Commission's logic laid out in the SEF to be balanced, well-reasoned, and insightful, and we fully support the conclusion that the measures on ammonium nitrate exported to Australia from China, Sweden and Thailand should be allowed to expire.

Yours sincerely

Darren Oliver
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[17] SEF, section 6.8, "Thailand", page 60.