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11 July 2018

Ms J Halilovic
Case Manager
Anti-Dumping Commission
Operations 2
Level 35
55 Collins Street
Melbourne
Victoria 3000

By email

Dear Ms Halilovic

Downer EDI Mining-Blasting Services Pty Ltd **Ammonium nitrate from China, Sweden and Thailand**

We act on behalf of Downer EDI Mining-Blasting Services Pty Ltd ("Downer") in relation to this matter.

Downer is perplexed as to why this investigation has been initiated. It is clear from the information in the application that the four entities that comprise the Australian industry that produces ammonium nitrate ("AN") are significantly profitable, market dominant, and that the imports the subject of the investigation are nominal when compared to the volume of the entire Australian market.

The Consideration Report indicates that 1,970,000 tonnes of AN was sold in the Australian market in 2017. On the basis of the information in the application, only 111,782 tonnes (5.6% of the market) of this was imported AN and only 54,932 tonnes (2.8% of the market) was from the countries subject to this investigation.

To put this another way, some 97.2% of the Australian market was supplied either by the Australian industry, or by manufacturers that are not subject to this investigation, and yet we are required to believe that the 2.8% of AN from the subject countries has had some materially injurious effect on the Australian industry?

Even these figures do not reveal the limited nature of any allegedly injurious impact on the Australian industry producers in the Australian market. The Australian industry participants themselves are active importers of AN. As Downer understands it, during 2017:

- Dyno-Nobel Limited, which is owned by Incitec-Pivot Pty Ltd, imported approximately **[CONFIDENTIAL TEXT DELETED – number]** tonnes of AN from China; and
- Orica Limited imported approximately **[CONFIDENTIAL TEXT DELETED – number]** tonnes of AN from Indonesia.¹

¹ Furthermore, Downer understands that both Dyno-Nobel Limited and Orica Limited have imported significant volumes of AN from China in 2018.

Accordingly, on a proper appreciation of the facts, the Australian industry dominates the market, controlling some **[CONFIDENTIAL TEXT DELETED – number]**% of the AN sold therein and selling that product at consistently profitable prices. We trust that the Commission has now learnt about these facts, or will learn about them, through its initial meetings with the relevant interested parties.

But even this fails to fully illustrate the paucity of any possibly injurious effect of imports from the nominated countries. In the period of investigation, Downer imported approximately **[CONFIDENTIAL TEXT DELETED – number]** tonnes of AN from Sweden. **[CONFIDENTIAL TEXT DELETED – importation and other commercial arrangements]**.

Even then, of the **[CONFIDENTIAL TEXT DELETED – number]** tonnes imported by Downer, **[CONFIDENTIAL TEXT DELETED – number]** tonnes were sold to the Australian industry (**[CONFIDENTIAL TEXT DELETED – numbers and customers]**). We do not see how these imports could be said to have caused any injury to the Australian industry producing like goods, whether or not they are dumped.

The remaining **[CONFIDENTIAL TEXT DELETED – number]** tonnes is less than 1% of the entire Australian market. The suggestion that this could cause injury or significantly influence the Australian producers of AN is patently absurd.

The key thing to recall here is that there are four producers in the Australian industry for AN. These producers are by far the biggest sources of AN in Australia. Collectively, their production represented 94% of the volume of AN sold in the Australian market at the relevant time. When their (known) imports are taken into account this increases to more than 97%. These Australian entities strongly compete with each other on price, amongst other things. Indeed, Downer has noted that CSBP has increasingly sought to sell AN into the east coast market, which has traditionally been dominated by Orica, and that Orica has sought to do the same in the Western Australian market, with the establishment of the Burrup AN plant. Presumably, in seeking to expand beyond their traditional markets, each will seek to lower their respective prices in accordance with normal market principles. This has nothing to do with imports. Any impacts would arise from competition between the Australian producers, which takes place with far greater vigour and impact than could conceivably be generated by competition from the measly quantity of independent imports.

Even then, with regard to the suggestion that imports have caused price suppression or depression. Downer notes that the vast majority of sales are made subject to “take or pay” supply contracts. These supply contracts not only include rise and fall clauses that are pegged to various cost fluctuations, such as the cost of ammonia or the cost of gas, they are also long term and, most importantly, require the buyer to either take all of the AN agreed to be supplied or to pay for it anyway! Spot sales only take place at the very margin of the market. Downer is not aware of a single instance where such contracts are based upon the price of imports of AN. Why would they be, given the small amount of import volumes, and the natural, institutional and regulatory protection afforded to the Australian industry by the nature of the product, and because of port, storage and transportation restrictions?

We understand the position in which the Commission finds itself when it receives an application and has little time and limited legal compulsion to adequately and independently inform itself during its evaluation of the application, before deciding whether to initiate an investigation. However, with full respect to the Commission, we must say that the Australian industry’s claims truly have no merit whatsoever, and that this investigation should not have been initiated.

In reality, what we have here is an anti-competitive attack by a number of big and highly successful businesses on small downstream market participants such as Downer. It is designed to disrupt and exploit small independent Australian operators, rather than to counteract any genuine “material injury” concerns.

Given the continued dominance and profitability the Australian industry demonstrates, the contention that it has suffered material injury as an absolute proposition is itself tendentious in the extreme. Even more flimsy is the allegation that "material injury" was caused to the Australian industry, by the 1% of AN in the market to which the application inevitably and only relates.

Our client places its trust in the Commission to recognise this to be the case, such that the investigation can be terminated at the soonest opportunity.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DM', with a long horizontal flourish extending to the right.

Daniel Moulis
Partner Director