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Mr Justin Wickes
Director
Investigations 2
Anti-Dumping Commission
Level 35
55 Collins Street
Melbourne Victoria 3000

Email: investigations2@adcommission.gov.au

Public File

Dear Mr Wickes

Investigation No. 473 – Ammonium nitrate exported from P R China, Sweden and Thailand – Unsuppressed selling price and non-injurious price; proposed form of measures

A. Summary

Orica Australia Pty Ltd ("Orica") has examined the Anti-Dumping Commission's ("the Commission") preferred basis for an unsuppressed selling price ("USP") as detailed in the Dumping and Subsidy Manual. Orica submits that a preferred basis for a USP is that determined in the marketplace i.e. a market-driven selling price for solid-grade AN sold to customers prior to the investigation period.

Orica notes that PAD 473¹ recommended provisional measures be taken based upon the combination form of measures. Orica agrees with the Commission's position that for goods where there are only a few different grades of product (e.g. AN) the floor price and fixed duty methodology of the combination method is suited to the circumstances of AN exports from the nominated countries.

B. Discussion

Australia's Anti-Dumping System is predicated on the principle that any duties imposed should only be of an amount sufficient to offset the injury caused by the dumping and/or subsidisation. It is this principle (i.e. the lesser duty rule) that Australia has incorporated into subsection 8 (5) of the *Customs Tariff (Anti-Dumping) Act 1975*. Section 269TACA of the *Customs Act* defines the 'non-injurious price'.

In each investigation, the Minister is required to consider the lesser duty rule. That is, where the non-injurious price is less than the normal value, it may be appropriate to impose a measure that is less than the full margin of dumping. The Minister is not required to have regard to the lesser duty rule when one or more of the following circumstances exist:

- Where the normal value cannot be ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii) where a 'market situation' applies;

¹ Refer ADN No. 2018/166.

- The Australian industry comprises two or more small-medium enterprises ("SMEs");
- Where the investigation involves a countervailing notice, the exporting country did not comply with Article 25 of the Subsidies and Countervailing Measures Agreement ("SCM Agreement") for the compliance period.

Orica does not consider that any of the three identified circumstances apply in the current investigation.

The 'lesser duty rule' is therefore confined to a consideration of ammonium nitrate ("AN") exported from each of the three countries – the People's Republic of China ("China"), Sweden and Thailand.

The Commission will determine a USP from which to calculate a non-injurious price ("NIP") for each country of export. The USP is a selling price in the Australian market that the Australian industry can reasonably expect to achieve in the absence of dumping and/or subsidisation. It has been the Commission's practice to firstly examine the Australian industry's weighted average selling price over a period unaffected by dumping. This could involve the period immediately prior to the investigation period or, an average of selling prices over a two or three-year period prior to the investigation period, where it is considered that dumping was not occurring. Based upon Orica's data the average price ex works of AN was approx. [value and basis]. The Commission will, of course, need to make a determination based on the industry application and other information before it.

Where a market selling price unaffected by dumping is not available (due to injury having occurred in the years prior to the investigation period, or costs in the investigation period not reflective of earlier year costs), the Commission may examine the industry's cost to make and sell in the investigation period and adjust for a level of profit. The level of profit to be applied may be sourced from earlier periods or, may be determined for a similar category of goods unaffected by dumping.

Whether the above-mentioned two options are not available to the Commission, an examination of undumped imports prices on the Australian market will be considered. Orica notes that AN exported from the Russian Federation is sold into the Australian market on an ongoing basis and is the subject of a NIP.

Additionally, Orica draws the Commission's attention to the previous submission made by Orica on 22 August 2018 relating to other aspects of material injury. In that submission Orica provided supporting investment calculations to conclude that the required average AN selling price to support investment in AN manufacturing assets is currently approx.[value and basis].

C. Form of measures

PAD 473 notified that the Commissioner was taking provisional measures based upon the combination duty methodology. The notice stated that where there are only a few limited grades of goods exported to Australia, the combination form of measures – with a floor price and a fixed rate of duty component - is a suitable methodology to apply.

Orica agrees with the Commission's reasoning. Additionally, Orica considers that the combination form of measures limits possible opportunities for circumvention of the measures and is effective in ensuring the measures have the desired impact.

D. Recommended methodology

Orica submits that an appropriate USP may be determined for the dumped exports from China, Sweden and Thailand based upon the weighted average market selling prices prior to the investigation period (i.e. a period unaffected by dumping). Orica proposes that a weighted average AN price across a three-year period prior to the investigation period would be reasonable.

Orica supports the determination of a USP that is market-driven. Where the Commission cannot determine a market-based price for a USP, recourse is available to the undumped selling price for imported Russian AN sold into the Australian market (on the basis that the actual Russian AN export prices are at undumped levels).

Orica recommends that where interim duties are recommended for the Minister to impose, that the form of measures be based upon the combination duty methodology.

If you have any questions concerning the attached response, please do not hesitate to contact me on (03) 9665 7309 or Orica's representative Mr John O'Connor on (07) 3342 1921.

Yours faithfully



Malcolm Hart

Senior AN Market Manager – APA

