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Mr Justin Wickes  
Director  
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**Public File**

Dear Mr Wickes

**Investigation No. 473 – Ammonium nitrate exported from P R China, Sweden and Thailand – Submission by BHP with Frontier Economics Report**

I. Introduction

We refer to the submission of 13 December 2018 by BHP to which a Report by Frontier Economics the "Frontier Report") is attached that contends the findings of the Anti-Dumping Commission ("the Commission") in Preliminary Affirmative Determination ("PAD") No. 473 in respect of ammonium nitrate ("AN") exported from the People's Republic of China ("China"), Sweden and Thailand, are "flawed".

BHP relies upon the erroneous conclusions in the Frontier Report to contend that the injury experienced by the Australian industry is consistent with the *normal ebb and flow* of the business cycle.

Orica Australia Pty Ltd ("Orica") refutes the BHP contentions and the findings in the Frontier Report. Orica has provided the Commission with evidence supporting its assertions that material injury experienced by represent impacts that are far in excess of the normal ebb and flow of business. Orica supports the Commission's findings in PAD 473 as well supported and evidenced – certainly from Orica's perspective.

II. Frontier Report

The Frontier Report is an "opinion" on the Commission's PAD No. 473, which is speculative at best, and not based on, or supported by, real data.

Not unexpectedly, the Frontier Report criticises the Commission's basis for the PAD and contends that any injury experienced may be attributed to the 'normal ebb and flow of business'.

The Frontier Report is premised on a number of falsehoods. It is (wrongly) claimed that:

- the "ADC has not compared price and profit outcomes with and without the alleged dumping<sup>1</sup>";

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<sup>1</sup> "Opinion on Preliminary Affirmative Determination – Investigation 473 – Ammonium Nitrate, Prepared for BHP Billiton Iron Ore Pty Ltd" (Frontier Report), P.2.

- there is no evidence of import substitution;
- there is “evidence” that industry’s prices and profits would have fallen in the absence of dumping in the investigation period; and
- to the extent there has been reductions in profit and profitability attributable to dumping, the reductions are “*within the ordinary ebbs and flows of business profits*”.

(a) *ADC has not compared price and profit outcomes with and without the alleged dumping*

The Frontier Report argues that the Commission has not undertaken factual and ‘counterfactual’ analysis to account for influences of factors other than dumping. It is further suggested that the “*ADC must be able to appropriately account for other factors that may have changed in the assessment period which could also have reduced profits or other measures of injury*”.

The Frontier Report’s suggests that the Commission has not compared price and profit outcomes with and without the alleged dumping. The industry’s application did not claim injury from dumping was being suffered in 2014/15 or 2015/16. Both years are included in the Commission’s trend analysis and are considered appropriate benchmarks for comparison with the investigation period (as is usual practice of the Commission). The claims that the Commission “does not specify the baseline for how prices have evolved in the absence of dumping” is also correct as the Commission has undertaken a trend analysis across a four-year injury period (and examined prices, costs, profits and profitability).

The purpose of examining the industry’s financial data over a four-year injury period is to examine the impact of the dumping in the investigation and contrast this with periods in which dumping was not evident.

The Frontier Report suggests that the Commission’s analysis of profits is flawed. It states “*There are two essential questions which the ADC must answer with respect to profits and profitability. Is the reduction in profits caused by dumping and does it constitute material injury?*”<sup>3</sup>. The Frontier Economics’ inference is that the reduction in profits and profitability has been caused by dumping. The 2012 Material Injury Direction<sup>4</sup> does not require the dumping to be the sole cause of the material injury. The Direction states:

*“In the past some uncertainty has arisen over establishing the requirements for material injury where other factors may be contributing to injury suffered by the industry. Injury caused by other factors must not be attributed to dumping or subsidisation. However, I direct that dumping or subsidisation **need not be the sole cause of injury to the industry.**”* (emphasis added).

The Direction makes it clear that the dumping may not be the only form of injury experienced by the industry but it must be material in nature.

The Commission’s findings in PAD No. 473 considered the volume and price effects of the dumped exports from China, Sweden and Thailand, the size of the dumping margins determined, the price impact on the negotiated contracts (which confirmed the lowering of prices by the local industry), and the consequential impact on the industry profits and profitability. The Commission was satisfied that the injury suffered by the Australian industry was material and provisional measures were required to prevent further injury to the Australian industry members.

The PAD confirms that the injury experienced as a result of the dumping was “material”. This does not mean that there were other factors that may have caused injury to the

<sup>2</sup> Ibid, P. 11.

<sup>3</sup> Ibid, P.12.

<sup>4</sup> New Ministerial Direction on Material Injury, Anti-Dumping Notice No. 2012/24.

Australian industry or, that the Commission must “specify what proportion of the fall in profit is attributable to dumping<sup>5</sup>”. It merely confirms that the Commission was satisfied that the injury caused by the dumping was material in nature (and that provisional measures are required).

It is further contended in the Frontier Report that in respect of industry profits “the ADC does not specify how profit or profitability percentage is estimated<sup>6</sup>”. As indicated above, the Commission examined the decline in profits and profitability from the first two years in the four-year injury period data to conclude that the decline in profits and profitability in the investigation period that is attributable to dumping is material.

*(b) Evidence of substitution*

The Frontier Report concludes<sup>7</sup>:

*“The pricing data provided by the applicants indicates that the products in recorded volume information are not likely to be homogeneous or perfectly substitutable. There is no evidence that customers see imports as perfectly substitutable for domestic product and are chosen entirely on the basis of price. In our opinion, this casts doubt on the ADC’s finding that the only reason that applicant’s prices have fallen by between 7 and 22 per cent is competition from dumped imports.”*

The Commission and its predecessor Customs and Border Protection have determined that imported AN (whether low density AN or high density AN) is substitutable with locally produced AN (and the Australian industry manufactures like goods). It is not a requirement of the legislative provisions that the goods and like goods are homogeneous or perfectly substitutable. Successive inquiries involving imported AN (following original investigation as detailed in Trade Measures Report No. 28) have concluded that the goods are used interchangeably and are substitutable.

*(c) Reductions in profit and profitability*

Orica has addressed its decline in profits and profitability, the basis for the declines, the evidence provided by Orica to substantiate price reductions, and the subsequent impact in its submissions dated 22 August 2018 (EPR Documents 0012 and 0013).

The Commission has examined the profit and profitability declines in the context of the Australian industry and is satisfied that the reductions that have resulted from dumping are material.

*(d) Reductions in profit and profitability are within the normal ebbs and flows of business*

The Frontier Report seeks to cast doubt over the Commission’s price undercutting analysis that confirms the Australian industry’s selling prices were undercut by the dumped exports from China, Sweden and Thailand by between 7 and 22 per cent. It further contends that injury from other factors have contributed to the decline in profits and profitability. It is also speculated in the Frontier Report that declining volumes and prices have fallen – although there is no evidence provided that demand in the Australian market for AN is shrinking. The Frontier Report further speculates that the injury experienced by the industry is nothing more than the normal ebb and flow of business.

Orica highlights that the price undercutting experienced from the dumped exports is not immaterial – with margins between 7 and 22 per cent. The volume of Orica sales at which price reductions have occurred is similarly not immaterial. In the absence of dumping, Orica would not be required to reduce its selling prices to avoid a loss of sales volumes.

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<sup>5</sup> Frontier Report, P.13.

<sup>6</sup> Ibid, P. 13.

<sup>7</sup> Ibid, P. 10.

The subsequent impact from the price undercutting and price reductions is material and exceeds what may be considered the normal ebb and flow of business.

The speculative comments contained in the Frontier Report that the material injury caused by the dumped exports from China, Sweden and Thailand is not material and is consistent with the normal ebb and flow of business is not supported by the evidence provided to the Commission by Orica.

III. Conclusions

The Frontier Report is merely an "opinion" as to the impact of dumping of AN exports from China, Sweden and Thailand on the Australian industry's profit and profitability. The information relied upon by Frontier Economics is not the information before the Commission. The author(s) do not have access to the Australian industry volumes, prices and profits and profitability and comments associated with declines in profit and profitability are 'speculative'.

The Frontier Report wrongly criticises the Commission's examination and analysis of the trends and economic performance of the Australian industry across the injury period. However, the findings in the Frontier Report are based upon incomplete information resulting in speculative and unreliable interpretations.

Orica urges the Commission to exercise care in its consideration of the Frontier Report.

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