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21 February 2019

The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2601

By email

Dear Director

Yara AB - ammonium nitrate from Sweden Rebuttal of allegations regarding injury to the Australian industry

As you know, we act on behalf of Yara AB and its related entities (collectively “Yara”) in this investigation.

Yara has not caused the Australian industry producing ammonium nitrate injury. The reasons for this are well documented in Yara’s previous submissions of 27 September 2018 and 7 December 2018. Any finding to the contrary would be untethered to the facts.

We have reviewed the verification reports for Orica Australia Pty Limited (“Orica”) and CSBP Limited (“CSBP”).¹ We note that the Commission has essentially rejected all of the injury allegations made in the application which led to the initiation of this investigation. This accords with Yara’s own views, and the view of many other interested parties on the public record. The allegations in the application did not reflect the operation of the Australian ammonium nitrate market and were inconsistent with publicly available information published by the applicants.

Therefore, it is somewhat disappointing to see that there appears to have been a pivot in the verification reports to a more speculative and, to be frank, questionable basis for suggesting that injury has occurred or may occur. This notwithstanding, it is still not apparent how the circumstances outlined in either report can be said to relate to Yara’s exports to Australia.

In the case of CSBP, four examples of negotiations are cited, which the verification report considers constitute:

...sufficient information and evidence to conclude that during the investigation period, CSBP had to reduce its prices in response to customers’ alternative import supply options, or

¹ Doc 040 – Verification Report Australian industry - Orica Australia Pty Ltd and Doc 042 – Verification Report - Australia industry CSBP Limited

matched prices determined at IPP, in order to ensure price competitiveness and to maintain supply contracts and the sales volumes in accordance with these contracts.²

In this regard, we note:

- Three of the four examples appear to be instances where CSBP is negotiating the provision of ammonium nitrate in addition to supplies that are made under pre-existing historical supply agreements. We note that in CSBP's financial report for second half FY18, there are references to *"opportunistic sales"*.³ It may be that the three examples referred to in the CSBP verification report are these *"opportunistic sales"*. If these sales are thought of by CSBP as *"opportunistic sales"* that have been simply tacked on to existing, high volume/long term contracts then we are unconvinced that they can be evidence of injury. Instead, they should be seen for what they are – low volume, low price sales which if averaged with the sales under the high volume, higher priced contract to which they have been tacked on really make no substantive difference whatsoever to the profitable prices enjoyed by CSBP. Yara strongly disagrees with the implication that a producer can claim injury caused by alleged dumping when it does not need to negotiate higher prices because it already has a highly profitable position with the customer concerned.
- We also note that each of these four instances were said to relate specifically to imports into Western Australia, and that the figures quoted by CSBP as forming the basis for its IPP price offers in its submission dated 17 September 2018 were benchmarked only to supply from China and Thailand, as we now recount.

➤ Example 1

...CSBP's price offer to this customer was determined by having regard to the alternative supply option available to this customer (particularly given that this customer allegedly imports the goods from one of the subject countries) and also prices of ammonium nitrate imported into WA (mostly from China and Thailand) for the 12 months ending December 2017.⁴ [footnotes omitted]

➤ Example 2

...it matched a price determined at import parity, which represented the customer's "next best" alternative supply option.⁵

➤ Example 3

...the price was reviewed in line with import parity pricing (i.e. the comparative cost of imports into WA at an ex-works equivalent price), particularly from one of the countries the subject of the application.⁶

² Page 31.

³ *Wesfarmers 2018 Half-year Report*, page 17.

⁴ Page 27.

⁵ Page 28.

⁶ Page 29.

➤ Example 4

CSBP claimed that its price offer to this customer was based upon the understanding that this customer's alternative supply option is imported ammonium nitrate; therefore, the price CSBP offered matched pricing at import parity to ensure that its price offer was competitive.⁷

Yara is a Swedish exporter. It has not supplied the Western Australian market.⁸ It could not have been considered to be the “next best” alternative supply option nor even a hypothetical supply option. There are no links between Yara’s exports to Australia and these negotiations. The outcome of these negotiations cannot be linked to Yara in any way, shape or form. We further note that “next best” alternative form of supply could equally apply Australian produced AN.

In the case of Orica, it seems the only relevant form of injury that is being considered is some kind of threat posed by a potential price change that may come into effect in the future if a rise and fall price formula that is being discussed in negotiations eventually forms part of a contract that may or may not be signed by Orica and one of its customers:

The verification team however notes that one feature of the contract being negotiated with this particular customer allows for the variation of the contract price in certain circumstances (based, in part, upon import prices).

The verification team considers that, due to this particular provision, the presence of dumped imports threatens to cause injury to Orica in the form of price depression, reduced profit and profitability and reduced revenue for the duration of the contract.⁹

From the information available it is entirely unclear what this “provision” actually does. It appears that the price might be revised in certain undisclosed circumstances based on, in part, import prices. Is this a similar IPP mechanism to those that that CSBP has entered into? Or is this more a “next best offer” mechanism which is open to imports and domestically produced products alike? If the latter, what is a genuine supplier offer required? Who’s to say that the price parameters will not work in favour of Orica? We simply do not have enough information to understand. The only thing we do know for sure is that the clause is not even in effect, regardless of what it might eventually say! With respect, the theory expounded in the verification report is misplaced and unbounded.

Also, we note the following:

- In determining whether material injury is threatened, the Minister must only take into account such change in circumstances as would make injury foreseeable and imminent.¹⁰ The circumstances cited in the Orica verification report may well be “feared” by Orica but in sum are no more than imaginary.

⁷ Page 29.

⁸ **[CONFIDENTIAL INFORMATION DELETED – further information regarding West Australian market].**

⁹ Page 27, Orica Visit Report.

¹⁰ Section 269TAE(2B).

- It is highly improper that a “threat of material injury” is now being considered as a basis for the imposition of measures when the application specifically excluded it from the scope of the investigation.¹¹
- We note that any finding of threat of material injury needs to be based upon circumstances relating to the exportation of the subject goods.¹²

Yara has explained the circumstances pertaining to its prices to Australia during the period of investigation [CONFIDENTIAL INFORMATION DELETED – circumstances of sale]. They cannot be considered to threaten to cause Orica material injury.

Accordingly, neither the CSBP nor the Orica visit reports reveal any rational basis for the imposition of measures on Yara’s ammonium nitrate. The conditions of competition that relate to Yara’s exports are entirely different to the conditions of competition in which the exports and Australian sales from the other countries under investigation have taken place.

We request that this investigation be terminated as against ammonium nitrate from Sweden at the soonest possible instance.

Yours sincerely



Alistair Bridges
Senior Associate

¹¹ As per page 40 of the Application:

This application is not based on a threat of material injury to the Australian industry. The Applicants have demonstrated that AN exported to Australia from China, Sweden and Thailand during 2017 has caused material injury to the Australian industry.

¹² Section 269TAE(1).