17 March 2019

Mr Justin Wickes
Director
Investigations 2
Anti-Dumping Commission
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Dear Mr Wickes

Investigation 473 – Alleged Dumping of Ammonium Nitrate, Exported to Australia from China, Sweden and Thailand

1. INTRODUCTION AND PURPOSE OF CORRESPONDENCE

1.1 We refer to the Statement of Essential Facts in relation to the above investigation (**Investigation)** by the Anti-Dumping Commission (**ADC**), dated 25 February 2019 (the **SEF**). We also refer to the correspondence between the ADC and Glencore Coal Assets Australia (**Glencore**) which led to Glencore's submission to the ADC in relation to the Investigation on 10 December 2018.

1.2 The purpose of this correspondence is to highlight additional information relevant to the preliminary findings articulated by the ADC in the SEF and to draw to the ADC's attention a number of issues and comments in respect of its reasoning and preliminary findings. In particular, Glencore wishes to identify relevant matters that we believe the ADC have failed to properly take into account as relevant considerations when reaching the conclusions stated in the SEF.

1.3 Confidential commercial information has been redacted for the purposes of allowing the ADC to place this submission on the public register.

2. EXECUTIVE SUMMARY

2.1 As previously submitted, Glencore is of the strong view that there is not a sufficient factual basis upon which to conclude that the alleged injury to the Australian Industry is a result of any alleged dumping.

2.2 In particular, injury caused by other factors must not be attributed to dumping or subsidisation. The SEF fails to consider a range of relevant factual matters in this respect which result in erroneous conclusions:

(a) **The impact of domestic competition on pricing has not been appropriately considered in the ADC's analysis**. The SEF fails to properly examine the effect

that competition between domestic AN suppliers has had on Australian AN pricing. Glencore's recent negotiations with Australian AN producers have resulted in [Confidential – Negotiation details] in the SEF to which material injury has been attributed. The outcome of these negotiations [Confidential – Negotiation details]. The SEF fails to consider the extent to which competition between Australian suppliers has forced down pricing. It is submitted that failure to properly consider this issue (and distinguish the subsequent effect on pricing from the allegedly dumped goods) will result in an erroneous decision that fails to consider all relevant facts in a manner that is consistent with applicable Ministerial Directions.

(b) **The impact of excess production capacity resulting directly from the Australian AN industry's over-investment in many regions has not been appropriately acknowledged or appraised**. The SEF erroneously concludes that the primary driver of pricing depression is the allegedly dumped imports. The SEF fails to acknowledge the extent to which the Australian Industry's investment during the mining boom has resulted in market conditions where [Confidential – Market information].

2.3 In addition, the ADC's analysis places an over reliance on information provided by the Australian Industry and would appear to fail to have undertaken sufficient verification or given appropriate consideration to a number of relevant facts that would affect the conclusions reached in the SEF. Notably, the Australian Industry would appear to be seeking protection or subsidisation from the impacts of its own (over) investment rather than harm that is objectively attributable to any material injury arising from allegedly dumped imports.

2.4 Regional differences have not been acknowledged when developing proposed duties, particularly having regard to relevant market characteristics displayed in NSW. Indeed, even if a potential threat of injury existed, it cannot be reasonably applied to the broader Australian 'industry' but can be objectively limited to a small number of specific importers in Queensland and Southern Western Australia.

2.5 Recognising that despite the information the ADC has been presented with it may still choose to make a recommendation that dumping duties be imposed, (and without prejudice to Glencore's views on that), Glencore submits that the ADC must define a USP that is in line with broader industry norms and is not influenced by the self-interest of the Applicants. The current proposed USP and NIP fail to consider relevant costs associated with the import of AN into Australia or recognise that the Australian Industry continues to enjoy price levels well above those that the fundamental supply/demand balance indicate should apply, and indeed, well above those that a cost plus reasonable margin would indicate apply. Relevantly, the Australian Industry [Confidential – Pricing information] level being considered by the ADC when they are not impacted by alleged-dumping. A cost build up approach with substantially higher than average industry returns results in price levels well below the injurious price being considered by the ADC.

2.6 To ensure that any duty imposed by the ADC is objectively determined, it is submitted that reference ought to be had to comparable overseas markets not impacted by dumping such as the US/Canadian market as it operates at price levels well below the injurious price being considered by the ADC.

2.7 Glencore has also provided information based on its experience in importing AN that should be used as a guide in examining relevant import costs. Reference should also be made to evidence of prices available in the Australian market which are unaffected by AN imports.

3. OVERVIEW OF KEY ISSUES AND RELEVANT BACKGROUND

(A) Domestic competition has had significant impact on pricing

3.1 Without repeating what has been previously submitted to the ADC by Glencore, the SEF fails to properly examine the full range of causative factors that have given rise to the alleged dumping. To attribute any depressed pricing to imports alone is erroneous and fails to consider and assess domestic Australian factors that have had a significant impact on AN pricing.

3.2 In particular, the SEF does not address or consider the extent to which domestic competition has affected AN pricing and would indicate that the ADC has simply accepted the views of certain Australian AN producers. The failure to consider the views of Australian AN customers and take into consideration the nature of negotiations with customers in respect of AN contracts is highly problematic.

3.3 Glencore's recent negotiations with Australian AN producers have resulted in proposed pricing [Confidential – Pricing information and negotiation details] by the Australian Industry in circumstances where a comparison to imports of AN does not correspond, thereby countering the claims being made by the Australian Industry as to the threat posed to them by allegedly dumped imports. The following examples relate to the investigation period and are therefore relevant facts that should be taken into account:

(a) **Example 1 – Mine specific tender process:** [Confidential – Details of tender process and outcome], the only reasonable conclusion that can be drawn is that domestic market factors and supply and demand dynamics have a material impact and are more influential on AN pricing than the claimed impact of imports. The primary driver of this pricing is competition between domestic products for volume in an oversupplied market. The SEF seemingly fails to examine the role of domestic competition (or at least acknowledge all relevant facts) on pricing and fails to differentiate between the alleged damage caused by imports and other domestic factors notwithstanding that [Confidential – Pricing information] were considered or raised as an alternative. The relevant excerpt from the contract is included as Confidential Appendix A.

(b) **Example 2 – Multiple mine site tenders:** During Glencore's tender process for supply to the majority of its mines [Confidential – Pricing information]. This price point is further evidence of the willingness of the Australian Industry to vigorously compete amongst itself at prices far below imports and to capture volume. [Confidential – Pricing information]. The email correspondence including the pricing details is included as Confidential Appendix B.

(c) **Example 3 – Multiple mine site tenders:**

(i) As Glencore has previously explained, negotiations it undertook for AN and explosives supply to multiple mine-sites [Confidential – Negotiation details].

(ii) [Confidential – Pricing information].

(iii) [Confidential – Pricing and volume information]. Therefore, as of January 2018, and making the necessary adjustments required by the adjustment formula, AN was being offered for supply at a price of [Confidential – Pricing information] in order to win business from its domestic competitors in response to tender processes for which imports were not considered. The relevant documentation to support this explanation is included as Confidential Appendix C.

3.4 Each of the examples above clearly demonstrate that the [Confidential – Pricing information] (regardless of any alleged dumping) and have been offered in circumstances where imports were not relevant in the formulation of the supply offers received from the Australian Industry. Indeed, [Confidential – Negotiation details].

3.5 On this basis, we believe that the SEF indicates that the ADC has failed to properly take into consideration the primary drivers of pricing offered by the Australian Industry or to properly distinguish between potentially different causative factors influencing price. It is therefore unclear the basis upon which the ADC can conclude that a threat of material injury exists that can be attributed to the allegedly dumped imports. Glencore is of the view that that ADC has **not** examined all relevant evidence or other known factors other than dumping as required by Article 3.5 of the ADA and Article 15.5 of the SCM Agreement. This view is highlighted by the ADC's conclusion that the alleged price depression followed contract negotiations.

3.6 It is submitted that the ADC must investigate the circumstances surrounding relevant contract negotiations in more detail to better understand the influences on pricing as failure to do so would neglect to examine relevant known factors that were operating during the relevant period that the ADC is obliged to consider. Indeed, the natural price point that will be determined if market dynamics are comprehensively considered and appropriate verification is undertaken in respect of the prices submitted by the Applicants (and regard is had to their self-interest and incentive to manipulate such pricing)[1], is significantly lower. Based on available market information and knowledge, Glencore does not accept that it is reasonable or possible to conclude that allegedly dumped imports create, or threaten to create, material injury for the Australian Industry when the Australian Industry is already competing amongst themselves at pricing levels well below those to which they attribute material injury.

(B) Injury-causation analysis does not satisfy procedural requirements

3.7 Article VI:1 of the GATT 1994 and Article 3 of the *Agreement on the Implementation of Article VI of the GATT* set out the requirements of, and factors to be considered in, the determination of "injury" and "causation". Articles 3.1 and 3.2 of the AD

[1] Glencore believes that the Australian Industry stands to realise a financial benefit of approximately [Confidential] above price points they currently obtain which are not influenced by imports, allegedly dumped or otherwise, as a result of duties being imposed.

Agreement mandate an assessment of the volume of dumped imports and its impact on prices of domestic "like goods" based on positive evidence and objective examination. Article 3.4 further requires investigating authorities to consider "all relevant economic factors and indices having a bearing on the state of the industry" in concern. These provisions are incorporated into section 269TAE of the *Customs Act* 1901.

3.8 Based on the SEF, Glencore is concerned that the ADC has not conducted a sufficiently thorough evaluation of all of the relevant factors and evidence before it and relies predominately on allegations and evidence advanced by the Australian Industry. In particular, the 'but for' analysis in the SEF appears incomplete and lacks balance in that important facts that could reasonably result in different outcomes have been ignored.

(1) *'But for' Analysis is incomplete and does not support a finding of material injury*

3.9 In its submission of 10 December 2018, Glencore explained the rationale of its sourcing process and [Confidential – Negotiation details].

3.10 As a result of the Australian mining boom, the Australian Industry (and them alone) invested in the overcapacity currently available in Australia (2,640,000 mt/yr of installed capacity during the investigation period versus a demand of ~2,000,000 mt/yr). As previously noted, a primary influence on domestic AN pricing is the current limited volume of demand relative to levels of supply in most Australian states (with the exception of NSW). Technical issues, turnarounds and other factors that limit or prohibit plants from producing is a risk of owning and operating a chemical plant, i.e. the risk is entirely of the Australian Industry's own making, having chosen to make those investments based on their own commercial profit expectations.

3.11 Operating an AN plant in a 'long' market where the product can be sold at anything over the cash cost of production is value accretive for the owner/operator of that plant[2]. However, when the level of demand changes, imports cannot be blamed for the business decisions of the Australian Industry that have led to over-capacity.

3.12 As the AN industry in Australia has moved from a position of under-capacity to over-capacity, the ADC has erred in its 'but for' analysis by failing to critically examine the role and influence that the Australian Industry's excess of installed production capacity has had on pricing. In an oversupplied market with excess capacity, [Confidential – Negotiation details], and it applies to the market as a whole, whether it is recognised by the participants or not.

3.13 Every sale that the Australian Industry makes above its cash cost of production leaves it better off. Given that the cash cost of production is significantly below the cost of any imports (including the alleged dumped imports), there can be no reasonable basis upon which to allege let alone evidence any injury to the Australian Industry that is in anyway substantive or material.

3.14 In fact, over the relevant period which the ADC's investigation is examining, the Australian Industry has continued to enjoy prices well above [Confidential – Negotiation details]. The ADC, in section 9.5.5 of the SEF identifies and agrees that

[2] Glencore would welcome an opportunity to discuss this with the ADC.

there is over-capacity in the Australian market. However, an incorrect conclusion has been drawn in the 'but for' analysis which ignores the fundamental drivers in the market and simply looks at the negotiations that have occurred.

3.15 The SEF fails to examine or acknowledge that in the absence of the allegedly dumped imports, the over-capacity would still have existed. It is this key point, and the implications of it, that the ADC has not considered. As the ADC has acknowledged, there is a lag effect due to the long term contracts that have been established for supply. However, as those contracts have expired the Australian Industry has been exposed to a situation of its own making; namely over-capacity. There is no evidence that connects the allegedly dumped imports to this over-capacity. In addition, given the reality of the business model[3] of continuous chemical plants, neither self-imposed mothballing nor technical issues can be discounted from the market reality or the ADC's analysis.

3.16 For many years the Australian market had a situation of under supply which has led the Australian Industry to price based on the Next Best Alternative of the customer (supply from another Australian manufacturer or from imports). However, as we have explained in this submission, that situation now no longer applies and so the correct evaluation to make has now changed to being one of [Confidential – Negotiation details]. The reasoning and negotiations used in supply contract discussions cannot be used as a basis to evidence that injury has been suffered (particularly when the ADC has seemingly failed to consider all relevant evidence before it in this respect). The relevant issue that the ADC needs to assess is whether the allegedly dumped imports pose a threat to reducing the [Confidential – Negotiation details].

(2) Lack of sufficient investigatory due diligence to ensure balanced view

3.17 The totality of documents on the public record do not demonstrate that the ADC has conducted sufficient investigative due diligence to confirm the reasons for the injury claimed by the Australian Industry, nor to establish that such injury will continue in a manner consistent with the requirements under relevant legislation.

3.18 A number of specific and notable examples of where the ADC's investigation and investigatory diligence appears to be misinformed or is in our view not sufficiently comprehensive are outlined below:

(a) **Business negotiations by their very nature involve different views of narratives and data points to justify commercial positions and outcomes.** As noted above at section 3(A), [Confidential – Negotiation details]. Based on the SEF, the ADC appears to have failed to properly examine or appreciate the circumstances surrounding commercial negotiations that have allegedly resulted in price depression to which material injury has been attributed. Even if negotiations may have considered imported AN (irrespective of whether it is allegedly dumped), it does not in any way infer that the imported price level

[3] Technical production issues and mothballing cannot be classified as removing production capacity from an over-supplied market. Business fundamentals mean that contracts are either in place based on the assumption of over-capacity or the owner of the plant is trying to avoid the impacts of that over-capacity. If the ADC is not intimately aware of the key economic considerations of running a continuous chemical plant and of the sales of the production, then we request that you arrange an opportunity to discuss this with us so that we can make it clear.

creates any sort of threat to a 'should be' price level. That is to say, the mere fact that imports are referenced in negotiations does not provide a sufficient evidentiary basis to establish the requisite levels of causation required for the conclusion that there is a threat of material injury. It is incumbent on the ADC to investigate this level of factual detail to ensure than an objective and balanced view as to the nature, substance and outcomes of all relevant commercial negotiations are given appropriate weight in respect of the conclusions reached[4], and that only allegedly dumped imports are being considered in any evaluation (rather than just imports in general).

(b) **Failure to recognise commercial market realties and limitations of import supply chains**: The mere existence of allegedly dumped AN does not itself create a threat of material injury – it must also realistically be a viable option to replace the entirety of the AN supplied by the Australian Industry.

(i) In section 9.5.3 of the SEF, the ADC has identified that most explosives manufacturers and associated services providers have established import supply chains and has elected not to consider the impact on the limitations to this supply chain that have been brought to its attention. Rather, the approach taken by the ADC is to assume that because an allegedly dumped import parity price has been included in a negotiation, the Australian Industry has had to reduce its prices to meet this level. However, this conclusion fails to consider all relevant matters and is incomplete. For example, if the end customer was not willing or able to import the required ammonium nitrate then imposing dumping duties simply protects the Australian Industry from having imperfect knowledge of the factors that drive their customers' decisions. The mere existence of allegedly dumped AN does not itself create a threat of material injury – it must also realistically be a viable option to replace the entirety of the AN supplied by the Australian Industry. As a mining company, we do not believe i

(ii) It is not viable to import large volumes of AN and therefore on no basis can it be said that all of the Australian Industry's volumes are at risk. During the height of the mining cycle, importers of AN still relied heavily on domestic production due to the limitations in the import supply chain that have been highlighted to the ADC. Not only is there a clear limit to the quantity of AN that can be imported but there is also a limit to the demand for imported AN so that imports would only ever be at the margin.

(iii) Few, if any, miners have established their own import supply chain and therefore the ADC's decision not to include selling costs and margin in

[4] We believe the Applicants can provide the ADC with all necessary contact information for the relevant counter parties and, if necessary, release those counterparties from any confidentiality provisions they may have to be able to discuss negotiations and/or contract details with the ADC. If necessary, Glencore can provide contact details that the ADC may not be able to source, but if companies are unable to talk freely with the ADC as a result of contractual confidentiality provisions with the Australian Industry then the only correct conclusion to draw is that any example or case study related to dealings with that customer should be disregarded by the ADC.

the determination of an NIP is entirely inconsistent with its view that only the explosives manufacturers and associated service providers have the ability to import.

(iv) Based on the analysis and findings set out in the SEF, Glencore believes that the ADC needs to undertake a more thorough investigation of relevant supply chain dynamics (including further engagement with importers and customers) in order to reach an informed view as to the practical limitations of imports.

(c) **ADC's failure to have proper regard to, or properly examine, material submitted by Yahua**:

(i) In section 6.6.2 of the SEF, the ADC puts forward its view as to why the information provided by Yahua in establishing the normal selling price in China is less relevant than that provided by the Applicants. The reasons put forward are not compelling, particularly when such information would assist in verifying (or contradicting) the claims that are made by the Applicants who have little experience in respect of the operation of the Chinese market. It is submitted that the ADC's investigation would be better served by engaging with Yahua on each of the issues that are raised at section 6.6.2. Glencore is concerned as to the manner in which Yahua's information has been disregarded by the ADC.

(ii) With respect to arm's length transactions, the ADC is well positioned to determine if Yahua is connected to an AN producer or not. Requesting the corporate structure and list of affiliates should be sufficient for these purposes.

(iii) In terms of profitability of sales, simple cost modelling can provide a strong guide as to profitability of AN sales.

(iv) With respect to trading terms, surely a deeper engagement with Yahua, even without the participation of the Chinese AN producers should provide strong guidance on all of these points.

(v) In section 6.7.1.2 of the SEF, the ADC considers the *physical, commercial, functional and production likeness* of Yara's tropical grade AN with the AN it sells domestically in Sweden. On this basis, it is evident that a similar analysis can be undertaken in respect of AN Yahua purchases in China. A review of technical data sheets and an examination of the use of the AN would be sufficient for this purpose and is easily obtainable.

(d) Based on the examples above, the ADC's approach appears to be one that provides undue weight on the allegations and information submitted by the Applicants without sufficient verification against information provided by importers and end customers. Glencore believes that there is a significant risk that the ADC's conclusions are based on insufficient investigation and information. It is therefore submitted that deeper engagement be made with a

range of relevant participants (such as Yahua), particularly given the immaterial level of imports into Australia attributable to such entities and the lack of commercial ability and incentive such parties have to manipulate pricing for AN (unlike the Applicants).

(C) ADC has not accounted for significant regional differences in its assessment of material injury and imposition of duties

3.19 The ADC has not fully considered the implications of the regional nature of the allegedly dumped imports and, even assuming there was a threat of imports, the ADC is proposing a level of protection that is completely unwarranted in certain markets such as NSW. Whilst WTO Agreements do not generally permit an injury finding to be made on less than the whole domestic industry, on the current facts we believe that a more granular sectorial analysis is warranted due to the fact that AN destined for one regional market does not typically enter other regional markets. In particular, we note that NSW evidences characteristics that are not present in other market segments. As a result, the imposition of dumping duties will have a disproportionate adverse effect on end customers in NSW when there is in fact no threat of material injury due to the substantial lack of production capacity compared to demand that exists in that state.

3.20 In section 5.2 of the SEF, the ADC correctly identifies that there are four main regional markets for explosives (and therefore AN) in Australia. We concur with the market breakdown and have identified that each market is essentially independent from the others, largely due to the logistics costs involved resulting in AN being uncompetitively priced if it is shipped from one region to another. However, the analysis completed by the ADC does not appear to have considered the differences in the market structure in each of these regions, nor the different regions to which the allegedly dumped imports were made.

3.21 Given the large distances between each region (and therefore the cost of transportation), AN that arrives in one region will for commercial reasons be used there. In the case of NSW, during the investigation period, ABS data demonstrates that [Confidential – Market information][5,6] then the allegedly dumped imports (not made by the Australian Industry which the ADC has recognised cannot cause any injury) made up less than 1% of the NSW market during the investigation period. Based on the Ministerial Direction on Material Injury, such a small volume of imports is unlikely to be capable of causing material harm.

3.22 As part of a detailed investigation into the NSW market, we would like to highlight that the only examples of alleged injury that have occurred relate to QNP and to CSBP. Accordingly, it is almost certain that given the locations of QNP and CSBP, any alleged injury cannot and does not reasonably relate to NSW.

3.23 As highlighted previously to the ADC, [Confidential – Supply arrangements], and where Orica has not demonstrated any material injury that has been accepted by the ADC, then regardless of the correctness or otherwise of the ADC's recommendation to

[5] We request that the ADC verify directly with [Confidential – Market information] was made by them as part of a full and complete evaluation of the circumstances being explained.

[6] In order to fully establish the market size in NSW, we request that, for the investigation period, the ADC verify directly with: [Confidential – Market information].

the minister in relation to dumping duties, it becomes apparent that the application of duties have no basis to be applied in NSW.

3.24 Similarly, when one examines the Pilbara region of WA, we cannot identify any allegedly dumped imports (in fact, any imports at all) that were not made by the Australian Industry. Furthermore, the intense competition between CSBP and Yara Pilbara Nitrates/Orica which has been explained to the ADC in terms of the Applicants' own statements to the stock market, creates a scenario where the import parity price level is significantly above the level which is beneficial for the Australian Industry to price at in order to operate their plants[7].

3.25 In short, the Applicants have failed to show that the entire Australian Industry is under threat from allegedly dumped imports. Indeed, it is submitted that NSW in particular displays characteristics that warrant separate consideration insofar as the ADC considers it necessary to impose duties.

(D) Considerations for establishing a USP and NIP

3.26 Recognising that despite the information the ADC has been presented with it may still choose to make a recommendation that dumping duties be imposed, (and without prejudice to Glencore's views on that), Glencore wishes to submit a range of information to guide the ADC to define a USP that is in line with broader industry norms and is not influenced by the self-interest of the Applicants.

3.27 As a starting point, it is important to note that:

(a) There are clear instances when [Confidential – Pricing information] (refer to section 3(A) of this response);

(b) Similar overseas markets not impacted by dumping operate at price levels well below the injurious price being considered by the ADC; and

(c) A cost build up approach with substantially higher than average industry returns results in price levels well below the injurious price being considered by the ADC.

3.28 [Confidential – Supply arrangements]. Accordingly, we have an up to date, realistic and clear view of the costs involved in importing AN. We are happy to share our experiences and these figures with the ADC with the expectation that the data be taken into account when calculating USPs and NIPs.

3.29 **Import costs**: [Confidential – Supply arrangements].

[Confidential – Pricing information].

[7] As part of its due diligence, we request that the ADC seek to understand the base prices in the supply contracts entered into by [Confidential – Market information], this information could be accessed from Orica but should be verified with the miner in all cases. We can support the ADC in providing contact details, if required.

Please note that due to the short time available to respond to the SEF, documentation supporting the above estimates is not immediately available. However, should the ADC wish to verify these costs, we will be pleased to gather all the necessary evidence.

In addition to the costs outlined above, Glencore has to pay for the storage of the imported AN. [Confidential – Supply arrangements]. This is an arm's length transaction and a price has been agreed of [Confidential – Pricing information], which must be added to the cost of each tonne of imported AN.

Finally, in managing the above imports, the Glencore team have used at least [Confidential – Business details] of time which we have estimated at a cost of [Confidential – Business details] based on a 38 hour working week and a cost of [Confidential – Business details] based on the resources having the necessary skills and experience. This translates to [Confidential – Cost information] across the above two imports.

The necessary documentation to support the above figures are included in Confidential Appendix D. Furthermore, [Confidential – Supply arrangements] showing the agreed amounts has also been provided. If the ADC wishes to verify the amounts with the [Confidential – Supply arrangements], we would be pleased to arrange an introduction.

3.30 In section 11.4 of the SEF, the ADC states that no adjustments are being made "for importer selling and administration costs or profits, as the importers predominantly consume the ammonium nitrate in making explosives rather than on-selling the goods in the condition that they were imported". However, we note that with [Confidential – Supply arrangements] the conclusion reached by the ADC is not applicable in this case and appears somewhat arbitrary to assume no margin can be applied to the ammonium nitrate. Furthermore, we do not see any evidence that the ADC has sought detailed information from the importers of AN to confidently conclude that no margin should be added. Understanding the margins, sales formulas and cost allocations of the importers as well as the profitability those importers attribute to the imports made is a pre-requisite with which the ADC must comply before reaching the stated conclusion. We believe further verification is required by the ADC and we have submitted evidence that the importer selling and administration costs or profits should be [Confidential – Cost information].

3.31 As explained in this submission, one of the key points that the ADC has not considered is the change from an under-supplied market to an over-supplied market in Australia. Given the lag effect due to contracted sales this takes time to have an impact. However, the existence of an over-supplied market has been recognised by the ADC in the SEF. Therefore, establishing a USP based upon the average selling prices of Orica and CSBP in the two-year period prior to the investigation period (i.e. industry selling prices at a time unaffected by dumping) is not applicable nor should it be the primary determinant given the hugely important change in the supply/demand balance within Australia. Accordingly, it is submitted that the ADC take the following into consideration if it decides to recommend duties be put in place when establishing a USP:

(a) In section 3(A) of this submission, [Confidential – Pricing information].

(b) Glencore highlighted in section 3.6 of our submission dated 10 December 2018, that the prices paid in Australia for ammonium nitrate are significantly higher than elsewhere in the world. To ensure that any duty that the ADC believes

should be imposed is arrived at on an objective basis, the ADC should have regard to prices available in similar markets to Australia. Specifically:

(i) The US/Canadian explosives market is not impacted by dumped AN. Whilst imports are made into the US and Canada for fertiliser, there are negligible or no imports of ammonium nitrate that are used to manufacture explosives[8]. Like Australia, there is an excess of production capacity and so prices are set by AN producers competing against each other for volume. Furthermore, Orica (or its affiliates or joint venture partners) is known to purchase significant quantities of AN from third party manufacturers in the USA. In reaching any decision on the USP, the ADC should require Orica to share details of its purchasing cost in the USA [Confidential – Supply arrangements] as a strong guide to a price level that can be achieved in an arm's length transaction in an over supplied market that is not impacted by dumping. Our belief is that this is a price level of [Confidential – Pricing information], which should rightfully be adjusted for higher gas and labour costs in Australia, but for little else. The ADC is well within its rights to request this information from Orica and it would provide a more independent data source in establishing a *constructed industry prices – industry CTMS plus profit*, rather than solely relying on figures selected by the Australian Industry.

3.32 Independent sources of information indicate that the chemical industry on average earned a gross margin of between 25% - 30% in 2018[9]. Assuming cash production costs of [Confidential – Cost information], this would translate to a typical selling price of [Confidential – Pricing information] if the Australian Industry was earning industry average returns. Assuming some risk premium and other factors, if the Australian Industry earned double the industry average, the typical selling price would still only be [Confidential – Pricing information], well below the level at which threatened material injury could occur.

3.33 Glencore would be happy to discuss any aspects of this submission further and should the ADC believe that any documentary evidence that might impact the final decision is missing, we encourage you to request that from us.

Yours sincerely,

Darren Oliver

[8] As part of its investigation, if the ADC wishes to verify the claims that the North American market not being impact by dumped AN, we request the opportunity to present further details and explanation.

[9] https://csimarket.com/Industry/industry_Profitability_Ratios.php?ind=101 provides a useful source of information