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Public File

Dear Ms Halilovic

Investigation No. 473 – Ammonium nitrate exported from P R China, Sweden and Thailand – Statement of Essential Facts

I. Executive Summary

I refer to Statement of Essential Facts No. 473 (“SEF 473”) placed on the electronic public record on 25 February 2019. Orica Australia Pty Ltd (“Orica”) is a co-applicant Australian producer that has applied for anti-dumping measures on exports of ammonium nitrate (“AN”) from the People’s Republic of China (“China”), Sweden and Thailand.

Orica welcomes the Commissioner’s proposed recommendation to the Minister for Industry, Science, and Technology (“Minister”) that a dumping duty notice be published in respect of AN exported to Australia from China, Sweden and Thailand.

Orica agrees with the Commissioner’s findings concerning dumping, material injury and causal link. The preliminary findings are sound and well supported by the available evidence. Anti-dumping measures are required to ensure the Australian industry does not experience further material injury from dumped exports sourced from China, Sweden and Thailand.

Orica does not consider it is plausible (or can be justified) that the normal value for Chinese exporters includes a zero level of profit. Investors in the high-risk, capital-intensive AN industry seek high returns to cover capital outlays for extended periods well in advance of actual operating production. A zero level of profit fails to recognise the capital risk in the AN industry.

Orica is further concerned about the Commissioner’s proposed form of measures to be applied to the dumped and injurious goods. Orica considers that in a price sensitive market such as AN there exists a strong likelihood that exporters and importers will seek to circumvent anti-dumping measures based upon an *ad valorem* methodology. Orica, therefore, recommends that the Commissioner propose to the Minister that the form of measures to be applied to the dumped and injurious goods be based upon the combination form (involving a fixed and variable component).

II. Like Goods

Orica acknowledges the Commissioner's findings that the Australian industry manufactures AN that are like goods to the imported goods from China, Sweden and Thailand.

Representations were made by the China Chamber of International Commerce ("CCOIC") that the Australian industry does not produce like goods to imported high density AN ("HDAN") and, as such, the goods imported from China could not have caused injury to the Australian industry (refer EPR document No 038).

The Commissioner has correctly addressed this issue. In continuation investigations conducted in 2005, 2010 and 2015, the issue of like goods was examined. In the original investigation No. 28¹, the Australian Customs Service concluded:

"...low density, high density AN and AN solution are sub-sets of the product group AN....all types of AN, irrespective of whether in solid or solution state, prilled or granular form, low density or high density, are like goods."

The Australian Customs Service based this finding on:

- *Australian produced LDAN was substitutable with imported LDAN;*
- *In certain circumstances, HDAN and LDAN could be substituted for each other; and*
- *Emulsion explosives made from both ammonium nitrate solution and HDAN compete with each other.*

The findings identified by the Australian Customs Service in Trade Measures Report No. 28 continue to apply to the present day. HDAN and LDAN may be substituted for each other in end-use applications in the explosives industry. This position has been re-affirmed in the continuation inquiries of 2005, 2010 and 2015, and remains evident to the present day. The Commissioner has correctly determined that the Australian industry continues to manufacture like goods to the imported goods (including where the imported good is HDAN).

III. Dumping investigation

SEF 473 has confirmed that exports of AN from China, Sweden and Thailand were at dumped prices during the investigation period as follows:

Country	Exporter	Dumping Margin
China	Uncooperative and all other exporters	29.6 %
Sweden	Yara AB	51.1 %
	Uncooperative and all other exporters	61.3 %
Thailand	Uncooperative and all other exporters	31.3 %

Yara AB ("Yara") of Sweden was the only cooperative exporter that provided the Anti-Dumping Commission ("the Commission") with a compliant exporter questionnaire response ("EQR"). Normal values for Yara were determined under subsection 269TAC(1) using the exporter's domestic selling price information.

Exporters in China and Thailand did not provide compliant EQR responses (or were not the producer of the goods). The Commission, therefore, relied upon information provided by the applicants' in the industry's application for anti-dumping measures.

Section 6.6.2 of SEF 473 details the Commission's assessment of information relied upon by the Commission to determine normal values for Chinese exporters of AN to Australia.

¹ AN exported from the Russian Federation.

The Commission noted that the applicants did not include contemporary pricing for utilities in the constructed selling price models, and made adjustments based upon its access to relevant contemporary pricing in China. The Commission noted that the contemporary costs for utilities were higher and did not include these in the conservative normal values determined for China. Orica notes that the Commission has not included a level of profit in the normal values determined for China. The applicants did not include a level of profit in the prima facie constructed selling price normal value information as it was hesitant to overstate a level of profit. The Commission has access to information on profit for a cooperative AN producer in Sweden – this level of profit could be used in the constructed normal values for Chinese AN exporters.

The Commission has used the most relevant information to determine normal values for Thai exporters under subsection 269TAC(6). The Commission had available to it information on pricing for AN in Thailand from 2017 and has relied upon this information in the absence of cooperation from a Thai exporter.

Orica is therefore concerned with the absence of a level of profit in normal values for Chinese exporters of AN to Australia. It is considered unrealistic and improbable that Chinese AN exporters operate on the basis of a nil profit margin. Orica requests the Commission to include a level of profit relevant to the risk profile of an AN producer and considers that the most relevant source for this information is the verified profit levels of the Swedish cooperative AN exporter.

IV. Material injury and causation

Orica agrees with the Commissioner's findings at Section 9.1 of SEF 473 including that "*the Commissioner found injury to the Australian industry, particularly in the form of price depression, caused by dumping.*"

The Commission's causation analysis included a "but for" analytical approach to assess pricing in the absence of dumping. This methodology is used to compare the state of the industry in the investigation period to the state of the industry that would have existed had there been no dumping. The Commission used reliable and comprehensive information provided by Orica (and sourced from other Australian industry members) and validated the injury with information sourced from importers and customers.

The outcome of the analysis was that "*The Commissioner found that the injury caused to the Australian industry by dumping is material.*"

Orica provided the Commission with examples of price negotiations with customers where it suffered price-effect injury from the dumped exports from China, Sweden and Thailand. The injury examples were detailed and comprehensive. Orica agrees with the Commissioner's conclusion that in the absence of the dumping, Orica's selling prices would have been comparable to non-dumped levels.

V. Will dumping and material injury continue

The Commission concluded that "even at its full capacity, the Australian industry is not able to fully supply the entire volume of the Australian ammonium nitrate market, and hence importations of the goods from China, Sweden and Thailand are likely to continue."

Orica concurs with the Commission's assessment that it is likely exports of AN from China, Sweden and Thailand will continue. It is also likely that given the size of the dumping margins evident during the investigation period (ranging from 29.6 per cent to 61.3 per cent) and that the import volumes from the three countries increased significantly between 2015-16 and 2017-18 (in aggregate and as a percentage of total imports), it is likely that the dumping will continue in the foreseeable future.

Orica agrees with the Commissioner's conclusion that exports of AN from China, Sweden and Thailand in the future may be at dumped prices and that continued dumping *will* continue to cause material injury to the Australian industry.

VI. Non-injurious price

Orica notes the Commissioner's proposed basis for an unsuppressed selling price ("USP") for the Australian industry is "based on the average of the weighted-average selling prices (at ex-works) for CSBP and Orica over a two-year period prior to the investigation period (from 1 April 2015 to 31 March 2017)." It is further proposed that the weighted average ex-works selling prices would be adjusted for the movements in the consumer price index ("CPI").

Orica considers that the Commissioner's proposed basis for a USP is appropriate provided that the ex-works selling prices for Orica and CSBP are comparable.

VII. Form of measures

The Commissioner is proposing to recommend to the Minister that the form of measures to be applied is based upon the floor price duty method. Orica notes the Commission's comments at Section 12.5 of SEF 473:

"The floor price method can limit the negative effect of price increases in the goods that are associated with the ad valorem duty method. It acts to prevent price manipulation by the exporter such as where they artificially decrease their export price under the ad valorem method which would decrease the amount of duty paid. A disadvantage is that a floor price can quickly become out-of-date and in a rising market become ineffective. This duty method may not suit the situation where there are many models or types of good with significantly different prices. Given that there are only two sub-sets of ammonium nitrate (HDAN and LDAN) that are imported, the Commission considers that the floor price would be appropriate."

Orica strongly disagrees with the Commissioner's recommended form of measure to be applied to the dumped and injurious imports of AN from China, Sweden and Thailand. Orica submits that an unstated reason in support of the proposed floor price method is that it is relatively easy to administer and involves limited applications for duty assessment by importers subsequent to duty imposition. It is also noted that the measures in place in respect of AN exported from the Russian Federation attract measures based upon the floor price method. Both of these reasons should not be grounds to justify the imposition of measures on the floor price method in the current circumstances.

Orica supports measures based upon the combination method. The Commission has conceded that measures based solely on a 'floor price' are ineffective in a rising market; the combination form of measures at least ensures a fixed component of interim dumping duty (IDD) i.e. the difference between the ascertained export price and the non-injurious price, in the current circumstances. When contrasted with measures based upon a floor price, no IDD is collected where prices increase above the levels determined in the investigation period – even though dumping may be continuing. The combination form of measure operates to an increased level of effectiveness to address the injury that is caused by dumping – with any overpayments of IDD available to be refunded via the duty assessment process. Underpayments of duty, however, cannot be collected and the injury is again subjected to injury as costs and prices increase.

Orica is firmly supportive of the proposed measures being determined on the combination method. That is, the measures include a fixed component (i.e. based upon the margin between the AEP and the NIP, as the NIP is lower than the normal value for all exporters in each of the three exporting countries), and a variable component (for the difference by which the *actual export price* is lower than the AEP).

Orica submits that measures based upon the combination form are more effective at addressing injurious dumping than measures solely determined upon a floor price. With the key objective of addressing the injurious effects of dumping in mind, measures based upon the combination method operate with the highest level of effectiveness of the four methods available to the Minister.

Orica requests the Commissioner to reconsider the form of measures to be applied to the dumped and injurious exports from China, Sweden and Thailand and recommend measures based upon the combination method be applied.

VIII. Conclusions

Orica welcomes the Commissioner's proposed recommendation to the Minister for Industry, Science, and Technology ("Minister") that a dumping duty notice be published in respect of AN exported to Australia from China, Sweden and Thailand.

In supporting the imposition of anti-dumping measures, Orica requests the Commissioner to:

- (i) Include a level of profit in the normal values determined for Chinese exporters (as it is unrealistic for a capital-intensive industries to operate on a zero return); and
- (ii) Recommend measures apply based upon the combination form as this form is the most effective form of measure to address injurious dumping (particularly in a rising market which can occur in the volatile ammonia-AN market).

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

