inherently
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18 March 2019

The Director - Operations 2
Anti-Dumping Commission
Industry House
10 Binara Street
Canberra
Australian Capital Territory 2600

Sent by email – investigations2@adcommission.gov.au

Dear Director

473 - Investigation – Statement of Essential Factors regarding Ammonium Nitrate exported from China, Sweden and Thailand

You have our previous submissions and thus are aware of our position in this investigation and also in the exemption inquiry which is taking place at the same time.

The proposal to recommend to the Minister that a dumping duty notice be issued against all and indeed any types of ammonium nitrate (together called 'AN') exported to Australia from China, Sweden and Thailand is not logically supported and is objected to by AEL.

As we understand it, the grounds for such an action are dumping and material injury and a conclusion that the dumping has caused material injury. On that basis the ADC's concepts of material injury and causation must be detached from the real world.

AEL would like first to list the key aspects of the SEF as they are set out and as we can interpret them.

1 The local producers of AN are CSBP, Orica, QNP, Dyno Nobel, Yara Pilbara Nitrates. The market is also supplied by imports from China, Sweden, Thailand and other countries.

2 Although the local producers do not produce High Density AN (called 'HDAN'), the ADC thinks that the AN the local producers do produce is the same as or so closely resembles the imported AN as to be 'like goods'.

3 The ADC looked at the financial performance of the Australian industry from April 2014 to 31 March 2018 but the investigation period where the actual dumping causing material injury should be assessed is just the 12 months from 1 April 2017 to 31 March 2018.

4 The ADC found evidence of depressed prices 'following' contract negotiations. It was also found that the depressed prices resulted in injury and will continue to result in injury. When material injury was caused or will be caused is unclear, except that there may be dumping which may continue to cause material injury in the future.

5 The ADC has not found that material injury is threatened as the grounding for the decision.

6 It is intended to establish a floor price level for all exports and the floor price will be worked back from CSBP and Orica prices for AN made from 1 April 2015 to 31 March 2017. This means that the export FOB price of the exported AN from China, Sweden and Thailand in future can't be lower than the worked back floor price.

Our critique of the way in which the injury-related matters have been considered and concluded in the SEF follows.

Concerning <u>like goods,</u> AEL has provided comments in the exemption inquiry applied for by Nitro Sibir and at this time wishes to make three further comments.

> The first is that it is a simplification and a mistake in many respects to say that ANSOL is like imported HDAN. Locally produced ANSOL does not have primary physical characteristics that closely resemble HDAN (the first is a liquid at elevated temperature, the other a solid). Also locally produced ANSOL is more restricted in its saleability and in its usability and therefore does not have the same market or customers as imported HDAN. ANSOL and HDAN are not substitutable either, because it is not a case of simply using one or the other in the same way as the other. Lastly, imported HDAN is NOT manufactured in a similar manner to locally produced ANSOL. ANSOL is a product that exists at a point that is "upstream" in the production chain of HDAN, and to say that the latter is manufactured in a similar manner to the former ignores the activities that must necessarily take place in the stage of production "between" ANSOL and HDAN.
>
> Secondly, regardless of the ADC's outcome on like goods in this anti-dumping investigation the 'like goods test' is NOT the test of exemption under 8(7)(a) of the Customs Tariff (Anti-Dumping) Act of 1975 and that outcome cannot direct the outcome in the exemption inquiry.
>
> Thirdly, the suggestion that Marbyl is a readily available substitute for HDAN is simply not true. [redacted]

Concerning <u>injury</u> the SEF speaks about this in terms of volume effects, price effects and other economic factors.

The SEF concedes that there were no <u>volume effects</u> by reason of dumping. In Table 6 the 'Australian industry' production total for the investigation period is shown as being only 0.8 index points less than the previous year.

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However the table does not include Yara Pilbara Nitrates. Of course AEL does not have access to Yara Pilbara Nitrates output data for the Apr 2017 to Mar 2018 period but suspects it was [redacted] MT (and publicly available evidence suggests that Yara Pilbara Nitrates expects to produce 200,000 MT in the 2020 calendar year – see Attachment 1). These tonnages hugely exceed the 0.8 index point production decrease shown in Table 6 for the investigation period, from an index of 103.8 to 103.0.

Looking at each company individually, Orica and Dyno Nobel didn't drop in production or sales, CSBP's drop in both was because of planned and unplanned shutdowns, and QNP's drop in both was because of weather, production problems and lower demand.

With regard to the market, import volumes are extremely low and only one of the import sources increased its market share. It is pretty obvious that all that happened in the investigation period was an increase in imports from a party (Yara of Sweden) related to an Australian industry member (Yara Pilbara Nitrates). It is [redacted] confirmed by the SEF, that this was a kind of stopgap arranged by the JV partners in Yara Pilbara Nitrates because of commissioning problems at Burrup.

Now looking at price effects, CSBP and QNP increased their prices in the investigation period and Orica's were marginally lower. Costs in Western Australia went up but prices went up higher. On the east coast there were much higher cost increases and price decreases. The reasons for these changes are considered in the SEF. Dumped imports do not directly feature as part of these reasons and instead the SEF rests its conclusion on injury on a later 'new contract by new contract' analysis.

Other economic factors also do not demonstrate material injury or injury possibly caused by dumping. Sales revenues are hardly changed and reasons given in the SEF for effects on sales revenue, return on investment, capacity utilisation and employment numbers are factors other than dumping. Dyno and Yara Pilbara Nitrates are not included in any of the other economic factors analysed.

This leaves the 'contract negotiation' analysis as the only hook for the ADC to hang its decision on. The ADC explains how it set out to do this –

> To establish a causal link between injury to the Australian industry and the allegedly dumped goods, the Commission assessed the information provided by each applicant in support of its claims that prices (and the increasing availability) of the goods imported from the subject countries during the investigation period have impacted contract prices that were re-negotiated (where the applicant is the incumbent supplier) or negotiated (where the applicant made an offer to a potential customer). This injury may be either through price pressure as a result of the allegedly dumped goods (price depression) or through loss of contract (loss of sales volumes).

AEL has read the negotiation by negotiation rendition in the SEF and finds it to be lacking probability or logic and highly and unfairly tilted against the exporters concerned. The Australian industry members compete amongst themselves and even if they do reference an import price that does not mean that dumped imports have caused the lower price.

[redacted]:

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[redacted]

[redacted]

There is also the shadow cast over the Australian market by the production capacity of the Burrup plant coming on stream, which is causing other Australian industry members to secure as much volume as they can, now, to protect themselves from an uncertain oversupply scenario in future.

AEL understands that the ADC must make a positive finding on an objective and provable basis. The SEF states that there appear to be factors, other than dumping, that have likely caused the reductions in prices. AEL cannot see how an objective and provable link between dumping and material injury is established if that is the case.

The but-for analysis in the SEF and its operative assumption that all other things will remain the same essentially admits that the finding is not based on positive evidence. Has the ADC predicted the longevity of the contracts it actually thinks are 'dumping affected' and the volumes the customer will buy thereunder, are the prices and volumes fixed and guaranteed, and how has that been done?

Even if they are fixed, they must be minor in time or volume because, as the SEF itself notes, there are restrictions on the amount of AN that can be received at a designated port at any one time and it is simply not possible for exporters to materially and unrestrainedly increase their volumes from the very low base they presently have.

Has the ADC predicted the costs of the Australian industry members who entered into the contracts that are said to be dumping affected? Prices are not an indicator of injury, material or not, without working out the contribution of those prices to profitability, overall revenue, capacity utilisation and investment. An already profitable Australian AN producer is probably quite satisfied to pick up smaller AN contracts to take up unused capacity. Fixed and variable costs and throughput must be considered and considered on an informed basis and not just on the assumption that things won't change. Frankly we do not know how all those other factors could be reliably predicted and the SEF does not try.

The conclusion in the SEF reads like a finding that there will be injury in the future but without the rigour of materiality, of not attributing it to dumping if other things are or could be involved, or of being able to reliably predict it will happen imminently.

Particularly, in the contract-by-contract analysis QNP contract experience is relied upon in examples 4, 5, 6 ('first' and 'second' of the negotiations) and 7 ('spot sales'). QNP is a JV between CSBP and Incitec Pivot, each of whom have their own separate AN plants. QNP has always been weaker performing than the JV partners because they each prefer to support the profitability of their own individual plants first, before thinking about QNP. Incitec Pivot has its own blasting services provider, Dyno Nobel, but QNP does not. [redacted]

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Lastly AEL is extremely concerned and dissatisfied with the statement in the SEF that no adjustments for importer selling and administration costs or profit were made in working out the non-injury price because 'the importers predominantly consume the ammonium nitrate in making explosives rather than on-selling the goods in the condition that they were imported'. Obviously, that does not apply to AEL and in all logic and fairness we demand that a mechanism is introduced into any final measures that does allow us, specifically, to recover our selling and administration costs and to earn a profit on our imports from our suppliers.

AEL is very disappointed with the proposals in the SEF and how they have been reached. The proposed action is highly protectionist even openly explained as a fixed price barrier to guarantee that the Australian industry members make even more money than presently. The proposals are anti-competitive and if implemented will impact badly on the costs and efficiencies of the mining industry, and on the vibrance and the viability of independent blasting services providers such as AEL and all their employees and contractors.

AEL insists that the ADC should reappraise the SEF and that the recommendations therein are not proceeded with.

Yours sincerely

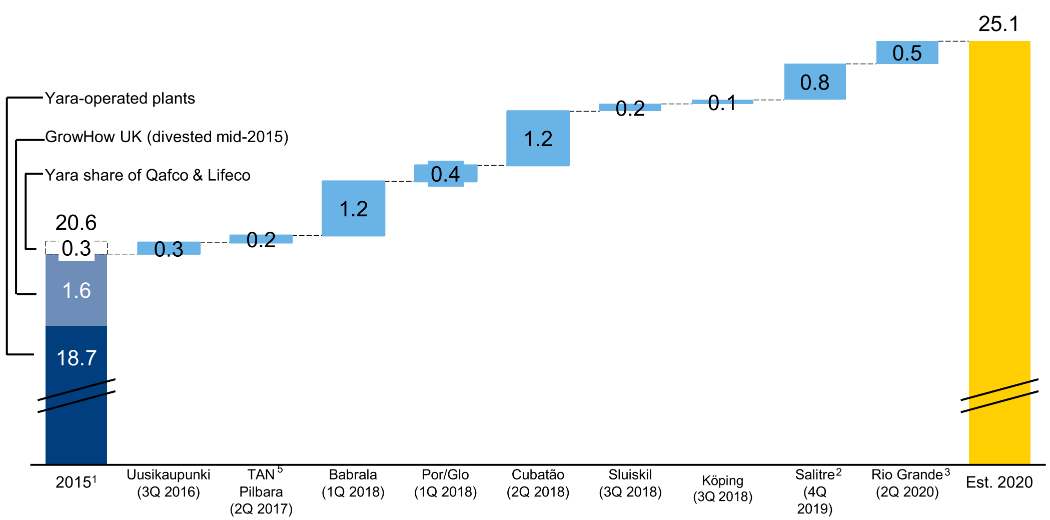
A. J. Rawiller

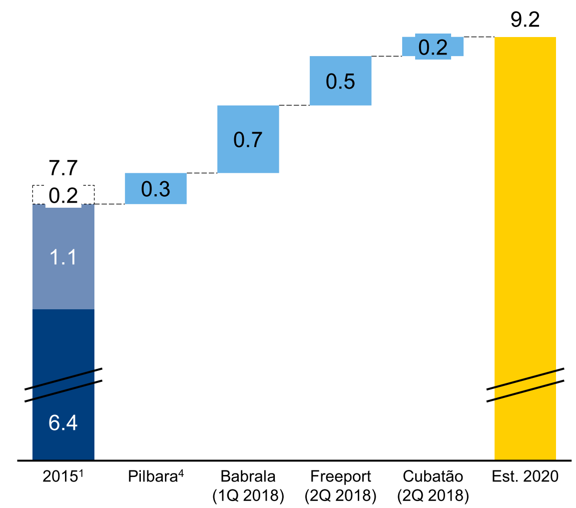
Alan Rawiller
Strategic Sourcing Manager - Nitrates

Yara is delivering on its growth pipeline; multiple plant expansions and M&A coming on stream in 2018

Production growth 2015 - 2020

Mill.tonnes (mt)





1) Adjusted to normalized / 2016 turnaround level (0.7mt finished fertilizer and 0.2mt NH_3) and regularity level (0.7mt finished fertilizer and 0.4mt NH_3)
2) Salitre will reach 1.1 mill.tonnes in 2022
3) Rio Grande expansion also adds 1 million tonnes NPK blends by 2020
4) Including 100% ownership in Pilbara NH_3 plant (not included in committed growth pipeline)
5) TAN Pilbara started up in 2Q 2017, but has suffered from technical difficulties and the site is currently undergoing a turnaround