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### Public File

Dear Ms Halilovic

#### **Investigation No. 473 – Ammonium nitrate exported from P R China, Sweden and Thailand – Submissions by interested parties following Statement of Essential Facts**

##### I. Introduction

We refer to the following submissions by interested parties following the publication of Statement of Essential Facts No. 473 ("SEF 473"), including

- European Commission (dated 14 March 2019);
- Moncourt Group (dated 15 March 2019);
- Glencore Coal Assets Australia (dated 17 March 2019);
- China Chamber of International Commerce (dated 18 March 2019);
- AEL Mining Services Australia (dated 18 March 2019); and
- Yara AB (dated 18 March 2019).

We consider that the identified submissions include comments that are ill-conceived and inaccurate, requiring response.

##### II. European Commission

The European Commission (EC) contends that SEF 473 prepared by the Anti-Dumping Commission ("the Commission") includes an injury and causality analysis that "...presents considerable weaknesses, which are incompatible with WTO standards".

It appears from the EC's statements (at Section 2.1 of its submission) that it considers the Commission has treated the Australian market as two separate markets (presumably East-coast and West-coast). This is not the case. The Commission has not treated the Australian market as two separate markets. The Commission has merely highlighted the location of the production plants and how this influences supply in the different regions.

The EC seeks to downplay the market share held by the dumped imports as being a "mere 3.1% of market share during the investigation period". Ammonium Nitrate ("AN") is a 'price sensitive' raw material input into the explosives industry. As such, even small volumes of imports can have a pervasive effect across a broad section of the Australian market as import price parity points are used in response to customer tender inquiries.

The EC further argues that the Commission should not have commenced an investigation based upon the small volume of imports into the Australian market. The volume of imports, however, from each of the three countries accounted for approximately 49 per cent of total AN imports in the investigation period, with each country's import volume exceeding the 3 per cent negligible volume requirement of subsection 269TDA(4).

It is considered by the EC that the injury experienced by the Australian industry has been caused by other factors and not the dumped exports to Australia. The Commission has, however, had regard to the volume and price effects of the dumped exports from China, Sweden and Thailand, and considered other causes of injury to the Australian industry. The Commission's examination concluded that the injury from the dumping is "significant" and whilst there are other factors that have caused injury to the Australian industry, this finding does not detract from the Commission's assessment that the injury suffered by the Australian industry is **material**.

### III. Moncourt Group

The Moncourt submission argues that the Commission's "but for" approach to injury analysis is "not fit-for-purpose". The Commission will typically use a "coincidence analysis" approach to injury analysis whereby it examines data across an injury analysis period and contrasts this with indicator data in the investigation period. A "but for" analysis examines the state of the industry during the investigation period with what the industry might have looked like in the absence of the dumping.

A 'but for' analysis was used by the Commission in SEF 473. The Commission estimated the effects of the dumping on the Australian industry by examining the injurious effects of the dumping against an undumped price. Following this examination, the Commission was satisfied that the industry has reduced prices in response to the dumping and the subsequent injury was material in nature.

Moncourt further suggests that the Commission's analysis represents a "hypothetical" analysis and is based upon conjecture. The Commission has conducted verification visits with the two largest applicant AN producers. The Commission is satisfied that the verified information is representative of the Australian industry.

Moncourt argues:

- No actual injury has been established;
- The injury finding is based upon untested evidence;
- Materiality of injury has not been established;
- "other" factors have not been considered; and
- Any injury sustained was not caused by exports.

SEF 473 adequately addresses each of the allegations raised by Moncourt and establishes findings contrary to Moncourt's assertions. The Ministerial Direction on Material Injury 2012 referred to by Moncourt requires the Commissioner to consider injury to the Australian industry from dumping and subsidisation and directs that the injury sustained (or threatened) is material (i.e. not immaterial, insubstantial or insignificant). Importantly, the Ministerial 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."*

The Commission has considered injury caused by other factors in the Australian market for AN. These include production overcapacity. The Commission considers, however, that the injury caused by the dumped exports from China, Sweden and Thailand has caused injury

that it considers is material and threatens to cause material injury. The Commission's findings on material injury in SEF 473 are therefore consistent with the Ministerial Direction.

The Moncourt submission further argues that the Commission's determination of an unsuppressed selling price ("USP") is "odd". It claims that Orica is not injured<sup>1</sup>. The Commission has explained the reasons for using an average of the verified Orica and CSBP sales data for the two-year period prior to the investigation period (a period that the Commission considers is unaffected by injurious dumping).

The Commission's preference for the determination of a USP is to turn to the market for selling prices unaffected by dumping. The selected verified selling prices are consistent with the Commission's preferred approach to USP determination.

We agree with the Commission's decision not to include importer selling and administration costs, and profit, as "*the importers predominantly consume the ammonium nitrate in making explosives rather than on-selling the goods in the condition that they are imported*". The reasons provided by the Commission for excluding these costs in the determination of the non-injurious price (NIP) are correct and are sound.

#### IV. Glencore

The Glencore submission has raised similar objections to SEF 473 as contained in the Moncourt submission. We do not propose to repeat responses to the matters raised above.

#### V. China Chamber of International Commerce

The China Chamber of International Commerce's ("CCOIC") challenges the Commission's cumulation of dumped exports finding and seeks to argue that the Chinese exports are "so different" to be cumulated due to "distinct patterns and dynamics".

We disagree and concur with the Commission's assessment. The goods exported from China, Sweden and Thailand are AN – whether it be HDAN or LDAN. The Australian industry manufactures goods that are alike to the exported goods. The exported goods (whether from China, Sweden or Thailand) can be used in the same applications as the locally produced AN. The exported goods compete with the locally produced goods and with goods imported from other countries. For these reasons, the Commission has correctly concluded that it is appropriate to cumulate the dumped goods exported from China, Sweden and Thailand.

CCOIC similarly challenges the Commission's injury and causation analysis (as challenged by Moncourt and Glencore). We again reiterate that the Commission's findings in SEF 473 are consistent with the Ministerial Direction on Material Injury 2012.

#### VI. AEL Mining Services

AEL Mining Services ("AEL") contends that "import volumes are extremely low" and that the increase in imports from one source relate to the interests of a party in Yara Pilbara Nitrates. We again reference the Ministerial Direction in particular the then Minister's comment:

*"I note that in cases where the dumped or subsidised imports hold a small share of the Australian market, it may be difficult to demonstrate material injury. I direct that no minimum standard should be used to determine whether dumped or subsidised imports have a sufficient share of the Australian market to cause material injury."*

The Commission was satisfied that the dumped imports have caused material injury (that is, injury that is not immaterial, insignificant or insubstantial). The level of dumped imports

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<sup>1</sup> Table 11 confirms that Orica's CTMS increased 4.3 percentage points and price declined 1.5 per cent, demonstrating price suppression in the investigation period.

from each of the three exporting countries was above negligible volumes and is therefore considered sufficient to have caused material injury to the Australian industry.

#### VII. Downer EDI Mining Blasting Services

Downer EDI Mining Blasting Services ("DBS") submits that the Commission's findings in SEF 473 are "seriously unfounded". DBS further states that the proposed recommendation is "unfair in the broadest sense – legally, factually and commercially".

We reject DBS' assertions as the Commission has based its preliminary conclusions in SEF 473 based upon the available facts that reflect the impact of the dumped and injurious exports during the investigation period. DBS has not demonstrated that the Commission has erred in its determinations of dumping, material injury and causation. The alleged *commercial* unfairness can be equally argued by the Australian industry as it has to compete with the dumped exports during the investigation period.

DBS attempts to minimize the claimed impact of the dumping on the Australian industry's economic performance. The Commission's analysis at Section 8 of SEF 473 confirms the industry has suffered injury in the investigation period. The available evidence supports the Commission's proposed recommendation that dumping has caused material injury to the Australian industry producing like goods and that anti-dumping measures are required to prevent further material injury to the industry.

We have commented on the appropriateness of the proposed USP above.

#### VIII. Yara AB

Yara AB ("Yara") argues that the Commission's proposals and recommendations are "*protectionist*" and "*not those of an open, trade embracing first-world economy*".

Yara does not concede that it has exported AN to Australia at dumped prices. Nor does it concede that it has injured the Australian industry manufacturing like goods with its dumped export prices. We note that Yara's exports to Australia in the investigation period increased by 310 per cent over the preceding period. The Yara export prices were the lowest of the three exporting countries under investigation – by a substantial amount – as reflected in the 51 per cent determined dumping margin.

As has been argued in the submission on behalf of CCOIC, Yara contends that its exports should not be cumulated with exports from China and Thailand. It cites particular circumstances that Yara considers warrant it to not be cumulated with exports from China and Thailand.

Again, Orica disagrees. The AN exports are sold into the Australian market and compete with locally produced AN and imports from other sources. There is no evidence that suggests the Yara exports do not compete in the Australian market with AN from other suppliers (whether locally produced or imports).

We reject outright Yara's assertion (and indeed that commonly referred to by DBS and AEL) that the injury experienced can be attributed to a "fear" of competition. Yara itself would be aware of the need to operate AN plants efficiently at optimal production rates and that the dumping of AN is disruptive to the economic performance of the industry (as was also the case in Europe – where Yara is the largest producer - resulting in anti-dumping measures on AN exported from Russia).

Yara also mirrors the claims in the CCOIC and AEL submissions that the dumping has not caused injury to the Australian industry. The Commission's findings on dumping, injury and causation are soundly based, well-reasoned and supported with relevant facts and indicators. We submit that Yara's representations conveniently dismiss the impact of its significantly dumped exports during the investigation period on the economic performance of the Australian AN industry.

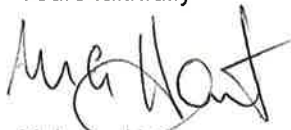
IX. Conclusions

The respondents to SEF 473 as identified in this submission have not evidenced any new information that would alter the Commission's preliminary findings and recommendations as detailed in SEF 473. The findings and proposed recommendations are sound and well supported by information sourced by the Commission during the conduct of the investigation.

We re-affirm our support for the Commission's proposed recommendation to the Minister to impose anti-dumping measures on AN exported to Australia from China, Sweden and Thailand.

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

A handwritten signature in black ink, appearing to read 'Malcolm Hart', written in a cursive style.

Malcolm Hart

Senior AN Market Manager – APA

