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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 Further submission regarding alleged injury to the Australian industry

We refer to the submission of Orica dated 2 April 2019 relating to this investigation.

Unsurprisingly, Orica disagrees with Yara's submission dated 18 March 2019. In doing so, Orica fails to address any of the following errors regarding the proposed imposition of measures:

- The proposal is based on seven contracts or transaction – four of which were sales of volumes in excess of already contracted amounts and one of which was merely a spot sale. In none of these cases was Yara a party to the negotiation.
- It considers the pricing methodologies undertaken by QNP and CSBP in these seven negotiations to which Yara was not a party to be a circumstance of the exportation of Yara's goods to Australia.
- It concludes that "injury" has been suffered based on assumptions and conjecture regarding the outcome of these seven negotiations had dumping not been found to have occurred.
- It concludes that this "injury" is material to the Australian industry producing like goods, but fails to provide any meaningful explanation as to how this materiality was assessed or quantified.
- Only two of the members of the Australian industry have been found to have suffered the "injury" the SEF considers was caused by the exports: QNP and CSBP. QNP has not been verified. It appears that there has not even been an attempt to "desk audit" the information provided by QNP in the application.
- It accumulates the supposed impact of exports from China, Sweden and Thailand in circumstances where individual impacts could be easily assessed by the Commission.

We also note that Orica was not found to have been injured by the imports subject to this investigation and that the prices of Yara's exports are made in accordance with [CONFIDENTIAL INFORMATION DELETED – circumstances of exports to Australia]. The Commission has evidence of this. To be very clear, [CONFIDENTIAL INFORMATION DELETED – circumstances of exports to Australia], then Yara would have had no basis to import AN at this price. Its comments regarding the price of Yara's exports need to be understood in that context.

Before measures can be imposed, it must be established that dumping has caused material injury. Such a finding must be based on positive evidence and fact; it cannot be based on allegations, conjecture or remote possibility. For the reasons stated above and further detailed in Yara's submission of 18 March 2019, the proposed injury finding does not meet these binding legal requirements.

Yara has been open, transparent and co-operative during this investigation and has gone to lengths to detail the circumstances surrounding its Australian sales to the Commission. Yara reiterates that the imposition of measures on in these circumstances would be unjustifiably protectionist.

Finally, we note that an extension of time was granted for interested parties to comment on submissions by the applicants regarding the form of measures that should be adopted. Yara notes that the recommendation that a floor price be adopted was based upon the high level of market share and profitability the Australian industry has achieved since 2001, when measures were imposed on AN from Russia. Yara notes that the Russian measures took the form of a floor price and have been characterised by the Commission as being effective at remedying the injury found to have occurred in that investigation, notwithstanding the fact that raw material costs have varied considerably between 2001 and the publication of the SEF. Accordingly, the applicants have not raised any factor that would require the Commission to reconsider its conclusion with regard to the form of measures.

Having said that, there is no basis for the imposition of anti-dumping measures of any form on exports from Sweden. This investigation should be terminated.

Yours sincerely



Alistair Bridges
Senior Associate