

9 April 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 ADC's Notice dated 4 April 2019 granting an Extension of Time in which to provide its Final Report (**Notice of Extension**) to the relevant Minister and the basis for why the ADC sought such an extension.
- 1.2 The purpose of this correspondence is to highlight a number of concerns Glencore Coal Assets Australia (**Glencore**) has with the factual accuracy of additional information provided to the ADC by Orica, CSBP and QNP (the **Applicants**) since the publication of the Statement of Essential Facts on 25 February 2019 (**SEF**). In particular Glencore has concerns with the level of reliance the ADC has placed on submissions made by the Applicants without undertaking appropriate steps to verify the claims made or having regard to facts submitted by industry participants.
- 1.3 Given the limited period of time within which the ADC has provided industry participants an opportunity to respond to the issues raised by the Notice of Extension (and submissions by the Applicants upon which the ADC appears to have relied exclusively in determining its position), Glencore seeks to summarise its key concerns for the purposes of ensuring that they are placed on the public record. Should the ADC wish to obtain further information in respect of the matters raised below Glencore would be happy to cooperate.
- 1.4 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 submitted numerous times, 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. This view is shared by the majority of industry participants and has been supported by objectively verifiable evidence.

2.2 The Notice of Extension would appear to suggest that the ADC will recommend that duties will be imposed. Based on the reasoning placed on the public record, the ADC appears to have limited its consideration of submissions made in response to the SEF to the matter of the level of duties that should be imposed and not whether the statutory requirements for the imposition of such duties has been satisfied. Of particular concern is the fact that the ADC appears to have relied almost exclusively on submissions made by the Applicants to the exclusion of issues and facts raised by the rest of the industry.

2.3 The concerns of Glencore can be summarised as follows:

- (a) The Applicants (and Orica in particular) have expressed a concern with the floor price methodology to calculate dumping duties on the basis that they believe it will be ineffective in a rising market. The concern that the market will rise appears to be based upon assertions from the Applicants and, due to the information redacted in the Applicants' submissions, it is not clear if they have even provided forecasts that gas (and coal) prices are projected to increase during the periods to which the measures will apply (we note that correlations that show a relationship between the prices of oil, coal, gas, ammonia and ammonium nitrate (AN) are not forecasts of future price behaviour). The Applicants have used their submissions to argue for the ADC to adopt a methodology in which to calculate duties (using the combined method of duty, which necessarily contains a fixed component) that will provide an additional level of protection to them from legitimate competition without providing any objectively verifiable or legitimate basis as to why such an approach is appropriate in the given circumstances;
- (b) The Applicants have not submitted any additional evidence to that already considered prior to the release of the SEF that supports such a methodology being adopted. Glencore believes that the claims used to support the need for a revised methodology are largely baseless and factually inaccurate. To the extent that there is any purported evidence provided it appears limited to China;
- (c) The ADC appears to have failed to appropriately consider or re-consider conclusions stated in the SEF in light of additional facts that have been submitted by other industry participants. In doing so, Glencore is of the view that the ADC has failed to adopt an independent and objective approach to assessing the entirety of evidence and facts that has been submitted giving rise to issues around the procedural integrity of the ADC's investigatory process.

2.4 Glencore remains strongly opposed to the introduction of any duties for the import of ammonium nitrate into Australia, as outlined in our submission dated 17 March 2019. However, should the ADC, after fully addressing the broad range of concerns raised in response to the SEF, still decide to recommend the imposition of dumping duties, then the use of a floor price, appropriately adjusted to account for all the costs and margins incurred when importing, is the only legitimate alternative that can be used. Any other approach would likely be subject to challenge.

3. FACTUAL BASIS PROVIDED BY APPLICANTS IN SUPPORT OF PROPOSED METHODOLOGY IS INCOMPLETE AND INACCURATE

- 3.1 The Applicants have expressed a concern that the floor price methodology to calculate dumping duties will be ineffective in a rising market on account of the likelihood that the market will rise.
- 3.2 Firstly, in respect of the point raised by the Applicants that the use of a floor price will be ineffective in a rising market, we note that a floor price has been in place for imports of ammonium nitrate from Russia for many years and has almost eliminated imports, even when markets reached their peaks in 2008 and Russia was one of the few sources of available ammonium nitrate globally. The Applicants have not submitted any verifiable or new evidence to counter this point. In the absence of a more detailed analysis provided by the ADC, the only reasonable conclusion that can be arrived at is that the floor pricing methodology is an effective mechanism in preventing imports of ammonium nitrate.
- 3.3 Secondly, the Applicants' suggestion that the market will indeed rise is based upon forecasts that gas (and coal) prices are projected to increase during the periods to which the measures will apply. The Applicants specifically submit that "the forecasts for higher input costs for gas and coal are relevant considerations for the [ADC]". However, the Applicants (and Orica in particular) have not provided any evidence of forecasts for higher costs. Rather, they have looked to provide historical correlations between gas, coal, oil, ammonia and ammonium nitrate costs and have merely asserted that prices will rise. This approach has three key issues:
- (a) An assertion of a possible future by a party with strong commercial incentives and interests in the outcome does not meet the required statutory threshold for evidentiary based decisions; and
 - (b) In terms of the correlations provided by the Applicants, historical performance cannot be used to predict the future particularly in the absence of sufficient detail and rigorous analysis (that is made available for public comment and input).
 - (c) To the extent that any purported evidence has been provided by Orica, it relates only to China. However, Orica remains adamant that ammonium nitrate imports from China, Thailand and Sweden require the imposition of dumping duties. Even if Orica's hypothesis is correct (and we believe we have shown that it is not on an objective and verifiable basis), facts relating to one jurisdiction cannot simply be extended to the other sources without any meaningful attempt to conduct a sufficiently comprehensive examination of market factors in each respective jurisdiction that is the subject of the Investigation.
- 3.4 Thirdly, it is submitted that each of the following facts need to be considered against each of the claims made by Orica in its most recent submission in respect of the likelihood of a rising market:
- (a) Orica claims that the recommended measures to be applied based upon a floor price methodology would reflect input costs for the period of the industry's selling prices (i.e. 1 April 2015 to 31 March 2017), which reflect lower raw material input costs. Glencore notes that the key input cost for the production of ammonium nitrate is ammonia, which has been lower in the last two years than it was in the indicated period [**CONFIDENTIAL TEXT DELETED – commercially sensitive pricing information**] Accordingly, the available facts directly contradict the claim being made by Orica – input costs are lower now than during the period under consideration.

- (b) Orica claim that “gas prices in most global markets are linked to prevailing oil prices, even though there is a more recent price trend for gas prices to be linked to LNG prices (now that LNG prices are becoming more observable in global markets)”. Historically, gas may have been linked to oil prices in some contracts but, as Orica identify, it is increasingly linked to LNG. What is not under dispute is that gas is the key feedstock to produce ammonia (and in some limited circumstances it is replaced with coal), which is in turn required to produce ammonium nitrate. However, LNG prices are declining and are forecast to continue to decline¹, with demand growth in China reducing and the supply side for LNG increasing considerably, particularly with new LNG projects likely to be approved in 2019. Therefore, extending Orica’s own rationale, the cost to produce ammonia and therefore AN is actually likely to decrease over time and not increase.

3.5 Finally, Glencore submits that the following macro-economic factors also contribute to a likely downward trend in feedstock pricing for ammonium nitrate (whether that feedstock be gas or coal). As per Orica’s own hypothesis, lower feedstock costs will reduce the cost to produce ammonia and will reduce ammonium nitrate costs, meaning the combination method of duties is likely to be punitive. Therefore, the ADC must consider these implications prior to any final recommendation being made as to the need for duties and the methodology adopted for the purposes of calculating such duties:

- (a) **Technology** – as has been widely publicised in the media, the USA has enjoyed a shale gas revolution. The technology for gas extraction continues to develop enabling far higher recoveries of gas from existing fields and making previously uneconomical fields commercially viable. In short, gas supply is increasing at a greater rate than demand, leading to downward pressure on gas pricing;
- (b) **Infrastructure leading to competition** – Governments are building major pipelines to get gas from where it is produced to where it is consumed. This in turn increases competition and decreases gas pricing. A new pipeline from Russia to China is almost complete², China is re-organising access to existing pipelines to drive exploration³ and a Russian pipeline to Europe is almost complete⁴. As LNG is used to meet incremental supply requirements in any market (over and above natural gas) and because it is easily shipped around the world, it is easily displaced by new natural gas supply to a market. When it is displaced from one market, it necessarily has to find an alternative market where it can be used. Therefore, new natural gas supply increases competition within the LNG market, thus reducing gas prices which will flow through to AN costs.
- (c) **Coal gasification requires local coal** – the economics to import coal for gasification do not work (a low cost source of coal is required for gasification and the additional freight and handling involved in importing coal mean it is not a viable source for gasification projects). As China legislates to clean up its air, whilst demand for high quality imported coal may increase as it is a cleaner energy source,

¹ See: <https://www.woodmac.com/news/editorial/is-2019-the-year-of-the-much-talked-about-lng-oversupply/>

² See: <https://oilprice.com/Latest-Energy-News/World-News/Russias-Huge-Natural-Gas-Pipeline-To-China-Nearly-Complete.html>

³ See: <https://www.reuters.com/article/us-china-energy-pipeline-reform/china-plans-new-state-pipeline-company-in-massive-energy-reshuffle-idUSKCN1QG0PE>

⁴ See: <https://www.bloomberg.com/news/articles/2018-11-16/russia-s-11-billion-natural-gas-pipeline-is-primed-to-fuel-europe>

the demand for lower quality local coal (often used in gasification) in China will decline. With less demand for this lower quality coal but no change in the available supply, supply and demand fundamentals suggest the price will decrease, which will flow through to the cost to produce ammonia and then AN.

- 3.6 Separate to the claims made by Orica, Glencore submits that any application of a duty methodology that contains a fixed component of duty (as would apply under the proposed combination method sought by the Applicants) to a product like ammonium nitrate, particularly when that duty is being applied to multiple sources of supply, all of which have a different cost basis that varies independently of the other sources, is wholly inappropriate and would simply serve as an unduly punitive measure that would be disproportionate to any material injury (that we do not believe is capable of being established on the facts).
4. **ADC'S ASSESSMENT OF EVIDENCE AND FACTS FAILS TO CONSIDER THE TOTALITY OF EVIDENCE AND MATERIAL THAT HAS BEEN SUBMITTED BY ALL INDUSTRY PARTICIPANTS**
- 4.1 The preliminary conclusions outlined by the ADC in the SEF and the Notice of Extension suggest that appropriate regard has not been given to the totality of material submitted to the ADC. Glencore is concerned that relevant facts and considerations raised by a number of industry participants have not been given appropriate weight by the ADC throughout the Investigation.
- 4.2 In particular, it would appear that the ADC have placed undue reliance on the submissions made by the Applicants (and particularly Orica) in a manner that is inconsistent with an objective investigation:
- (a) Issues identified in the ADC analysis and conclusions of the SEF have been highlighted by multiple parties. However, counter arguments provided by Orica simply refer back to the SEF as evidence that the ADC's conclusions are correct without providing any additional arguments, analysis or reasoning or in a selective self-serving manner. The ADC has not explained why the view of Orica is viewed as more persuasive than the views submitted by other parties or the extent to which such views have been objectively verified;
 - (b) Orica also place a large degree of reliance on referencing historical trends and links, without providing evidence of those links to future pricing. History cannot be used as a determinant of the future, particularly when a detailed analysis or assessment of relevant market factors as applied to all relevant jurisdictions has not been undertaken and even more so when there are enormous changes occurring in the relevant markets that have never been seen before (e.g. the advent of US shale gas).
- 4.3 Orica's submission fails to address a broad range of important details provided in the additional submissions the ADC has received and does not provide a sufficient factual or legal basis to support the view that the ADC is proposing to adopt. Rather, Orica takes a broad brush approach to try and counter the arguments but relies more on re-asserting previous statements from the ADC than providing any new information. Where new information or explanations have been provided, re-asserting past conclusions without fully considering the implications of all information available does not advance the process.
- 4.4 On this basis, Glencore submits that relevant facts have not been taken into consideration by the ADC. Orica simply asserting that they require additional protection in a rising market does not mean that market will rise. Indeed, Glencore urges the ADC to ensure that it

considers (re-considers) its preliminary conclusions in a manner that is independent and objective having regard to the totality of material before it.

5. CONCLUSION

- 5.1 Glencore remains strongly opposed to the introduction of any duties for the import of ammonium nitrate into Australia, as outlined in our submission dated 17 March 2019. However, should the ADC, after fully addressing the broad range of concerns raised in response to the SEF, still decide to recommend the imposition of dumping duties, then the use of a floor price, appropriately adjusted to account for all the costs and margins incurred when importing) is the only legitimate alternative that can be used.
- 5.2 It must again be noted that it is not the ADC's role to protect an uncompetitive Australian industry from legitimate competitive constraints.
- 5.3 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.

Your sincerely,



Darren Oliver