

GLENCORE

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For public register

12 February 2020

Mr Dale Seymour
The Commissioner
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne
Victoria 3000

By email

Dear Commissioner

Reinvestigation – ADRP Review No. 107 – Ammonium Nitrate exported from China, Sweden and Thailand

1. Introduction and purpose of letter

1.1 We refer to:

- (a) the letter from the Anti-Dumping Review Panel (**ADRP**) to yourself dated 22 November 2019 requesting the reinvestigation of findings made by the Anti-Dumping Commission (**ADC**) in Report No 473 (**REP 473**), in respect of the materiality of injury assessment and the cumulation of exports from Sweden with other exports to Australia (**Reinvestigation Notice**); and
- (b) the Note for File placed on the ADC's public register entitled, 'Meeting with Orica Australia Pty Ltd – 14 January 2020', that reveals that the ADC has requested industry members to provide financial data for the period 1 April 2018 to 30 September 2019 for the purposes of reassessing the materiality of the profit foregone in the post-investigation period (**Note for File**);

1.2 We also refer to the submission made on behalf of Downer EDI Mining – Blasting Services Pty Ltd and Yara AB by Moulis Legal dated 11 February 2020, raising concerns around the extent and nature of information sought by the ADC in undertaking its reinvestigation (**Moulis Submission**).

1.3 Glencore Coal Assets Pty Limited (**Glencore**) similarly wishes to raise a number of matters regarding information sought by the ADC as part of the reinvestigation process for the purposes of the public record.

1.4 As a general matter, we wish to emphasise the importance of conducting the reinvestigation pursuant to the terms of the Notice issued under section 269ZZL of the *Customs Act 1901* (Cth)

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(Customs Act), in accordance with the specific requirements and directions as set out by the ADRP in that Notice and other relevant provisions of the Customs Act.

2. Additional information from outside investigation period is of questionable relevance

2.1 We wish to express some concern over the appropriateness of the ADC requesting financial data for the period 1 April 2018 to 30 September 2019, which is information post-dating the investigation period, from Australian industry members for the purposes of reassessing the materiality of the profit foregone in the post-investigation period.

2.2 Whilst we recognise that the Reinvestigation Notice indicates that the ADC should, '*...examine the profit foregone in the investigation period and profit foregone in the post-investigation period, as separate injury factors*', there is no specific or explicit direction to obtain information that did not form part of the original record or go beyond information that formed the basis of the original analysis that was conducted in respect of this issue. It also remains unclear why the necessary information was not obtained from the industry members by the ADC during the initial investigation.

2.3 The questionable basis as to the validity of post-investigation period profits as a relevant factor to the assessment of materiality of injury heightens our concerns around the legitimacy of seeking additional information that is not part of the original investigation or ADRP record in respect of profits allegedly foregone in the post-investigation.

3. Opportunity for interested parties to be heard on additional information

3.1 We also wish to remind the ADC of its obligation to set out any evidence or material on which any new findings or finding from the reinvestigation are based.

3.2 If, despite the matters raised in the Moulis Submission and those outlined above, the ADC relies on any additional information or material that was not relied on in the initial investigation and does not form part of the current ADRP record, that should not occur without Glencore (or other interested parties) being given an opportunity to comment on the veracity of that information or material and the way in which it has been used by the ADC as part of any analysis linked to the investigation.

As a number of findings in REP 473 remain under review, we trust that the ADC will conduct its reinvestigation in a manner that is consistent with the Reinvestigation Notice and its obligations under the Customs Act.

Yours sincerely,



Darren Oliver
Glencore Coal Assets Australia Pty Ltd