

20 March 2020

The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Email: investigations2@adcommission.gov.au

PUBLIC FILE

Dear Sir/Madam

Anti-Dumping Commission Reinvestigation No. 473 – Ammonium nitrate exported from The People’s Republic of China, Sweden and the Kingdom of Thailand

A. Executive Summary

Orica Australia Pty Ltd (“Orica”) agrees with the preliminary findings of the Anti-Dumping Commission (“the Commission”) concerning its Reinvestigation into certain matters required by the Anti-Dumping Review Panel (“ADRP”) that relate to the materiality of injury and the cumulation of injury involving ammonium nitrate (“AN”) exports to Australia from Sweden with exports from The People’s Republic of China (“China”) and The Kingdom of Thailand (“Thailand”).

The Commission’s findings concerning materiality and cumulation are the correct and preferred decisions.

Orica reiterates its position that it has sustained injury in the form of price depression, price suppression and reduced profit in the renegotiation of its contract with [*commercially sensitive details concerning AN customer*]. The Commission’s quantification of injury sustained by the AN industry in the investigation and post-investigation periods is understated and does not reflect the significant injury experienced by Orica for the supply of AN to [*customer*].

B. Reinvestigation Report No. 473

(i) *Injury quantification*

Reinvestigation Report 473 (“the Report”) details the Commission’s request of the applicant Australian AN manufacturers to provide updated financial data to 30 September 2019. Orica provided the requested data, including for the post-investigation period. Section 2.2 of the Report details the basis for the Commission’s quantification of the effect of the dumping:

*“The Commission quantified the effect of the dumping, which occurred in the investigation period, on the Australian industry’s profit in order to determine whether the resulting injury is material to the Australian industry as a whole. Specifically, the Commission determined the profit forgone in relation to the **examples listed in Section 9.2.1 of REP 473**, and only where there was evidence that pricing or volumes were affected or influenced by the dumped goods exported in the investigation period.” (Emphasis added).*

(ii) *Orica injury*

Orica highlighted with the Commission its concern that injury experienced during the investigation and post investigation periods at a significant account – [customer] – was not included in the injury analysis and quantification. Report 473 acknowledged that injury may be sustained by Orica however as *“this contract is still being negotiated and is yet to be finalised”*¹. It was not included in the Commission’s injury analysis and quantification. Following the Commission’s 3 December 2019 request for updated financial data to 30 September 2019, Orica confirmed [commercially sensitive contract details] resulting in injury to Orica. Orica considers the injury at this account was evident during and post the investigation period, and is a relevant injury example to be included in the Commission’s injury assessment.

The profit impact to Orica on this contract is significant in terms of Orica’s total domestic AN sales volumes and the level of pricing. Orica has quantified the profit forgone in the period post investigation as \$ xxx M to 31 March 2019 and an additional \$ xxx M to 30 Sep 2019. The correct and preferable decision concerning the quantification of injury to the AN industry would include the injury experienced by Orica in the [customer details].

Furthermore, Orica has highlighted with the Commission that dumped imports impact Orica’s profitability not only during the investigation period but beyond that period for the term of the customer agreement. As noted in earlier discussions with the Commission and acknowledged in both the Commission’s Final Report 473 and its Draft Report to the ADRP that customers use competitive tender processes to establish a market price for supply. Once that price is agreed, the impact of dumped imports is in effect locked in for the term of the contract. In the case of Orica’s contract with [contract customer and timing for supply] which goes well beyond the period that the Commission has used to assess injury and amounts to \$xxx m pa over the whole contract term. The Commission has thus taken a very conservative approach to the evaluation of injury from dumped ammonium nitrate into the Australian market.

(iii) *Industry injury understated*

It is Orica’s view that the profit forgone calculations for the investigation and post-investigation periods for the Australian AN industry is understated. The [customer] contract is a high-volume contract that accounts for approximately xxx per cent of Orica’s annual production volumes. The [contract timing] was finalised based upon dumped prices, resulting in price depression, price suppression and reduced profit to Orica. This injury example should, as a minimum, be considered in the post-investigation injury analysis.

¹ Report 473, P.76.

C. Reinvestigation injury methodology analysis

The Commission's reinvestigation analysis is not based upon notional sales information but actual data obtained from the applicant companies. The Commission found that the industry's "aggregated net profit" increased in the post-investigation period although the profit impact of the dumped exports had increased from the level determined during the investigation period (i.e. from 2.2 per cent to 3.6 per cent).

Orica concurs with the Commission's stance in maintaining the methodology from Report 473 in assessing profit forgone. The Commission was requested by the ADRP to examine an alternate methodology comparing the applicants' profitability across the periods. Orica agrees with the Commission's assessment that "*this alternate methodology represents the profit forgone as a percentage point change relative to revenue and therefore trivialises the total loss of profit, **which is in the millions of dollars.***" This latter point is important as dumped imports significantly impact returns in a high value capital investment industry such as this.

The Commission's recommended injury assessment methodology based on profits (as distinct from profitability) is the correct approach in this instance.

D. Cumulation

The ADRP further requested the Commission to examine whether exports from Sweden should be cumulated with other exports to Australia. Orica supports the Commission's finding that exports from Sweden are alike in all respects to exports of AN from China and Thailand, and to the goods manufactured by the Australian industry. Orica agrees that the conditions of competition between the exports from Sweden and those from China and Thailand are such that "*end users are unlikely to discern significant physical or functional differences*" in the sources of supply for AN and that the "*products are highly substitutable and interchangeable*" and that it is "*appropriate to cumulate exports from Sweden with exports from China and Thailand, given that these goods compete mostly on price*".

Orica concurs that it is price that influences the customers decision to purchase the subject goods.

The Commission's determination on cumulating exports from Sweden with those from China and Thailand in its injury analysis is therefore the correct and preferred decision.

E. Recommendations

Orica welcomes the Commission's preliminary findings in Reinvestigation Report No. 473. Orica agrees that the injury experienced by the Australian industry manufacturing AN based upon profits forgone in the investigation and post investigation periods is material in nature and is the correct and preferable decision. Orica further considers that the quantified injury in the post-investigation period is understated and should include injury Orica has experienced in its sales to [customer].

Orica concurs with the Commission's finding that the goods exported from Sweden should be cumulated with exports from China and Sweden due to the conditions of competition evident between the exported goods.

If you have any questions concerning this submission, please contact me on (03) 9665 7309.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Malcolm Hart', with a stylized flourish at the end.

Malcolm Hart
Senior AN Market Manager - APA