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The Director
Investigations 2
Anti-Dumping Commission
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Cc: ADRP@Industry.gov.au

PUBLIC FILE

Dear Sir/Madam

ADRP Review No. 134 – Reinvestigation of findings in Investigation No. 565 – Ammonium nitrate exported from the Russian Federation

I. Context

You will recall that:

- (a) On 17 September 2021 the Anti-Dumping Review Panel (“**ADRP**”) Member wrote to the Commissioner seeking a reinvestigation of certain matters relating to the recommendations contained in Report 565 that was accepted by the then Minister for Industry, Science and Technology (“**the Minister**”);
- (b) The Commissioner was originally required to provide its report (“**Reinvestigation Report**”) to the ADRP by 5 January 2022;
- (c) the Commissioner requested (and the ADRP has approved) an extension of time for the Commissioner to provide the Reinvestigation Report, which is now due on 28 April; and
- (d) the ADRP has invited submissions from interested parties on or before 28 January 2022 pursuant to File Note (EPR Document No. 052).

II. Purpose

The Applicants (namely CSBP Limited, Dyno Nobel Asia Pacific Pty Ltd, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd) (together, the “**Applicants**”) make this further submission in support of the re-investigation of the matters relating to the recommendations contained in Report 565 which the Minister accepted in his decision of 23 May 2021 and which denied the Applicant’s request for a continuation of the anti-dumping measures.

In this submission, the Applicants wish to draw to the attention of the ADRP, comments made by the Senior Member of the ADRP in Reviews 144 and 145 in so far as the Applicants consider these are both relevant and helpful to the issues to be considered in this re-investigation. The Senior Member’s

comments cast doubt about the approach taken by the Commission in relation to the proper test that was applied by the Commission under section 269ZHF(2). Given that the continuation investigations in Consumer and Food Service & Industrial pineapple from the Philippines and Thailand occurred at or about the same time that the Applicants' Continuation Investigation No. 565 into ammonium nitrate exported from the Russian Federation was being considered by the Anti-Dumping Commission ("**the Commission**"), the Applicants submit that the Commission has also inadequately or incorrectly examined the future threat of material injury requirement in its assessment of whether material injury is likely to occur in the absence of measures on ammonium nitrate exported from the Russian Federation.

III. ADRP Investigations 144 and 145

In ADRP investigations 144 and 145, ADRP Senior Member wrote to the Commissioner concerning ADRP Review inquiries into the Minister's decision not to continue anti-dumping measures on Consumer and Food Service & Industrial pineapple exported to Australia from the Philippines and Thailand. Relevantly, the ADRP Senior Member raised concerns about the Commission's comment "*that the threat of future material injury is not part of the test for the continuation of the measures*". The Senior member has written to the Commissioner requesting a number of grounds for reinvestigation in ADRP Review No. 144¹ which includes an assessment of whether the Australian industry is likely to suffer a recurrence of material injury.

In the current ADRP Review (i.e. ADRP Review No. 134) the ADRP Member has requested the Commissioner – insofar as the original negative dumping finding (subject to reinvestigation) impacts the likelihood of injury finding – to reinvestigate "*the finding that the Commissioner is not satisfied that the expiration of the anti-dumping measures would lead, or would likely lead, to a continuation of, or a recurrence of injury*".

The Applicants' note that the ADRP Senior Member stated that he was concerned that the Commission has "misunderstood" the test required in subsection 269ZHF(2). Specifically, the Senior member has stated²:

*"...I am concerned that the Commission, in its approach to the task to be undertaken in a continuation inquiry, may have **misunderstood what is required (emphasis added)**. It is not sufficient simply to consider what has occurred during the inquiry period but based on the material and evidence obtained during the inquiry to consider what is likely to occur if the measures in place are not continued. **This includes a consideration of what hypothetically may happen (emphasis added)**, including any material injury which may occur if the measures are not continued."*

Importantly, the Senior Member also noted:

"A continuation inquiry does include a consideration of hypothetical injury. It is quite possible that the measures in place during the inquiry period are preventing material injury to the Australian industry. After all, that is what is intended by applying the measures the measures and it is contemplated by s.269ZHF(2) in the reference to a recurrence of the material injury."³

In respect of the threat of material injury occurring, the Senior Member confirmed⁴:

¹ The same issue of whether material injury was likely was also a ground for reinvestigation in ADRP Review No. 145.

² ADRP Senior Member letter to Commissioner, ADRP Review No. 144, Paragraph 21.

³ ADRP Senior Member letter to Commissioner, ADRP Review No. 144, Paragraph 16.

⁴ ADRP Senior Member letter to Commissioner, ADRP Review No. 144, Paragraph 17.

*“If there is a threat of material injury recurring if the measures are allowed to expire, then such a threat **must** be considered when conducting an inquiry into whether measures should be continued” (emphasis added).*

IV. ADRP Review No. 134

The Applicants are similarly concerned that, in investigation 134, the Commission may have also misunderstood the test required by s. 269ZHF(2). Specifically, whether – in its assessment of whether material injury is *likely*, should the measures expire – the Commission gave any (or at least any adequate) regard to the threat of material injury to the Australian industry from ammonium nitrate exported to Australia from the Russian Federation.

The likely *threat* of material injury is an important consideration in the likelihood of material injury recurring. The Applicants provided considerable evidence to the Commission of the increased and increasing capacity expansions for ammonium nitrate in Russia and that Russia is the largest exporter of ammonium nitrate globally. Relevant information concerning the capacity to supply of ammonium nitrate from Russia following the expiration of measures was further provided in ADRP Review No.134. These matters are all highly relevant considerations to the threat of material injury in the current reinvestigation. The Commission’s Report 565 stated that it considered that the injury to the domestic industry would be confined to “spot sales” but did not provide any explanation or justification in support of this view, which, against the evidence produced, was not reconcilable.

V. Conclusion

The Applicants are concerned that – as highlighted by the Senior Member in ADRP Reviews No. 144 and 145 – the Commission has misunderstood the test under s.269ZHF(2) as to the likely recurrence of material injury occurring if the anti-dumping measures are permitted to expire on ammonium nitrate from the Russian Federation.

It is clear from the Senior Member’s statements (in ADRP Reviews 144 and 145) that the Commission did not adequately or correctly consider the “threat” of material injury.

The Applicants ask that the Commissioner correctly consider the requirements as required by s.269ZHF(2) and as highlighted by the Senior Member in Reviews No. 144 and 145 (and that the “threat” of material injury recurring) are considered in the reinvestigation into the likely recurrence of material injury.

If you have any questions, please do not hesitate to contact me on (07) 3342 1921.

Yours sincerely



John O’Connor
Representative of Australian Industry Applicant companies

Cc: CSBP Limited
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Orica Australia Pty Ltd
Queensland Nitrates Pty Limited