GLENCORE

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14 July 2022

Mr C Kennedy
Case Manager, Investigations 3
Anti-Dumping Commission
G.P.O Box 2013
Canberra ACT 2601

Dear Cameron,

Investigation 605 - No basis to impose measures on ammonium nitrate from Vietnam, Chile and Lithuania

We write concerning the recent initiation of the investigation regarding dumping allegations concerning imports of ammonium nitrate from Chile, Lithuania and the Socialist Republic of Vietnam.

Glencore Coal Assets Australia (**Glencore**) considers the application for this investigation to be opportunistic. Evident from the materials in the application and the consideration report is the fact that import volumes from the subject countries have fallen significantly. At present, we understand that Chile is entirely sold out of capacity, Vietnam is favouring other markets that have opened up as a consequence of the Russian invasion into Ukraine, and that Lithuanian exports are largely tied by contract to African and Latin American markets. So what purpose does this investigation serve other than slamming the door on any possible future import competition? We see no compelling rationale to protect the Australian Industry in the manner that they have requested.

The Consideration Report estimates that the size of the Australian market was some 2.5 million tonnes in 2021. If this holds, total imports over this period were merely 2.95% of the market. Imports from the subject countries were only 1.8%. This means that the Australian industry represented some 97.25% of all sales in the Australian market in that year, excluding whatever proportion of imports industry itself is responsible for.[1] In the investigation period, imports have fallen even further. If the figures in the application are correct, imports from Chile represent 0% of the market, imports from Vietnam 0.26% of the market and imports from Lithuania 0.79% of the market.

In this context, we do not understand how the Australian industry can, while maintaining a straight face, argue it has been materially injured by the allegedly dumped imports. If the

[1] The Australian industry's proclivity toward importing AN itself has been well established in previous investigations. The most recent example is in the Preliminary Reinvestigation Report Reinvestigating Certain Findings in Report No. 565 notes that since FY 2016 the Australian industry has been responsible for between 37% and 60.3% of total ammonium nitrate imports.

Australian Industry are alleging that 97.25% of the market is being materially impacted by 1.05%, that allegation should be supported by a clearly articulated logic. No such logic is articulated in the application. Instead, all that is presented is pearl-clutching and hand wringing about the supposedly ruinous impact of a small, and diminishing, volume of imports.

On the face of the record, the injury argumentation makes no sense. The Australian industry argues that to "avoid the loss of sales volume and market share" they must lower prices. As a starting proposition, this rationale is flawed. By selling more units, the marginal cost of production for each unit should decrease, meaning a lower price can be charged whilst increasing profitability. So there is an incentive to sell higher volumes, even if those volumes are at lower prices. This is year-one economics.

That stated, the information in the application indicates that the Australian industry's sales volumes actually *increased* by 10.7% between 2020 and 2021 *while its prices also increased*. Contemporaneously, imports from the subject countries have almost halved. So, their rationale is not evidenced, nor is it cogent.

The Consideration Report cites price suppression, reduced profit and reduced profitability as the relevant injury, based upon a linear comparison of average prices with average costs. This is answered by the Commission's previous findings that:

> *…the majority of the applicants' sales during the investigation period were made in accordance with contracts negotiated several years prior to the investigation period… Therefore, the applicants' selling prices and volumes observed during the investigation period mostly reflect the contract terms, including prices and volumes, negotiated and agreed to before the investigation period.*[2]

The Australian industry has indicated these long-term contracts represent approximately 95% of their sales. The "price suppression" referred to in the Consideration Report is merely reflecting the terms of these agreements. If there is any lag between the changes in cost and price, that would be because of the pricing mechanisms built into the contracts, rather than any impact of the imported goods.

The Australian industry's position appears to boil down to the argument that they could have been *more* profitable in contracts negotiated during the investigation period. Note the argument is not that those contracts are not profitable, nor that the Australian industry is unprofitable, merely that the process of negotiation requires the Australian industry to offer prices acceptable to their customers. The very concept that the applicants could have negotiated higher prices in certain negotiations is pure speculation and should be treated as such.

[2] *Report 473 Ammonium Nitrate – China, Sweden and Thailand*, page 69.

In the application, the Australian industry has included 5 examples of contract negotiations, which it says were impacted by the targeted imports. Glencore has the following concerns in this regard:

- the contracts are said to relate to the period 2019 through to 2021. The investigation period is 1 April 2021 to 31 March 2022. Dumping needs to be determined in the investigation period. Determination of dumping regarding goods exported to Australia before the start of the exportation period is not permitted.[3] It is unclear which (if any) of these five negotiations occurred during the investigation period. So we are afforded no understanding of the detail of how and why injury was said to have been caused to the Australian industry.

- compounding this, interested parties, outside the applicants for the investigation, have NO insight into any of the detail of the negotiations cited in the application. The Australian industry's allegations need to be tested. That cannot be done without interested parties being given greater detail regarding what the allegations actually are. Allegations are not a sufficient basis for an injury determination.[4]

- significantly, if the applicant's injury allegations are based solely on negotiations they say were impacted by dumped imports, the other parties to those negotiations need to be given the opportunity to make submissions. At present, it is impossible to identify the barest minimum detail of those negotiations. So other negotiating parties cannot submit countervailing information nor make substantive submissions to the Commission. To us, it would be wildly irrational to consider the outcome of a negotiation as being injurious to the Australian industry based only on the Australian industry's allegations.

- at present there is no consideration regarding what other factors may have influenced the Australian industry's pricing. A negotiation requires at least two parties, each with their own goals and motivations. For example, despite their rancour around imports, the Australian industry's biggest competitors are its own members. The idea that competition between the Australian industry would not impact prices is both fanciful and contrary to various provision of the *Competition and Consumer Act 2010.* This needs to be examined.

There is an abject and regrettable lack of transparency regarding exactly what "injury" the applicants consider they have suffered as a result of the alleged dumping. Objectively, we do not understand how 1.05% of the market could be said to materially injure an industry

[3] Of course, once set s 269TC(5A) prevents the Commissioner from varying the length of the investigation period.
[4] Section 269TEA(2AA).

that represents at least 97.25% of the same market. None of the information on the public record makes a compelling case for tariff protection for that 97.25%

Interested parties' have the right to make submissions to the Commission. If the Australian industry continues to maintain that it has suffered material injury, we trust that the basis for these allegations will be clearly explained and transparently substantiated on the public record by 15 July 2022. Failure to properly substantiate the injury claims would prejudice the rights of interested parties to make submissions for consideration by the Commission when it is formulating the Statement of Essential Facts for this investigation.

If this cannot be achieved the injury determination could only be based on allegations, rather than fact. As a result, the investigation would need to be terminated.

Yours sincerely

Darren Oliver
Glencore Coal Assets Australia Pty Ltd