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

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Public File

Dear Sir/Madam

Investigation No. 605 – Ammonium Nitrate exported from Chile, Lithuania and Vietnam – Submission by Whitehaven Coal

I. Executive Summary

We refer to the submission by Whitehaven Coal Mining Limited (“Whitehaven”) of 29 July 2022. The Applicant Industry¹ rejects Whitehaven’s generic claims concerning the absence of material injury, the suggested negligible market share for the injurious imports, the claimed minimal impact of the dumped imports on industry negotiations, and that the nature of contracts that include variances for changes in raw material prices as having a greater influence on industry economic performance than the impact of the dumping.

Relevantly, it is noted that the Whitehaven submission fails to acknowledge the existence of the dumping from the countries the subject of investigation – Chile, Lithuania and Vietnam – and the consequential impact of the dumping on the economic performance of the Australian industry.

For these reasons, the Whitehaven assertions are speculative and ignore the material cause of injury to the Australian industry throughout the investigation period.

II. The Whitehaven claims

(a) Period of investigation

Whitehaven suggests that it does “*not consider there to be an appropriate factual basis to ascertain that injury has been caused by the relevant imports*”. Whitehaven is, of course, entitled to its own opinion but it is not privy to the relevant injury examples of lost sales volumes and price-effect injury as demonstrated by the Applicant industry.

The Australian industry application demonstrated injury that occurred during the investigation period that can be attributed to the dumping of exports from Chile, Lithuania and Vietnam. In its application, the Applicants demonstrated that the dumped imports accounted for approximately 72 per cent of

¹ Comprising CSBP Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd.

total ammonium nitrate imports during the prior twelve-month period (i.e. to December 2021). The application further demonstrated the injury caused during the investigation period and cited a number of examples of lost sales and/or price impacts from the nominated sources.

Importantly, the injury sustained in the investigation period (of Investigation No. 605) is greater than the material injury sustained in the twelve-month investigation period in Investigation No. 473 where the dumped imports accounted for approximately 50 per cent of total imports.

(b) Market share of imports

Whitehaven would be appraised of the legislative requirements concerning the level of imports that may be actioned in a dumping investigation (Section 269TDA (3) & (4) of the *Customs Act*). The relevant provision relates to the total volume of imports in the investigation period and not the share of the domestic market held by the dumped imports.

Previous investigations (including Investigation No. 473) have found that import volumes that account for a comparably small share of the Australian market can have a significant detrimental impact on the economic performance of an industry. That is due to the impact of the dumping having a pervasive affect across the total customer base for ammonium nitrate in Australia. The alternative to domestic supply is import supply and customers are attuned to the most recent sources of supply and pricing during the negotiation process. It is therefore incorrect to dismiss the impact of injurious dumping based upon the market share held by the dumped imports.

In this instance, the share of the dumped imports as a percentage of the total volume of imports (approximately 72 per cent) is significant. The sources of supply in the current investigation have displaced the injurious imports sources in Investigation No. 473 and now represent the major sources of import supply for ammonium nitrate into Australia as reflected in the trade statistics.

Whitehaven has sought to downplay the import volumes from the subject countries as minimal when the impact from the dumping is not insignificant, not insubstantial and not immaterial in nature.

(c) Material injury must be based on facts

The Applicants agree with Whitehaven's comments that the Minister's decision to impose measures must be based on positive evidence and not based on mere speculation or conjecture. The Applicants consider that they have demonstrated that the impact of the injury caused by the dumping is material in nature and has had a demonstrable impact on the economic performance of the industry.

The Applicants are satisfied that the Anti-Dumping Commission ("the **Commission**") and the Minister will examine injury in the current investigation consistent with the material injury provisions within Section 269TAE.

(d) Ammonium nitrate supply

Whitehaven's submission contends that "*contract negotiations concerning a bundle of goods and services are not particularly relevant to this investigation into the pricing of ammonium nitrate imports*". This assertion is entirely misleading and fails to accurately reflect the inter-relationship between of the price of ammonium nitrate and the supply of 'down-the-hole' blasting services.

Ammonium nitrate accounts for approximately [percentage amount] of the total value of a down-the-hole services contract. As such, it represents a significant proportion of the total value of the contract and any opportunity to secure a reduced selling price for ammonium nitrate represents a significant benefit to the customer (and to the exporter of the dumped goods). Additionally, a number of contracts do include separate details as to the price of the ammonium nitrate to be supplied across the period of the contract.

Providers of blasting services (which do not have their own ammonium nitrate manufacturing facilities) exploit opportunities to obtain dumped ammonium nitrate and use these prices to gain advantage in securing contracts for the supply of goods and services in the mining sector. It is therefore vital to consider the ammonium nitrate price when offered as a bundled offer, as it is not only influential but offers the provider with a considerable economic advantage.

It is therefore misleading to conclude that the price of ammonium nitrate in a contract for supply – whether it be purely for ammonium nitrate or in a bundled contract – does not represent a significant influencing factor in the contract negotiations.

(e) Contractual terms

It is further suggested by Whitehaven that the price suppression experienced by a member of the Australian industry could be attributed to the rise and fall provisions contained in contracts. These provisions relate to the raw material input prices in the manufacture of ammonium nitrate that fluctuate dependent upon demand and supply.

The Applicants submit that exports at dumped prices occur irrespective of the fluctuations in raw material ammonia supply. The Commission will assess what dumping from Chile, Lithuania and Vietnam has occurred across the investigation period and the consequential impact of that dumping on the contractual negotiations and spot market in Australia. The rise and fall of the price of ammonia in the contracts can be considered a constant – whereas the price of the dumped ammonium nitrate will have a price suppression impact across the life of the contract (or for the price of supply of the spot tonnes purchased).

The Applicants therefore reject Whitehaven's suggestion that the contractual terms have an impact on outcomes that detract from the impact of the injurious dumping.

(f) Other factors

We note Whitehaven's statements about the impact of other potential influences on the Australian industry's supply of ammonium nitrate. Whitehaven's comments, fail to address the manner in which the dumped imports from Chile, Lithuania and Vietnam have displaced previous supplies from China, Sweden and Thailand (Investigation No. 473) and have filled the supply gap of dumped exports the subject of measures following Investigation No. 473.

Whitehaven has also commented on the competition between Australian industry members for the supply of ammonium nitrate. Contrary to Whitehaven's assertions, imports of ammonium nitrate continue to be attractive to explosives manufacturers confirming the existence of a commercial advantage through the purchase of ammonium nitrate at dumped prices.

(g) Threat of injury

Whitehaven's submission contends that the Australian industry is "likely" at full capacity. This assertion is incorrect and must be treated as mere conjecture on the part of Whitehaven.

In commenting on the threat of future imports at dumped prices, Whitehaven notes:

"... that the Applicants' ability to adjust prices under long-term contracts is a factor reducing the relevance of dumped imports from the subject countries during tender negotiations".

This statement highlights the significant impact of prices for imported ammonium nitrate at dumped prices on long-term contracts. The availability of dumped imports at a time coinciding with a contract negotiation will impact the negotiation outcome for a significant period (Typically 3 or 5 years duration). This will have a consequential injurious impact on the ammonium nitrate price for the term

of the contract, resulting in longer-term injury to the industry (i.e. a future threat of injury in the absence of anti-dumping measures).

Whitehaven's claims about an absence of a future threat of material injury from dumped exports from the nominated countries cannot be sustained and should be disregarded by the Commission.

III. Conclusions

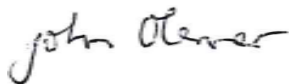
The Whitehaven submission has urged the Commission to exercise care in its assessment of material injury to the Australian industry in the current investigation. Whitehaven has failed to demonstrate that the imports of ammonium nitrate from nominated countries were not at dumped prices during the investigation period and were not responsible for injury caused and sustained by members of the Australian industry manufacturing like goods.

The Applicants demonstrated in the application for measures that the exports from the nominated countries had replaced the supply of dumped imports the subject of Investigation No. 473. The dumped imports in this investigation accounted for approximately 72 per cent of total imports into Australia in 2021 and satisfy the requirements of subsections 269TDA(3) & (4) and are not considered negligible.

The impact of the subject imports on the Applicant Industry's economic performance is greater in the 2021/22 investigation period than in Investigation No. 473 and demonstrates the injurious nature of the dumping from these new sources of supply following the imposition of measures following Investigation No. 473. The injury sustained by the Applicant Industry in the investigation period is material and is supported by the evidence provided in the Industry Application. The matters raised by Whitehaven concerning certain other factors impacting this injury do not detract from the materiality of the injury caused by dumping from the nominated countries.

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

Yours sincerely



John O'Connor
On behalf of the Applicant Industry

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