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21st October 2019

Ms Lenora Blumberg
Panel Member
Anti-Dumping Review Panel
GPO Box 2013
Canberra City ACT 2601

Email: ADRP@industry.gov.au

Public File

Dear Mrs Blumberg,

I. Recommendation

Queensland Nitrates Pty Limited ("QNP") acknowledges the appeals of the Minister's decision dated 3 June 2019 in respect of ammonium nitrate ("AN") exported from The People's Republic of China ("China"), Sweden and The Kingdom of Thailand ("Thailand") by Yara AB, Downer EDI Mining Blasting Services Pty Ltd and Glencore Coal Assets Australia Pty Ltd. QNP has further reviewed the conference summary notes of 4 September 2019 published following a telephone conference conducted by the ADRP panel member and representatives from the Anti-Dumping Commission ("the Commission") and the appellant parties.

The Commission has detailed its calculations of profit forgone as a direct consequence of the dumped imports from China, Sweden and Thailand that forms the basis of its conclusion that the Australian AN industry has suffered injury that is material (i.e. not immaterial, insubstantial or insignificant) during the investigation period. QNP agrees with the Commission's conclusion that the calculated profit forgone is a conservative estimate of material injury experienced by the Australian industry.

QNP contends that the conservatively estimated injury to the Australian industry represents a solid foundation for the Minister to be satisfied that the dumped imports from China, Sweden and Thailand was material in nature, and is the correct and preferable decision. QNP therefore requests the Panel member to affirm the Minister's decision published on 3 June 2019 to impose anti-dumping measures on exports of AN to Australia from China, Sweden and Thailand.

II. Investigation 473

QNP is a manufacturer of AN produced at its Moura, Queensland production site. QNP is an Australian industry co-applicant that requested the imposition of anti-dumping measures on exports of AN from China, Sweden and Thailand in April 2018.

By notice published on 25 June 2018, the Commission commenced an investigation into the allegations of the Australian industry manufacturing like goods that AN exported from China, Sweden and Thailand were at dumped prices and the dumping had caused material injury to the Australian industry.

The Commission's findings as accepted by the Minister for Industry, Science and Technology ("the Minister") were published in Report No. 473 ("Report 473"). The Commission's investigations established:

- exports of AN from China, Sweden and Thailand were at margins of dumping of 39.3 per cent, 51.1 to 61.3 per cent, and 32.7 per cent respectively;
- material injury to the Australian industry in the form of price depression, decreased profit and profitability, and loss of sales volumes (lost contracts) has been or is being caused by the dumped exports from China, Sweden and Thailand; and
- the Commissioner was satisfied that the dumping would continue and cause material injury to the Australian industry manufacturing like goods.

The Commissioner recommended that measures be imposed on all exports of AN from China, Sweden and Thailand. The Minister accepted the Commissioner's recommendations. The Minister's decision was published on 3 June 2019.

III. Applications for Review

Applications for review of the Minister's decision to impose anti-dumping measures on exports of AN from China, Sweden and Thailand were made by:

- Yara AB ("Yara");
- Downer EDI Mining Blasting Services Pty Ltd ("DBS"); and
- Glencore Coal Assets Australia Pty Ltd ("Glencore").

Prior to the public notification of the Anti-Dumping Review Panel ("ADRP") review inquiry on 20 September 2019, the ADRP Panel member conducted on 4 September 2019 a telephone conference of the review applicants (i.e. representatives for Yara, DBS and Glencore) and representatives from the Anti-Dumping Commission ("the Commission") to obtain further information concerning the finding relating to materiality of injury in Investigation 473. The telephone conference was also an opportunity for the appellant parties to inquire of the Commission any clarifications or information in relation to their respective grounds of appeal.

IV. Materiality of injury

The ADRP Conference Summary of 4 September 2019 details the Commission's response to four questions concerning the determination of profit forgone by the Commission in its "but for" injury analysis in Report 473. QNP has reviewed the Commission's detailed explanation and the written responses of the appellant parties concerning the Commission's detailed explanation.

It is evident from the appellant parties' representations that the parties are challenging the Commission's assessment of the material nature of the injury (as calculated on a profit forgone basis) experienced by the Australian industry during the investigation period.

The Commission established (and the Minister accepted) that the Australian industry had experienced material injury from dumping during the investigation period. The Commission's assessment of injury to the Australian industry examined thirteen examples of price undercutting that the Australian industry applicants had identified during the investigation period. The Commission found that seven of the contracts confirmed price and/or volume impacts from the dumped exports from China, Sweden and Thailand. Contracts for the supply of AN are often for periods between two and five years, are negotiated over extended periods that often precede and sometimes extend beyond the date of expiry and, typically, reference alternate options for supply.

It should be noted from the outset that most large negotiations (including price resetting of existing contracts) are long-term in nature (i.e. often up to five years) with negotiations commencing at least one year prior to the period of supply. The contract negotiations are often protracted and call upon available market data (including to a large

extent the only publicly available data – import pricing). Further, once a contract is agreed, the impact of that negotiated contract extends for the full contract period. It should also be understood that the transparency of import prices combined with customers' knowledge of market conditions (including recently agreed contract negotiations across the industry) continue to impact future contract outcomes for extended periods. For example, the Commission has noted that some contract negotiations preceded the import of the dumped exports from China, Sweden and Thailand. This would be expected as the negotiations for supply would have occurred at customers where contracts were due for renewal well in advance of the actual arrival of the dumped AN imports. Similarly, the presence of the dumped imports during the investigation period (peaking in the quarter post the investigation period) is supportive of the evidence that the impact of the dumped pricing extends for periods well in advance and post the investigation period.

QNP notes that the Commission examined seven customer negotiations involving QNP (refer Section 9.2.1 of Report 473). The Commission determined that QNP had experienced injury from the dumped exports in four of the contract negotiations. QNP does not agree with the Commissioner's conclusions in two of the three contracts (i.e. Examples 11 to 13) where injury from dumping was not found as in each instance, the alternative source of supply (including the extension of an existing contract where the loss of volume represents revenues and profit forgone) was from dumped imports from China, Sweden and Thailand. The excluded injury examples cannot simply be discounted due to the customer being a regular importer of AN or that there exists an ammonia rise and fall adjustment in the contract. The key consideration is whether the alternate source of supply is a price based upon dumped supply or some other price. In each example, the alternate source of supply was from dumped prices that accounted for more than 50 per cent of imports during the investigation period.

In QNP's view the two excluded contracts – in addition to the positive evidence relied upon by the Commission in the four contracts – demonstrate injury to QNP from dumped exports from China, Sweden and Thailand.

Nevertheless, the Commission's identified contracts where it was satisfied that the Australian industry suffered injury from the dumped imports is, in QNP's view, representative of the impact across the broader AN market for renegotiated contracts that were undertaken prior to, during and, post the investigation period. Therefore, the profit forgone as calculated by the Commission and determined to be material (i.e. not immaterial, not insignificant and not insubstantial) is considered to be understated due to the pervasive impact of dumped prices across the whole of the AN market (for a period extending prior to and post the investigation period).

QNP also notes that the Commission has stated in its submission to the ADRP conference on 4 September 2019 that the actual profit forgone calculation is lower than the decline in profit as presented in Tables 11 and 12 on Page 63 of Report 473 had the profit numbers been extrapolated beyond the investigation period.

The conservatively determined profit forgone estimate for the AN industry was calculated by the Commission on an annualised basis. QNP observes that the calculated profit forgone component for post the investigation period was greater than during the investigation period – this would be expected given the nature of the negotiations that occurred prior to the actual importations of the dumped goods during the investigation period (peaking in the quarter post the investigation period).

The Commission's finding that the injury assessed as profit forgone during the investigation period is the correct and preferable decision. QNP agrees with the Commission's assessment that the profit forgone calculation represents a conservative estimate. It is QNP's view that the actual profit forgone is significantly greater than that calculated by the Commission when the pervasive impact of dumped prices is considered across the broader AN market (including for contracts that were due for re-negotiation post the investigation period).

V. Cumulation and regional injury

Yara has contended that its exports were supplied to a single customer in the Australian market and that any impact from its exports is isolated. This claim is flawed and incorrect. The pricing of the imports was publicly available, included in the only available published benchmark pricing data (i.e. import statistics) and would have been used by DBS in representations to existing and prospective customers (including mining customers or other

service providers, all of whom are or could be direct customers of the domestic AN industry) as competitive pricing that DBS could achieve/deliver as part of its value proposition. QNP therefore agrees with the Commission's assessment in this regard that the Australian importer of the Yara exports has "on-sold the goods to other entities within the market" thereby impacting the broader AN market.

The Commission's conclusions concerning the availability of the Swedish imports from Yara are consistent with QNP's understanding that the importer had offered the imported goods for supply to a range of entities.

Glencore has contended (Ground 7 of its appeal) that the Commission "erred in finding that it cannot 'carve out' certain states from the dumping duty notice. In light of the evidence that there was no material injury from dumped imports in NSW or the Pilbara, the Minister should have exempted exports to those markets from the dumping notice." The Commission did not conclude that there was no injury to the Australian industry in NSW or the Pilbara. The Commission concluded that the Australian industry "as a whole" had suffered from injury that was material during the investigation period. The injury analysis involved markets that may be described as regional based upon location, however, the Commission's analysis involved the total Australian AN market. The Commission has indicated that there is no mechanism¹ within the *Dumping Duty Act* that permits the Minister to apply measures on a state-by-state basis. The imposition of measures (as suggested by Glencore on a state basis) is a different consideration to analysing injury to an Australian industry on a regional basis.

Further, QNP considers Glencore's claims that the impact of the Swedish imports is isolated is false. Glencore use this pricing across all states in which they operate to leverage negotiations. Beyond that, the pricing forms part of published data used by all in leveraging pricing negotiations.

VI. Affirmation of Minister's Decision

QNP requests the ADRP to affirm the Minister's decision to apply anti-dumping measures on AN exported from China, Sweden and Thailand as detailed in the Commissioner's recommendations in Report No. 473.

If you have any questions concerning this submission, please do not hesitate to contact me on (07) 4997 5100 or QNP's representative Mr John O'Connor on (07) 3342 1921.

Regards



David Armstrong
General Manager

¹ Report No. 473, P.91.