



ADRP Conference Summary

2019/107 - Ammonium Nitrate exported from the People's Republic of China, Sweden and the Kingdom of Thailand.

Panel Member	Leora Blumberg
Review type	Review of Minister's decision
Date	18 May 2020
Participants	Justin Wickes and Jasna Halilovic (Anti-Dumping Commission)
Time opened	3:00pm AEST
Time closed	3:25pm AEST

Purpose

The purpose of this conference was to seek clarification and further information from the Anti-Dumping Commission (“ADC”) in regard to the written submission of Orica Limited (“Orica”) relating to the conference held on 11 May 2020.

The conference was held pursuant to section 269ZZHA of the *Customs Act 1901*.

In the course of the conference, I may have asked the ADC to clarify an argument, finding, conclusion or specific detail contained in REP 473 or the Reinvestigation Report. The conference was not a formal hearing of the review, and was not an opportunity for the ADC to argue their case before me.

I have only had regard to information provided at this conference as it relates to Orica and “the reassessment of the materiality of injury with regard to profit foregone” in the report provided under section 269ZZL(2). Any conclusions reached at this conference are based on those clarifications. Information that relates to some new argument not previously set out in REP 473 or the Reinvestigation Report is not something that the ADRP has regard to, and is therefore not reflected in this conference summary.

Discussion

1. In Section III of Orica’s written response relating to the conference of 11 May 2020 Orica states:



Australian Government

Anti-Dumping Review Panel

“The Commission in Report 473 identified that the contract with the customer contained a feature that was being negotiated that allowed for the variation of the contract price in certain circumstances (based, in part, upon import prices) (“relevant provision”). However, it took the view that the injury experienced should not be taken into account, on the basis that the contract between Orica and [REDACTED] (which contained the relevant provision demonstrating material injury) had not yet been executed and was therefore treated as outstanding at the time of finalization of its report (at [9.2.1] Example 8).

The Commission in its Reinvestigation Report at 2.2.2.1 stated that it did not “have any information to establish whether this price-variation provision has been included in the finalised contract”. This is incorrect. Orica informed the Commission at a meeting on 14 January 2020 that the contract, containing the relevant provision [REDACTED] [REDACTED] and confirmed this in its submission to the Commission dated 20 March 2020. Thus the final executed agreement with [REDACTED] has the effect of reducing Orica’s contracted price for ammonium nitrate, to the extent that [REDACTED] [REDACTED] [REDACTED]. [emphasis added]

The ADC is requested to comment on the underlined portion of Orica’s submission.

See ADC’s written response in Attachment A.

2. If Orica is correct in its contention that it provided the information to the ADC establishing that the price-variation provision was included in the final contract, the ADC is requested to comment on the effect of this clarification on its finding relating to Orica’s claim that the estimate of the profit foregone does not take into consideration the example pertaining to Orica’s negotiations to supply a particular customer. In providing its response the ADC is requested to comment on the significance (if any) of the [REDACTED] [REDACTED].

See ADC’s written response in Attachment A.



2019/107 Ammonium nitrate
Written response to discussion points

1. In Section III of its written response relating to the conference of 11 May 2020 Orica states:

“The Commission in Report 473 identified that the contract with the customer contained a feature that was being negotiated that allowed for the variation of the contract price in certain circumstances (based, in part, upon import prices) (“relevant provision”). However, it took the view that the injury experienced should not be taken into account, on the basis that the contract between Orica and [REDACTED] (which contained the relevant provision demonstrating material injury) had not yet been executed and was therefore treated as outstanding at the time of finalization of its report (at [9.2.1] Example 8).

The Commission in its Reinvestigation Report at 2.2.2.1 stated that it did not “have any information to establish whether this price-variation provision has been included in the finalised contract”. This is incorrect. Orica informed the Commission at a meeting on 14 January 2020 that the contract, containing the relevant provision [REDACTED] and confirmed this in its submission to the Commission dated 20 March 2020. Thus the final executed agreement with Orica’s [REDACTED] has the effect of reducing Orica’s contracted price for ammonium nitrate, to the extent that [REDACTED].

[emphasis added]

The ADC is requested to comment on the underlined portion of Orica’s submission.

ADC response

The Commission was not provided with a copy of the finalised contract nor any workings of the price variations. The Commission also has no information to determine the nature of the finalised price-variation provision and whether it takes into consideration import prices, or other factors, in varying prices.

2. If Orica is correct in its contention that it provided the information to the ADC establishing that the price-variation provision was included in the final contract, the ADC is requested to comment on the effect of this clarification on its finding relating to Orica’s claim that the estimate of the profit foregone does not take into consideration the example pertaining to Orica’s negotiations to supply a particular customer. In providing its response the ADC is requested to comment on the significance (if any) of the [REDACTED].

ADC response

As noted in section 2.2.2.1 of the reinvestigation report, even if the price-variation provision was included in the finalised contract as claimed by Orica in its submission, the prices would not be affected by dumping in the investigation period. According to Orica, the price variations ([REDACTED]) came into effect after the investigation period (1 April 2017 to 31 March 2018) and the variations would have occurred from [REDACTED]. The Commission cannot link the claimed price variations [REDACTED] to dumping from China, Sweden and Thailand during the investigation period.