



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 | 5 May 2020 |
| Participants | Justin Wickes and Jasna Halilovic (Anti-Dumping Commission) |
| Time opened | 2:00 pm AEST |
| Time closed | 2:45 pm AEST |

Purpose

The purpose of this conference was to seek clarification from the Anti-Dumping Commission (“ADC”) and a better understanding of the reasons for the finding relating to “the reassessment of the materiality of injury with regard to profit foregone”, in the report of the Reinvestigation of Certain Findings in REP 473 (“Reinvestigation Report”).

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 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 “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

The specific information or clarification that the Review Panel sought from the ADC in this conference related to the ADC’s reasons for the finding relating to “the reassessment of the materiality of injury with regard to profit foregone”, in the Reinvestigation Report:



Australian Government
Anti-Dumping Review Panel

1. The ADC is requested to explain the reasons for the conclusion that, “having regard to both the profit foregone in the investigation period and post-investigation period, the Commission considers that the injury caused by the dumped imports is material to the Australian industry” [emphasis added]. It should be noted that the request for clarification relates only to the ‘materiality’ aspect of the finding (quantitatively and /or qualitatively) in regard to the Australian industry applicants and not to the applicability of the finding to industry “as a whole”.

In providing the reasoning of its analysis referred to above, the ADC is requested to:

- i. Set out how it came to the conclusion that the injury was “material”, bearing in mind that in REP 473 the assessment of materiality was based on the aggregated figure of the profits foregone in the investigation period (“IP”) and the post- investigation period (“post-IP”) as a percentage of the Australian industry applicants’ profit in the IP (calculated as being 6.2 per cent, per Confidential Attachment 17), while in the reinvestigation the profits foregone in the IP and the post- IP were disaggregated and the assessment of materiality was based on percentages of 2.2 per cent for the IP and 3.6 per cent for the post-IP. In this regard further clarification is requested as to whether the analysis of materiality was based on examining the reinvestigated IP percentage and the post IP percentage separately, or as a trend or whether the two percentages were ‘annualised’ by aggregating the dollar amounts of profit foregone in the IP and post- IP as a percentage of the dollar amounts of the sum of the Australian industry applicants’ aggregated profits in both the IP and post-IP.

[See ADC’s written response to this clarification request, which was presented at the conference, attached to this conference summary as Attachment A.](#)

- ii. Provide a step by step narrative of how the data reflected in Table 2 (as derived from Confidential Attachment 1) of the Reinvestigation Report (which includes the updated post-IP data provided by the industry applicants during the reinvestigation), supports the ADC’s reinvestigated finding of materiality of injury.



Australian Government

Anti-Dumping Review Panel

[See ADC's written response to this clarification request, which was presented at the conference, attached to this conference summary as Attachment A.](#)

- iii. Provide an explanation of how the ADC took into consideration in its analysis of 'materiality' of injury its new finding that the aggregated net profit of the three Australian industry applicants actually increased in the post-IP. In this regard the ADC should elaborate on how this increase in profits was factored into the analysis, and the ADC's resultant conclusion of materiality of injury.

[See ADC's written response to this clarification request, which was presented at the conference, attached to this conference summary as Attachment A.](#)

- iv. Provide an explanation of how the ADC came to the conclusion that, "regardless of the calculation used to quantify the materiality of the profit forgone (whether it is expressed as a percentage of the Australian industry's profit or a percentage point change in profitability), the absolute profit forgone determined in the investigation period and the post-investigation period (in the millions of dollars) is material". [emphasis added] In particular, an explanation is requested with regard to the finding that the absolute profit foregone (described as, "millions of dollars") is material, as it appears to have been examined in isolation in coming to this particular conclusion, without any reference point of comparison.

[See ADC's written response to this clarification request, which was presented at the conference, attached to this conference summary as Attachment A. In response to the Reviewing Member \("RM"\) requesting further clarification, the ADC Representative \("AR"\) acknowledged that it was necessary for the absolute profit forgone dollar amount to be examined in the context of the Australian industry's aggregated profit and not in isolation. The AR submitted that the ADC had already found that to be material.](#)

2. The ADC is requested to explain the reasons for coming to the conclusion in the Reinvestigation Report that the injury to the Australian industry caused by dumping, "is greater than that likely to occur in the normal ebb and flow of business". In so doing, the ADC is particularly requested to:



Australian Government

Anti-Dumping Review Panel

- i. Provide details in narrative form of its quantitative or qualitative assessment in coming to this conclusion.
- ii. Provide an explanation of its analysis in making the following finding:
- iii. “Further, the Commission’s assessment of material injury is not based on a coincidence analysis where trends are observed in variables over time and findings made based upon these relative trends. Therefore, the Commission found that the injury to the Australian industry caused by dumping is greater than that likely to occur in the normal ebb and flow of business.” [emphasis added]

[See ADC’s written response to this clarification request, which was presented at the conference, attached to this conference summary as Attachment A.](#)

3. The ADC is requested to clarify whether, in the event that the Review Panel were not to accept the ADC’s finding with regard to profit foregone in the post-IP period, it would still regard the injury in respect of profits forgone in the IP only (that is, profits foregone amounting to 2.2 per cent of the Australian industry applicants’ aggregated profits in the IP), as ‘material’ and greater than that likely to occur in the normal ebb and flow of business”. If so, please could the ADC provide its reasons therefor.

[See ADC’s written response to this clarification request, which was presented at the conference, attached to this conference summary as Attachment A.](#)



2019/107 Ammonium nitrate
Written response to discussion points

1. The ADC is requested to explain the reasons for the conclusion that, “having regard to both the profit foregone in the investigation period and post-investigation period, the Commission considers that the injury caused by the dumped imports is material to the Australian industry”, [emphasis added]. It should be noted that the request for clarification relates only to the ‘materiality’ aspect of the finding (quantitatively and /or qualitatively) in regard to the Australian industry applicants and not to the applicability of the finding to industry “as a whole”.

In providing the reasoning of its analysis referred to above, the ADC is requested to:

- i. Set out how it came to the conclusion that the injury was “material”, bearing in mind that in REP 473 the assessment of materiality was based on the aggregated figure of the profits foregone in the investigation period (“IP”) and the post- investigation period (“post-IP”) as a percentage of the Australian industry applicants’ profit in the IP (calculated as being 6.2 per cent, per Confidential Attachment 17), while in the reinvestigation the profits foregone in the IP and the post- IP were disaggregated and the assessment of materiality was based on percentages of 2.2 per cent for the IP and 3.6 per cent for the post-IP. In this regard further clarification is requested as to whether the analysis of materiality was based on examining the reinvestigated IP percentage and the post IP percentage separately, or as a trend or whether the two percentages were ‘annualised’ by aggregating the dollar amounts of profit foregone in the IP and post- IP as a percentage of the dollar amounts of the sum of the Australian industry applicants’ aggregated profits in both the IP and post-IP.

ADC response

As requested in the Panel Member’s reinvestigation request dated 19 November 2019, the Commission has disaggregated the profit forgone in order to determine the profit forgone separately for the investigation period and the post-investigation period. The two percentages referred to above were not ‘annualised’ as suggested, nor was any trend considered.

The materiality assessment was undertaken by considering the investigation period percentage and the post-investigation period percentage of profit forgone separately, noting that these amounts were directly attributable the dumping found.

- ii. Provide a step by step narrative of how the data reflected in Table 2 (as derived from Confidential Attachment 1) of the Reinvestigation Report (which includes the updated post-IP data provided by the industry applicants during the reinvestigation), supports the ADC’s reinvestigated finding of materiality of injury.

ADC response

Table 2 in the Reinvestigation Report merely represents the profit forgone and reduced profitability in index format, with the base period being 2014-15.

This table shows the trend in the industry applicants' actual profits and profitability since the base period, and what the profit and profitability would have been in the absence of the dumping that occurred in the investigation period.

- iii. Provide an explanation of how the ADC took into consideration in its analysis of 'materiality' of injury its new finding that the aggregated net profit of the three Australian industry applicants actually increased in the post-IP. In this regard the ADC should elaborate on how this increase in profits was factored into the analysis, and the ADC's resultant conclusion of materiality of injury.

ADC response

The aggregated net profit of the three Australian industry applicants in the post-investigation period was used as the denominator in calculating the profit forgone for the post-investigation period as a percentage of the Australian industry applicants' net profit in that same period. Given the increase in the net profit in this period, this has resulted in a lower percentage in the post-investigation period (3.6 per cent) relative to that determined in REP 473 (4.3 per cent). The ADC considers that this lower percentage is still material however.

It is important to note that this significant increase in profit is an aggregated profit for all three Australian industry applicants encompassing all their sales and contracts in this period. Out of all those sales, [REDACTED] [REDACTED] contracts were found to be affected by dumping in the post-investigation period, which entailed price depression or lost volumes and therefore lost profit.

As noted in section 2.2.1 of the Reinvestigation Report, the net profit in the post-investigation period increased significantly (in particular, [REDACTED], which increased by [REDACTED] in the post-investigation period relative to the investigation period) due to increased sales volumes to certain customers in the Pilbara region in Western Australia, given that Yara Pilbara Nitrates Pty Ltd (aka the Burrup plant or Burrup) is continuing to experience production issues. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- iv. Provide an explanation of how the ADC came to the conclusion that, "regardless of the calculation used to quantify the materiality of the profit forgone (whether it is expressed as a percentage of the Australian industry's profit or a percentage point change in profitability), the absolute profit forgone determined in the investigation period and the post-investigation period (in the millions of dollars) is material". [emphasis added] In particular, an explanation is requested with regard to the finding that the absolute profit foregone (described as, "millions of dollars") is material, as it appears to have been examined in isolation in coming to this particular conclusion, without any reference point of comparison.

ADC response

In assessing the materiality of the absolute profit forgone, the ADC had regard to the *Ministerial Direction on Material Injury 2012*, which directs that the ADC consider material injury to be injury that is not immaterial, insubstantial or insignificant.

The absolute amount of the profit forgone in the investigation period was [REDACTED], and the profit forgone in the post-investigation period was [REDACTED]. These figures are at Confidential Attachment 1 to the Reinvestigation Report.

The absolute amount of the profit forgone, which is in the millions of dollars, is not immaterial, insubstantial or insignificant.

2. The ADC is requested to explain the reasons for coming to the conclusion in the Reinvestigation Report that the injury to the Australian industry caused by dumping, “is greater than that likely to occur in the normal ebb and flow of business”. In so doing, the ADC is particularly requested to:

- i. Provide details in narrative form of its quantitative or qualitative assessment in coming to this conclusion.
- ii. Provide an explanation of its analysis in making the following finding:

“Further, the Commission’s assessment of material injury is not based on a coincidence analysis where trends are observed in variables over time and findings made based upon these relative trends. Therefore, the Commission found that the injury to the Australian industry caused by dumping is greater than that likely to occur in the normal ebb and flow of business.” [emphasis added]

ADC response

The assessment of the materiality of the injury found (in the form of profit forgone) is not based on a coincidence analysis, given that the majority of ammonium nitrate in the Australian market is sold and purchased in accordance with fixed-term contracts over a number of years. These contracts effectively fix the prices and volumes for the duration of the contract and therefore these prices and volumes cannot be affected by any factors (including dumping) while they are in effect.¹

In a coincidence analysis, two or more variables, such as import prices/volumes and profit, are examined over a period of time to determine whether these variables are correlated. However, in using such analysis, it is difficult to establish a direct causal link between the dumped imports and the injury indicators being examined, noting that correlation does not equate to causation. Therefore, one shortcoming in employing a coincidence analysis is that it is difficult to separate out the effects caused by dumping from the effects caused by all other factors which occur within the normal ebb and flow of business.

In Investigation 473, because of the nature of sales in the Australian market (being in accordance with fixed-term contracts), the ADC was able to isolate the effects of dumping using a ‘but for’ or counterfactual assessment in relation to seven supply contracts that were negotiated, as explained in Chapters 7 and 9 of REP 473. Given that the profit forgone in respect of the seven examples outlined in section 9.2.1 of REP 473 was determined using a ‘but for’ analysis and therefore was solely attributable to dumping, this profit forgone is outside of the normal ebb and flow of business.

3. The ADC is requested to clarify whether, in the event that the Review Panel were not to accept the ADC’s finding with regard to profit foregone in the post-IP period, it would still regard the injury in respect of profits forgone in the IP only (that is, profits foregone amounting to 2.2 per cent of the Australian industry applicants’ aggregated profits in the IP),

¹ The ADC has outlined the specific reasons for not using a coincidence analysis in Chapter 7 of REP 473.

as 'material' and greater than that likely to occur in the normal ebb and flow of business". If so, please could the ADC provide its reasons therefor.

ADC response

The ADC considers that the profit forgone in the investigation period (amounting to 2.2 per cent of the Australian industry applicants' aggregated net profit in the same period) is not immaterial, insubstantial or insignificant. The ADC also considers that the absolute amount (██████████), in dollar terms, of the profit forgone in the investigation period is not immaterial, insubstantial or insignificant.²

Further, and as explained in the ADC's response to question 2 above, because the profit forgone was solely attributable to dumping, this profit forgone is not within the normal ebb and flow of business. Therefore, the injury caused by dumping is greater than that likely to occur in the normal ebb and flow of business.

² As per the *Ministerial Direction on Material Injury 2012*, 27 April 2012.