



# 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	6 November 2019
Participants	<ul style="list-style-type: none"><li>Justin Wickes (Anti-Dumping Commission)</li><li>Jasna Halilovic (Anti-Dumping Commission)</li></ul>
Time opened	1:00pm AEDT
Time closed	3:30pm AEDT

### Purpose

The purpose of this conference was to obtain further information in relation to the review before the Anti-Dumping Review Panel ("Review Panel") in relation to Ammonium Nitrate (AN) exported from the People's Republic of China, Sweden and the Kingdom of Thailand.

The conference was held pursuant to s.269ZZHA(1) of the *Customs Act 1901 (Act)*.

The conference was not a formal hearing of the review and was not an opportunity for parties to argue their case before me. I have only had regard to information provided at this conference as it relates to relevant information (within the meaning of s.269ZZK(6) of the Act). Any conclusions reached at this conference are based on that relevant information. Information that relates to some new argument, not previously in any report or submission, is not something that the Review Panel 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 Anti-Dumping Commission (ADC) in this conference related to (1) Confidential Attachment 17 to REP 473; and (2) Yara AB's second ground of review relating to cumulation.

### **(1) Confidential Attachment 17**

#### **Worksheet 1**

1. The Reviewing Member (RM) requested clarification from the ADC representative(s) (AR) of the statement in Section 9.4 of REP 473 that the price effect on revenue "directly translates to profit forgone" and an explanation of why, in most examples in Worksheet 1, the revenue forgone is equal to the profit forgone.

The AR clarified that these are the examples where there was price injury in respect of those sales made under a contract where the price was lower than in the absence of dumping, and where there would have been a profit anyway. Therefore, any additional revenue that would have been received by achieving a higher price, by not competing with the dumped goods, would have been additional profit, dollar for dollar. It was clarified that to calculate the revenue foregone, the ADC took the difference between the price achieved and the un-dumped price that should have been achieved, and then multiplied this by the minimum contracted annual volume or the actual volume sold during the investigation period.

2. The RM requested clarification of the calculations of revenue forgone and profit foregone in the two examples relating to lost volumes, and an explanation of why the revenue forgone is not equal to the profit forgone in these examples.

The AR clarified that this was in respect of examples where there were lost volumes as a result of dumping. The revenue foregone was calculated by multiplying the price offered (bid price) by the volumes that would have been won. Profit foregone was calculated using margins of profit in the investigation period (IP) of the producer that lost the volumes, as reflected in Confidential Attachment 16. In other words, the revenue foregone (Column Y) was multiplied by the profit margin (during the investigation period) of the producer that lost the volumes.



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The AR clarified that one of the relevant examples of volumes lost was during the IP and one was after the IP, and the profit forgone in both instances would have been based on profit margins of the relevant producer during the IP.

The RM requested clarification on cost fluctuations (such as the price of ammonia) during the post-IP. The AR explained those type of price fluctuations were built into the contracts so it would not affect the profit margins, which would stay consistent. The AR also pointed out that since the trend of profitability was downwards over the injury analysis period, arguably if that trend continued the profit margin post-IP would have been lower, which would have increased the numbers and made it look more material. Therefore, the ADC contended that using the IP profit margin was more conservative.

3. The RM requested clarification as to why the “Applicant Estimate of Revenue Forgone” (Column M) is higher than actual “Revenue Forgone” (Column Y) in a number of examples.

The AR explained that the applicants’ estimated revenue foregone was based on the price at the time the negotiations commenced, while the ADC used the price in the absence of dumping, which was lower.

4. The RM requested clarification as to why the profit foregone as a percentage of the three industry applicants’ aggregated profit (Column AA) was multiplied in each example, by the proportion of the applicants’ share of total Australian industry production (Column AB) to obtain the materiality of injury to the whole Australian industry (Column AC).

The AR explained that this was because the ADC did not have the profit data of the two non-applicant producers (to use in the denominator), only their production volumes. The AR stated that the multiplier was to ensure that in each example the profit foregone was representative of materiality to the Australian industry as a whole, not just the three applicants, thus ensuring that the numbers were not inflated by not having regard to the other two industry members.

The RM requested clarification as to why the ratio was applied on a transaction basis, rather than looking at the aggregated profit foregone of the three applicants and then examining the total percentage of production that they represented (being 78%) and assessing if this reflected the industry as a whole, in a qualitative way.



The AR stated that the reason for applying the ratio on a transaction basis was that the percentage of total Australian production differed for some examples because of the regional breakdown of the market and because not all industry players competed with each other in all regions. For example, in certain regions, a producer would be a purchaser only of AN and not form part of the domestic industry for that particular transaction. Therefore, since there were different ratios for different transactions it made it more difficult to do the assessment in a qualitative way. The AR stated that it was important not to over-estimate the amount of injury caused and by examining each contract separately, the ADC accounted for the different circumstances related to each contract. It was pointed out that if the ADC had not applied these ratios in column AB and just relied on the percentages in column AA, it would have resulted in a higher estimate of profit foregone.

5. The RM requested clarification as to why the percentages in Column AB were █% in respect of █ examples relating to an [Australian industry member] and █% in respect of the █ relating to an [Australian industry member], rather than 78%.

The AR clarified that it was for the reasons referred to previously, because of the regional breakdown of the market. Where, for example, █ was the purchaser of AN, its production volumes were excluded from the denominator when calculating the ratio to adjust for representativeness of the industry as a whole.

The AR clarified that similarly, where █ was the purchaser of AN, its production volumes were excluded from the denominator when calculating the ratio to adjust for representativeness of the industry as a whole. In those examples the █ was also excluded from the numerator. For the same reasons its profit was excluded from the denominator, in determining the profit foregone as a proportion of the applicants' aggregated profit.

6. The RM requested clarifications relating to █ during the IP, in particular:
  - How revenue forgone was calculated:

The AR referred to the worksheet in Confidential Attachment 16, entitled "█" and clarified that the revenue foregone was the difference between the actual price of the sale and the undumped price that would have been achieved, multiplied by the quantity sold.



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- Why the profit of [Australian industry members] only was used as the denominator in the calculation in cell AA20, whereas the total profit of all three applicants was used as the denominator in all other calculations in column AA.

The AR clarified that, as explained previously this was because in these examples [REDACTED], being [Australian industry member], was the purchaser of AN and therefore injury could not be attributed to it.

**Worksheet 3**

7. The RM requested clarification of the calculation of [REDACTED]% as the percentage share of total AN production for [Australian industry members] when individually they are [REDACTED]% and [REDACTED]%.

The AR advised that for the reasons discussed previously, this percentage was calculated with the numerator being the production volumes of [Australian industry members] and the denominator being the production volumes of all producers except [Australian industry member].

8. The RM requested the ADC's comment on the accuracy in Orica's submission that the three industry applicants account for more than [REDACTED]% of actual industry profits during the IP (Section III(d) of Orica's submission), and how this relates to the applicants' percentage share of production determined by the ADC (78%).

The AR stated that the ADC did not know how this figure was calculated as Orica did not provide the figures that formed the basis of that estimate and the ADC did not have the profits for Dyno Nobel and Yara Pilbara Nitrates. The AR pointed out that both these producers were probably less profitable than the three industry applicants and made reference to Footnote 77 of the ADC's s.269ZZJ submission.

9. The RM requested that the ADC comment on the accuracy of the statement in Glencore's application of review that Orica and Dyno Nobel between them accounted for 60% of the Australian market whereas Worksheet 3 indicates that Orica and Dyno Nobel account for [REDACTED]% of total Australian production.



The AR stated that the ADC did not know what information this was based on, pointing out that Glencore referred to 60% of the “Australian market” while the ADC’s figure was based on production volumes.

**Other Issues Raised by Applicants**

10. The RM requested clarification of the ADC’s response, in its s.269ZZJ submission, to Glencore’s concern in its submission in respect of the Conference held on 4 September 2019, as to the possibility of double counting. The RM particularly referred to Example 2a (during the IP) and Example 2b (post IP) which had identical prices in respect of consecutive periods.

The AR said that the ADC would review this issue and provide a response after the conference.<sup>1</sup>

11. The RM requested clarification of the ADC’s response in its s.269ZZJ submission to Yara and DBS’s argument, in their respective 4 September 2019 Conference submissions, that profit foregone is reflected only as a percentage of the aggregated profit and not as percentage points of the aggregated profitability, which makes the figure appear to be more significant.

The AR stated that examining lost profitability was another way of expressing the materiality of injury in respect of profits foregone. It was stated that the ADC calculated an aggregated profit foregone of \$ [REDACTED], which on its own appeared to be material. However, in order to determine whether the profit forgone is material in the context of the Australian industry’s profit, the ADC calculated the profit foregone in each example as a percentage of the industry’s profit, and then aggregated those percentages. The AR further stated that the ratios were introduced to have some sort of regard to the other two manufacturers that weren’t applicants to ensure that the profits foregone is a conservative estimate.

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<sup>1</sup> The ADC subsequently provided a written clarification stating that the ADC had examined the material again and accepts that examples 2a and 2b cover sales to the same [REDACTED] for consecutive periods, therefore to accumulate the profit foregone in calculating an annualised figure results in double counting. Taking this into account, the ADC recalculated the profit foregone as a percentage of the Australian industry’s profit as:

- During Investigation period [REDACTED] %
- Post investigation period [REDACTED] %
- Total annualised [REDACTED] %



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The AR stated that in REP 473 profitability was calculated as the three applicants' aggregated net profit as a percentage of their aggregated sales revenue (based on all sales in the investigation period), as noted in footnote 105 on page 63 of REP 473. The AR pointed out that an examination of the reduction of profitability "but for dumping" could be calculated but only took into account the three applicants. The RM pointed out that such a methodology on the actual figures would show a reduction in profitability of [REDACTED] percentage points, which had the appearance of being a less significant reduction than the aggregated profit forgone of [REDACTED] %.

The AR pointed out that while that was not inaccurate, the ADC's approach looked at whether the profit foregone is material to the Australian industry's profit as a whole. The RM requested clarification as to why the examination of the reduction in profitability (discussed above), could not be assessed qualitatively, as to its representativity of the Australian industry as a whole, by taking into account the percentage of total production that the three applicants' production represented. The AR stated that while this methodology could be considered to be an alternate methodology for assessing materiality of the injury in respect of profits foregone in respect of industry as a whole, it did not take into account the differing representativity of industry on a transaction by transaction basis, as did the ADC's methodology. It was agreed that the ADC would provide its written response to the clarification requested, after the conference.<sup>2</sup>

- 12. The RM requested clarification of the ADC's response to DBS's Pre-Initiation Conference submission that the ADC's explanation of methodology and analysis does not include any consideration of cost in the post-IP or beyond that period.

The AR pointed out that, with respect to those examples where there were price effects, the costs were taken into account as there was already a profit calculated and

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<sup>2</sup> The ADC subsequently provided a written clarification, which confirmed the discussion during the conference. The ADC confirmed in its written clarification that an alternative method to determine materiality could have been to calculate the applicants' profitability in the absence of dumping, as follows:

$$\frac{\text{Profit} + \text{Profit foregone}}{\text{Revenue}} = \frac{[REDACTED]}{[REDACTED]}$$
$$= [REDACTED]\%$$

The ADC stated that this compares to actual profitability of [REDACTED] % therefore the profit foregone from dumping represents a loss of [REDACTED] percentage points.



the revenue forgone was the additional profit forgone. In those examples where there were lost volumes, the ADC applied the revenue forgone to the existing profit margin (which took costs into account) during the IP.

**(2) Yara AB's Second Ground of Review relating to Cumulation**

13. The RM requested clarification as to which of the Example(s) referred to in REP 473 relate to [REDACTED] and the specific pages and sections of Confidential Attachment 15 where this was referenced.

The AR clarified that this was in Example 8 referred to in Chapter 9 of REP 473 and was referenced in Section 4.3.3 of Confidential Attachment 15, pages 39 to 41. The AR clarified that this example was not included in the materiality of injury assessment.

14. The RM requested clarification as to whether the volumes of imports from Sweden, imported by the Australian industry to meet their contractual obligations, were excluded from the volume of dumped imports referred to in Section 6.10 of REP 473 and Confidential Attachment 11.

The AR advised that there were no exclusions of imports from Sweden (as a percentage of total imports) since none of the products from Sweden were imported by any of the domestic producers of AN to meet their contractual obligations. The AR clarified that the reference to Yara's claim that the majority of the imports from Sweden were for the "benefit" of the domestic industry related to the [REDACTED] [REDACTED] which it claimed benefited [REDACTED], since [REDACTED] was the alternate supply in circumstances where supply could not be made from [REDACTED]. The AR stated [REDACTED] imported the goods from Sweden, mostly for its own consumption, when it could have approached other domestic producers to source that supply.

15. A discussion ensued relating to the disclosure of certain confidential information in the ADC's s.269ZZJ submission to Yara in relation to its second ground of review, in so far as it related to the [REDACTED], including Confidential Attachment 1 and Confidential Attachment 2 to the ADC's submission.