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Ms Angela Woo
Assistant Commissioner
Productivity Commission
GPO Box 1428
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Dear Ms Woo

Productivity Commission Research Paper – Recent Developments in Australia’s Anti-Dumping System

Executive Summary

Orica Australia Pty Ltd (“Orica Australia”) is a supplier of commercial explosives and blasting systems. It has invested heavily in manufacturing capacity for ammonium nitrate in Australia over the last two decades with over \$1billion invested in upgrades at its sites at Kooragang Island, NSW and Yarwun, QLD, with further investment ongoing in its Burrup JV facility in WA. Orica also purchases significant additional volumes from third parties domestically and on the world market. Orica supports development of an effective and operationally efficient anti-dumping system in Australia which facilitates trade on a fair basis and which provides a level of certainty to underpin capital investment to meet growth in customer needs through local supply over the long term.

Orica Australia’s involvement with the anti-dumping system has principally been via the company’s role as an applicant for anti-dumping measures in ammonium nitrate exported from the Russian Federation.

Orica Australia has welcomed recent amendments to the anti-dumping legislation and contends further reforms are warranted. Specifically, Orica Australia submits that enhancements to the anti-dumping system are required to:

- provide greater surety through improved guidance on relevant market situation conditions;

- publish a preliminary affirmative determination (“PAD”) and apply provisional measures from Day 60 of an investigation;
- encourage strict adherence to deadlines for exporter questionnaire responses (“EQRs”) and government requests for information;
- extend the same level of scrutiny to exporter responses to that experienced by Australian industry;
- reverse the recent trend of excessive timeframe extensions by limiting requests to one extension with a maximum timeframe of 30 days;
- increase scrutiny on the non-disclosure (or redaction) of information claimed by interested parties to be “commercially sensitive”;
- adequately address country hopping activities of exporters and importers; and
- impose measures based upon the combination method as the ‘default’ form in all investigations.

Orica Australia further understands that the Productivity Commission is again examining the potential introduction of a public interest provision in the anti-dumping system. It should be noted that the Federal Government elected not to implement the Productivity Commission’s recommended “bounded” public interest test following the 2009 Inquiry. Orica Australia does not support the introduction of such a test into the Australian anti-dumping framework. In Orica’s experience there are market situations, such as in Russia, with ongoing government influence in the control of prices for key industrial inputs. Such conditions are ongoing and should not be limited by public interest provisions. There are a number of practical issues associated with a public interest test which is seen will increase inquiry timeframes and create uncertainty for outcomes, as well as contribute to significant additional costs for complying with any new legislative requirement.

Additionally, in the current Australian system the operation of the lesser duty rule in every investigation ensures the anti-dumping measures are applied at a level that is not excessive and sufficient to remove the injury from dumping, thus allowing for public interest to be taken into account. This mechanism differentiates Australia’s anti-dumping system from those in other jurisdictions where the lesser duty rule is not a mandatory consideration in every inquiry.

Orica Australia welcomes this opportunity to comment on the key issues identified by the Productivity Commission for its Research Paper.

Trends in anti-dumping activity

Orica Australia’s experience with anti-dumping measures has primarily involved nitrogen-based products. The company was involved in an application for anti-dumping measures in 2000, confronted with increasing

imports from the then Russia, that operated as a State-controlled economy, with prices for natural gas determined by the Russian government.

In 2015, the government of the Russian Federation continues to set domestic selling prices that are artificially low, and reflect a quarter of the price of natural gas in market-economy countries.

At the time of the application for measures, Russia was the subject of measures for a number of nitrogen-based products exported to other countries (including the US, the European Union, Mexico). Products covered by the measures included ammonium nitrate, urea, urea ammonium nitrate. Essentially, Russian producers were capitalising on the low natural gas prices and were able to export value-added nitrogen products at prices that undercut other market economy producers on the global market.

In the absence of anti-dumping measures on ammonium nitrate exported from the Russian Federation, the Australian industry manufacturing like goods would be unable to compete (as Russian Federation export prices as evidenced in Baltic Sea export prices) with marginally costed exports.

Additionally, the Russian Federation is the world's largest exporter of nitrogen-based products. Producers have access to significant underutilised capacities (total annual capacities circa 16 million tonnes of AN) that can be readily unlocked to increase supply on export markets at short notice. Manufacturers, therefore, require ready access to an effective anti-dumping system to address dumped (and/or subsidised) exports.

Impact of recent changes to the anti-dumping system

Recent changes

The Federal Government has introduced a number of recent reforms that have been designed to improve the operation of the anti-dumping system. These include changes to improve flexibility associated with timeframe extensions, removal of the s.269TAC(13) provision that allowed for no profit on a constructed s.269TAC(2)(c) normal value, broader options for applying different forms of measures, alignment of Australia's subsidies provisions with the Subsidies and Countervailing Measures ("SCM") Agreement, and the introduction of anti-circumvention provisions (including applications relating to sales at a loss and minor modification of goods).

At present, Australian manufacturers are required to compete with low export prices from an exporter that is unprofitable on its domestic market but is permitted to continue to export goods at injurious levels.

Orica Australia further understands that the Commission will undertake proactive work associated with the monitoring of measures to ensure the measures operate as they were intended.

Investigation timeframes

The impact of the changes is still being understood as they filter into practice in the investigation process. A noticeable impact involves the significant rise in timeframe extensions to investigations. Orica Australia has observed some investigations extending to more than double the 155-day legislative timeframes – a development that causes considerable uncertainty. Some cases have experienced three timeframe extensions prior to the publication of the Statement of Essential Facts (“SEF”). Certain other extensions have been granted to allow the final report to be prepared for the Minister (i.e. an extension is granted post SEF).

Orica Australia understands that timeframe extensions are warranted in complex cases. Recent practice, however, reflects timeframe extensions in nearly all new investigations.

Level of profit in s.269TAC(2)(c) inquiries

A further key change involved the removal of s.269TAC(13) concerning the nil profit to be applied to a constructed normal value. Whilst Orica Australia is supportive of the change, the practice that has since emerged involves examining the profit on low volume sales of like goods that fall below the threshold to be considered as sales in the ordinary course of trade. Often these ‘profitable’ sales are low profit sales, at low single digit levels (including less than one per cent). Orica Australia does not consider it reasonable that Australian manufacturers should be required to compete with exporters that, in the absence of a sufficient profitable sales (i.e. more than five percent of the total export volume to Australia), can continue to export to Australia at injurious prices whilst domestic sales are unprofitable. For this reason, Orica Australia supports a requirement that for normal values determined under s.269TAC(2)(c) using the exporters production costs and selling administration and general expenses, the profit applied should reflect an amount that allows for ongoing capital sustenance and re-investment.

Formation of Anti-Dumping Commission

Orica Australia welcomes the establishment of the Anti-Dumping Commission with increased resources. It is expected that the additional investigators will enable decisions to be made in accordance with the legislated timeframes, with minimal extensions required.

The additional resources will also permit increased monitoring of measures imposed, including anti-circumvention activities associated with goods the subject of measures.

How anti-dumping measures have affected individual sectors and Australia's broader economy

Orica Australia is aware of the Productivity Commission's ongoing concern that anti-dumping measures are a so-called 'impost' on downstream industries and impact the 'efficient allocation of resources'. Orica Australia can only comment on its experiences in the ammonium nitrate industry where the measures have been effective in ensuring dumped and injurious exports of ammonium nitrate, particularly from the Russian Federation, have not continued to cause injury to the Australian industry manufacturing like goods.

The anti-dumping measures have enabled the Australian industry to expand to meet the needs of the mining industry. The Australian industry has expanded from approximately 700,000 tonnes per annum in 2000, to more than 2 million tonnes in 2015, with a further 330,000 tonnes under construction in the Pilbara region of W.A. Total investment in the industry since the measures were first imposed has exceeded \$2 Billion and is ongoing. The anti-dumping measures have not inhibited downstream customers who have encouraged access to increased volumes of local supply.

Opportunities to improve outcomes from Australia's anti-dumping system

Orica Australia is concerned that current anti-dumping investigations lack symmetry in terms of the validation of information provided by Australian industry and exporters. This is evident in the level of redactions in exporter questionnaire responses and exporter verification reports when contrasted with applications of the Australian industry and industry visit reports.

Additional enhancements required to improve outcomes in the anti-dumping system include:

- improved clarification on relevant factors for establishing grounds for market situation claims
 - o where evidence is available that more than one key raw material input is the subject of government influence, surrogate normal values based on prevailing market prices (and/or costs) from an alternate market economy may be used;
- improved transparency in exporter verification reports to ensure symmetry with disclosure in Australian industry reports regarding both variable and fixed cost factors;
- fast-tracking of applications and access to remedies in circumstances readily identifiable as 'country-hopping';

- **observable** improvements in delivering PAD and provisional measures at Day 60 of investigation based upon EQR responses, information contained in the application of Australian industry, and information sourced from importers;
- limitations on extensions of time in investigations to no more than a single extension of a maximum 30 days only;
- where normal values based upon s.269TAC(2)(c) constructed values, the level of profit applied should be sufficient to allow for ongoing maintenance re-spends and re-investment opportunities;
- the form of duty to be applied should be based upon the combination duty method in the first instance, with other forms justified in accordance with the circumstances of the industry.

Importantly, the imposition of measures must be effective in removing the injurious effects of dumping. Where measures are circumvented, the Commission should avail itself of retrospective measures to prevent injury to the Australian industry.

Orica Australia has identified the lesser duty rule operates as a de facto public interest provision. Where the unsuppressed selling price is determined on the basis of the Australian industry's costs and an amount of profit is included, the level of profit applied is to be sufficient to allow re-investment in the industry.

Orica supports the continued improvement of Australia's anti-dumping system to make it more operationally efficient and effective in delivering fair and transparent outcomes for Australian manufacturers

If you have any questions concerning this submission, please do not hesitate to contact Mr Malcolm Hart

Yours sincerely,

Malcolm Hart
AN Product Manager – Australia Asia