



**CUSTOMS ACT 1901 - PART XV B**

**CONSIDERATION REPORT  
NO. 256**

**APPLICATION FOR REVIEW OF  
ANTI-DUMPING MEASURES IN RELATION TO**

**SODIUM HYDROGEN CARBONATE  
(SODIUM BICARBONATE)**

**EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**22 JULY 2014**

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**PUBLIC RECORD**

<b>Abbreviation / short form</b>	<b>Full reference</b>
ACBPS	Australian Customs and Border Protection Service
Sodium Bicarbonate	Sodium hydrogen carbonate, which is also known as sodium bicarbonate, baking soda or bicarbonate of soda
Orica	Orica Australia Pty Ltd
Penrice	Penrice Soda Products Pty Ltd (under external administration)
VanderArk	VanderArk International Limited
TCO	Tariff Concession Orders
The Act	<i>Customs Act 1901</i>
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner, of the Anti-Dumping Commission
the goods	the goods the subject of the review application (also referred to as the goods under consideration or GUC)
ADN	Anti-Dumping Notice

## 2 Summary and recommendations

This Consideration Report (CON 256) provides the results of the Anti-Dumping Commission's (Commission's) consideration of an application lodged by Orica Australia Pty Ltd (Orica) for the review of the anti-dumping measures that apply to sodium hydrogen carbonate ('sodium bicarbonate') exported to Australia from the People's Republic of China (China).

Orica has applied for a review of the anti-dumping measures on the basis that the measures are no longer warranted in relation to sodium bicarbonate exported to Australia from China as currently applied to exporters generally. The current anti-dumping measures in place apply to all exporters of sodium bicarbonate from China. The current measures are due to expire on 3 November 2015.

Orica's application is based on its claims that the External Administrators of Australia's sole manufacturer of sodium bicarbonate, Penrice Soda Products Pty Ltd, announced on 24 June 2014 that the company had ceased operations at its Penrice Osborne chemical plant (the manufacturing plant for sodium bicarbonate) effective immediately.

### 2.1 Recommendation

The Commission recommends that the Anti-Dumping Commissioner (Commissioner) decide not to reject Orica's application for a review seeking the revocation of the anti-dumping measures (dumping duty notice) as they apply to all exporters from China generally.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Non-Confidential Attachment 1** indicating that Commission will conduct a review of the measures covered by the application.

Orica has not applied for a review of the variable factors relevant to the measures. As such the review will only examine whether the measures are no longer warranted for sodium bicarbonate exported to Australia from China.

### 2.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901* (Act)<sup>1</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the review of measures.

The Division empowers the Commissioner to reject or not reject an application for the review of anti-dumping measures.

### 2.3 Findings and conclusions

The Commission has examined the application and is satisfied that:

- the application complies with the requirements of s.269ZB of the Act (as set out in Section 3 of this report); and
- there appear to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted (as set out in Section 4 of this report).

<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

**PUBLIC RECORD**

Accordingly, the Commission recommends that the Commissioner does not reject the application and that the application for review of the anti-dumping measures for sodium bicarbonate exported from China continue.

## 3 Background

On 25 June 2014, Orica, an importer of sodium bicarbonate from China, lodged an application requesting a review of the anti-dumping measures claiming that the measures are no longer warranted for sodium bicarbonate exported to Australia from China.

### 3.1 Existing measures

Anti-Dumping measures currently exist for all exporters of sodium bicarbonate from China.

Measures were initially imposed on imports of sodium bicarbonate from China on 3 November 2005. These measures were imposed after an investigation was initiated, following the application of Penrice Soda Products Pty Ltd (Penrice).

On 20 July 2006, a Review of Measures was initiated at the request of the Minister. As a result of this review the measures were varied.

In 2010 a Continuation Inquiry and another Review were initiated following the consideration of applications by Penrice. As a result of this Continuation Inquiry and Review, anti-dumping measures applying to sodium bicarbonate were revised and extended for a further five years.

In 2013, following an Accelerated Review, an exporter specific anti-dumping measure for sodium bicarbonate exported by VanderArk International Limited (VanderArk) from China was imposed retrospectively, from 21 November 2013.

The current measures relating to sodium bicarbonate are due to expire on 3 November 2015.

### 3.2 The goods subject to the measures

The goods subject to the measures (goods) are sodium hydrogen carbonate, which is also known as sodium bicarbonate, baking soda or bicarbonate of soda.

#### *Method of production*

Sodium bicarbonate is a downstream product of the soda ash manufacturing process. It is manufactured using two different production methods. The first is the Natural Alkali method in which alkali is mined, purified, filtered, carbonised and dried before packing. The second method is the Solvay method, which is a synthetic process that includes crude bicarbonate formation, filtration, light ash finishing and refining.

The sodium bicarbonate exported to Australia from China is manufactured by both the Natural Alkali and Solvay methods.

#### *Categories of goods – speciality packs or regular packs*

The goods, as described above, include both 'speciality packs' and 'regular packs'. Speciality packs refer to sodium bicarbonate that is in packages of less than 25kgs. Regular packs refer to sodium bicarbonate that is unpackaged or is in packages of 25kgs or more.

In the original investigation it was found that the majority of sodium bicarbonate exported to Australia from China was packaged in 25 kg bags or bags containing one tonne or more of the goods, referred to as 'regular packs'. These

goods can be used in a range of applications including agriculture, food and general purpose.

A small quantity of sodium bicarbonate was exported with features including high quality packaging materials, end users' brand graphics, tamper evident caps and zip locks. These packs were general purpose/industrial grade sodium bicarbonate destined for use in swimming pools and are referred to as 'speciality packs'.

### **3.3 Tariff classification of the goods**

The GUC are classified to tariff subheading 2836.30.00, statistical code 27 in Schedule 3 of the *Customs Tariff Act 1995*. The rate of duty is 'free' from all sources.

### **3.4 Australian industry producing like goods**

In 2010, the continuation inquiry found that there was an Australian industry producing like goods with Penrice being the sole manufacturer of sodium bicarbonate in Australia.

Information will be sought from Administrators of Penrice during this review.

The Commission will also seek information on whether there are any other Australian industry members that produce sodium bicarbonate.

## 4 Compliance with Section 269ZA and Section 269ZB

### 4.1 Finding

Based on the information provided in the application, the Commission is satisfied that the application complies with Sections 269ZA and 269ZB of the Act.

### 4.2 Legislative framework

Pursuant to section 269ZA where anti-dumping measures have been taken in respect of goods, an 'affected party'<sup>2</sup> may by application lodged with the Commissioner request that the Commissioner initiate a review of measures.

Any 'affected party' can lodge an application with the Commission requesting the Commissioner to initiate a review of the measures.

Section 269ZA(2) of the Act states, inter alia, that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a notice declaring the outcome of the last review of the anti-dumping notice.

Section 269ZA(4)(a) of the Act specifies that where a person's application for an accelerated review has resulted in the Minister making a declaration under Section 269ZG(3) of the Act, that person making the application cannot make an application for another review earlier than 12 months after the making of that declaration. This restriction in making an application under section 269ZA(4)(a) does not apply to other persons.

The application can be made by the affected party who considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, on the grounds that the anti-dumping measures are no longer warranted.

Section 269ZB(1) of the Act requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Section 269ZB(2) of the Act requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and

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<sup>2</sup> "affected party" , in relation to an application under Division 5 for review of anti-dumping measures imposed on particular goods, is defined under s.269T of the Act to be:

- (a) a person who is directly concerned with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or
- (b) a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods; or
- (c) a person representing, or representing a portion of, the Australian industry producing like goods; or
- (d) the Government of a country from which like goods have been exported to Australia.



- if the application is based on circumstances that, in the applicant's view, indicate that the anti-dumping measures are no longer warranted the applicant must provide evidence in accordance with the approved form, of the circumstances.

### **4.3 Particulars of the application**

Orica submitted an application for the initiation of a review of measures in respect of the subject goods pursuant to section 269ZA. Orica claims that the measures are no longer warranted for sodium bicarbonate exported to Australia from China.

The application requests the Commission to revoke the current measures on the basis that Penrice has ceased the manufacturing of sodium bicarbonate in Australia, meaning there will no longer be an Australian industry producing like goods.

Orica provided a copy of a letter dated 24 June 2014 from the External Administrators of Penrice to the Australian Stock Exchange (ASX) notifying, in part, that Penrice's Osborne chemical plant was immediately ceasing operations.

The Commission considers that Penrice was only manufacturing sodium bicarbonate at its Osborne chemical plant in Adelaide, South Australia.

### **4.4 Commission's assessment**

In its application Orica stated that it was an importer of the goods from China and that it supplied imported goods into the Australian stockfeed market. Orica was also identified as an importer of the goods during the 2010 continuation enquiry.

The Commission is satisfied that Orica meets the definition of an 'affected party' in accordance with the Act. Section 269T(1)(b) of the Act states that an affected party includes a person who is directly concerned with the importation into Australia of the goods to which the measures relate or has been directly concerned with the importation into Australia of like goods.

Whilst an accelerated review was completed in relation exporter VanderArk and that review resulted in the Parliamentary Secretary making a declaration within the past 12 months, Orica is an 'other person' for the purposes of section 269ZA(4)(b) of the Act and, accordingly, is permitted to make this application.

The Commission is satisfied that the application lodged by Orica:

- is in writing;
- provides a description of the goods subject to the measures;
- provides a description of the measures the subject of the application; and
- provides evidence of the particular circumstances which the applicant believes indicate that the measures are no longer warranted.

On the basis of the above, the Commission is satisfied that the application satisfies the form and the requirements under sections 269ZA and 269ZB of the Act.

## 5 Consideration of reasonable grounds

### 5.1 Finding

Having regard to the matters contained in the application and other relevant information, the Commission is satisfied that there is reasonable grounds for Orica to assert that the anti-dumping measures are no longer warranted for sodium bicarbonate exported to Australia from China.

### 5.2 Application for a revocation review

Orica claims that there are reasonable grounds that the measures in respect of the goods subject to this application are no longer warranted on the basis that the Australian industry producing like goods ceased its operations in June 2014.

#### 5.2.1 Applicant's claims

Orica claims in its application that Penrice's Osborne chemical plant was the only Australian operation producing sodium bicarbonate in recent history.

Orica provided a copy of a letter dated 24 June 2014 from the Administrators of Penrice notifying the ASX of the immediate closure of the Osborne plant. In that letter, it was stated that *'the Administrators of PSH announced today that following the withdrawal of the preferred bidder from the sales process, Penrice's Osborne Chemical plant will cease operations effective immediately'*. A copy of the Penrice Administrators' letter to the ASX is at **Non-Confidential Attachment 2**.

Orica claims that following the closure of operations at the Penrice Osborne plant, there is no injury being caused to the Australian Industry, and that there is unlikely to be a recurrence of an injury to the Australian industry in future if the measures were revoked.

#### 5.2.2 Commission's assessment

The Commission has noted the letter from Penrice's Administrators to the ASX, dated 24 June 2014.

A media report in *'The Australian'* newspaper dated 25 June 2014 also confirms the closure of Penrice's Osborne plant (**Non-Confidential Attachment 3 refers**).

The Commission also noted that Penrice's website contains a media release from the Administrator. In its media release, McGrathNicol Corporate Recovery (Administrator) announced the closure of the Penrice chemical plant ([www.penrice.com.au](http://www.penrice.com.au)).

In the 2010 Continuation Inquiry and Review into sodium bicarbonate it was found that Penrice was the sole producer of sodium bicarbonate in Australia. The Continuation Inquiry Report stated:

*"Penrice is the sole manufacturer of sodium bicarbonate in Australia at its production facility in Osborne, South Australia, using the Solvay method of manufacture"*.

Based on the available information before the Commission, it appears that the sole producer of sodium bicarbonate in Australia, Penrice, has ceased to

manufacture sodium bicarbonate in Australia from June 2014. No other Australian producer of sodium bicarbonate has been identified in any previous investigation, inquiry or review conducted in relation to the sodium bicarbonate.

### **5.2.3 Conclusion on “reasonable grounds”**

The Commission is satisfied, on the basis of the application, supporting evidence provided by Orica and other available information, that there appear to be reasonable grounds to assert that the anti-dumping measures are no longer warranted in relation to sodium bicarbonate exported to Australia from China.

Accordingly, it is recommended that the Commissioner decide not to reject the application for a review of anti-dumping measures. It is also recommended that the Commission publishes a notice indicating that the Commission will conduct a review in relation to whether the anti-dumping measures applying to sodium bicarbonate are no longer warranted.

**6 ATTACHMENTS**

<b>Non - Confidential Attachment 1</b>	Notice of Review
<b>Non - Confidential Attachment 2</b>	Letter from Penrice's Administrators to the ASX
<b>Non - Confidential Attachment 3</b>	Media report from <i>the Australian</i>

