



CUSTOMS ACT 1901 - PART XVB

REPORT NO.256

**REVOCATION REVIEW OF ANTI-DUMPING MEASURES
IN RELATION TO SODIUM HYDROGEN CARBONATE
(SODIUM BICARBONATE)**

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

23 December 2014

TABLE OF CONTENTS

1.	Summary and recommendations.....	4
1.1.	Introduction.....	4
1.2.	Findings.....	4
1.3.	Recommendation	4
1.4.	Application of law to facts.....	5
1.4.1.	Authority to make decision	5
1.4.2.	Application	5
1.4.3.	Initiation of this revocation review	5
1.4.4.	Statement of essential facts.....	5
1.4.5.	Final report.....	5
2.	Background.....	6
2.1.	History of anti-dumping measures.....	6
2.2.	Revocation review process.....	6
3.	Goods subject to the revocation review and the Australian industry	8
3.1.	Findings.....	8
3.2.	Goods description	8
3.3.	Tariff classification of the goods	8
3.4.	Like goods and the Australian industry.....	9
4.	Revocation of anti-dumping measures.....	10
4.1.	Findings.....	10
4.2.	Submissions received prior to publication of the SEF	10
4.2.1.	Applicant's submissions.....	10
4.2.2.	Submissions by other parties.....	10
4.2.3.	Cessation of production at Penrice	11
4.2.4.	Producer of potential like goods.....	12
4.3.	The Commission's assessment.....	12
4.3.1.	Cessation of production of sodium bicarbonate in Australia.....	12
4.3.2.	Producer of potential like goods.....	13
4.3.3.	The Commission's assessment	16
4.3.4.	Date of revocation.....	17
4.3.5.	Submission	17
4.3.6.	The Commission's assessment	17
4.4.	Submissions to the SEF	17
5.	Effect of the review and findings	18

PUBLIC RECORD

Abbreviation / short form	Full reference
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
The Act	Customs Act 1901
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
Oxford Dictionary	The Oxford Dictionary of Chemistry
Consolidated	Consolidated Chemical Co
FTA	FTA Food Solutions Pty Ltd
AusPac	AusPac Ingredients Pty Ltd
Causmag	Causmag International
The Minister	The Minister for Industry and Science
SEF	Statement of Essential Facts
China	The People's Republic of China
2005 investigation	The anti-dumping investigation on sodium hydrogen carbonate exported from the People's Republic of China, initiated on 16 March 2005
2010 continuation inquiry	The continuation inquiry into whether anti-dumping measures should be continued with respect to sodium hydrogen carbonate, initiated on 30 April 2010

1. SUMMARY AND RECOMMENDATIONS

1.1. Introduction

This revocation review is in response to an application by Orica Australia Pty Ltd (Orica) for the revocation 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's application is based on circumstances which, in the applicant's view, indicates that the anti-dumping measures are no longer warranted pursuant to s 269ZB(2)(d) of the *Customs Act 1901* (the Act).¹

This report (REP 256) sets out the recommendations of the Anti-Dumping Commissioner (the Commissioner) of the Anti-Dumping Commission (the Commission) to the Minister for Industry and Science (the Minister) in relation to the revocation review application by Orica. It recommends that the anti-dumping measures applicable to sodium bicarbonate exported to Australia from China be revoked.

1.2. Findings

Based on all available information, the Commission finds that the anti-dumping measures relating to sodium bicarbonate exported to Australia from China should be revoked due to the fact that the sole Australian industry member, Penrice Soda Products Pty Ltd (Penrice), has ceased production of like goods. As a result the purpose of the anti-dumping measures, which is to remedy or prevent injury to the Australian producer of like goods to those subject to the measures, no longer exists.

1.3. Recommendation

Based on the findings of the Statement of Essential Facts (SEF 256) and other relevant information, the Commissioner recommends to the Minister that the dumping duty notice (as amended on 21 November 2013)² be revoked as it relates to all exporters of the goods. It is proposed that any decision by the Minister in this matter take effect from 22 July 2014, the date of publication of the notice under s 269ZC indicating the Commission's proposal to undertake the revocation review.

The effect of the recommendation, if accepted, is that interim dumping duties do not apply to the goods entered for home consumption

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

² Pursuant to section 269ZG(3) of the Act, the Parliamentary Secretary declared that with effect from 21 November 2013, the Act and the *Customs Tariff (Anti-Dumping) Act 1975* the original dumping duty notice applied to VanderArk International Limited, an applicant for an accelerated review, as if different variable factors relevant to the payment of duty by VanderArk had been fixed. The findings of this accelerated review are in the Anti-dumping Commission Report No. 235 (REP 235). For further information, see also Anti-Dumping Notice No 2014/44.

on and after 22 July 2014, and that importers who had paid such duties would be eligible for a refund.

1.4. Application of law to facts

1.4.1. Authority to make decision

Division 5 of Part XVB of the Act sets out, inter alia, the procedures to be followed by the Commissioner in conducting a revocation review of measures.

1.4.2. Application

On 25 June 2014, Orica, an importer of sodium bicarbonate from China, lodged an application requesting a revocation review of the anti-dumping measures applying to sodium bicarbonate exported to Australia from China in relation to exporters generally.

1.4.3. Initiation of this revocation review

After examining the application and other relevant information the Commissioner was satisfied that:

- the application complied with the requirements of section 269ZB; and
- there appeared to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

A revocation review was initiated on 22 July 2014 with public notification in *The Australian* newspaper and publication of Anti-Dumping Notice (ADN) 2014/58.

1.4.4. Statement of essential facts

SEF 256 was published on 14 November 2014. Interested parties were able to lodge submissions in response to SEF 256 until 4 December 2014.³

1.4.5. Final report

This final report and recommendations in relation to whether the anti-dumping measures applicable to sodium bicarbonate exported to Australia from China are no longer warranted must be provided to the Minister by 24 December 2014.

³ Section 269ZC(7)(f) of the Act requires that interested parties be given 20 days to lodge submissions in response to a SEF.

2. BACKGROUND

2.1. History of anti-dumping measures

Measures were initially imposed on imports of sodium bicarbonate from China on 3 November 2005 following an anti-dumping investigation (2005 investigation). These measures were imposed following an application from Penrice Soda Products Pty Ltd (Penrice), a producer of like goods in Australia.

In July 2006, a review of measures was initiated at the request of the Minister. As a result of this review the measures were varied, with effect from 14 May 2007.

In 2010 a continuation inquiry (2010 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 extended for a further five years, and the level of measures varied.

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 effective from 21 November 2013.

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

2.2. Revocation review process

Application

Where anti-dumping measures have been taken in respect of certain goods, an affected party may apply for a review of those measures as they affect a particular exporter or exporters generally⁴.

An affected party may apply for revocation of the measures if there are reasonable grounds to assert that the anti-dumping measures are no longer warranted⁵.

If an application for a review of anti-dumping measures is received, and not rejected, the Commissioner has up to 155 days, or such longer time as the Minister may allow, to inquire and report to the Minister on the review of the measures⁶.

SEF

Within 110 days of the initiation, or such longer time as the Minister may allow, the Commissioner must place on the public record a SEF on which he proposes to base his recommendation to the Minister concerning the review of the measures.⁷

⁴ Section 269ZA(1)

⁵ Section 269ZA(1)(b)(ii)

⁶ Section 269ZDA(1)

⁷ Section 269ZD(1)

PUBLIC RECORD

Final Report

In making recommendations in the final report to the Minister, the Commissioner must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the delegate has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commission within 20 days of being placed on the public record⁸.

The Commissioner may also have regard to any other matter considered to be relevant to the review.

The Commissioner:

- must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and
- otherwise must make a revocation recommendation in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.⁹

Following the Minister's decision, a notice will be published advising interested parties of the decision¹⁰.

All documents on the public record are available on the Commission's electronic public record for the review, which may be accessed online at <http://www.adcommission.gov.au/cases/EPR256.asp>.

Documents included in the public record may be examined at the Commission's office by contacting the Case Manager on (03) 9244 8268.

⁸ Section 269ZDA(3)

⁹ Section 269ZDA(1A)

¹⁰ Section 269ZDB(1)

3. GOODS SUBJECT TO THE REVOCATION REVIEW AND THE AUSTRALIAN INDUSTRY

3.1. Findings

There is no longer an Australian industry producing like goods¹¹ subsequent to Penrice ceasing the production of like goods on or about 24 June 2014.

3.2. Goods description

The goods subject to the measures (the goods) are:

*sodium hydrogen carbonate, which is also known as sodium bicarbonate, or baking soda.*¹²

Method of production

As identified in the 2005 investigation and 2010 continuation enquiry, 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

Both the 2005 investigation and 2010 continuation inquiry established that 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 goods 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.'

¹¹ For the purposes of Section 269T(1).

¹² Trade Measures Branch Report No 98 on Sodium Hydrogen Carbonate (Sodium Bicarbonate) from the People's Republic of China - 2 October 2005.

3.4. Like goods and the Australian industry

In the 2005 investigation and the 2010 continuation inquiry, it was found that Penrice was the sole manufacturer of sodium bicarbonate in Australia and that the goods were manufactured at its Osborne chemical plant in South Australia.

The applicant in this revocation review, Orica, submitted that Penrice had ceased producing sodium bicarbonate and that they were the only Australian producer producing sodium bicarbonate.

No other information has been presented to the Commission indicating that there is any Australian industry currently producing sodium bicarbonate. Further discussion in relation to issue of like goods is contained in section 4.3.2 of this report.

4. REVOCATION OF ANTI-DUMPING MEASURES

4.1. Findings

The Commission makes the following findings:

- the anti-dumping measures applying to sodium bicarbonate are no longer warranted;
- as a result of the review, revoking the measures would not lead or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent¹³; and
- the dumping duty notice be revoked with effect from 22 July 2014, the date of publication of the notice under section 269ZC(4) indicating the Commissioner's intention to undertake the revocation review.

4.2. Submissions received prior to publication of the SEF

Submissions were received from six interested parties, including the applicant. A discussion of submissions is outlined in this section.

4.2.1. Applicant's submissions

Orica claimed in its application for this revocation review that the measures were no longer warranted for sodium bicarbonate exported to Australia from China. The application requested the Minister to revoke the current measures on the basis that Penrice had ceased manufacturing sodium bicarbonate in Australia and, therefore, there was no longer 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 had ceased operations.

Subsequent to initiation of this review, and prior to the publication of the SEF, Orica made a further submission. It submitted that the effective date for the revocation of the measures should be the initiation date of the review.¹⁴

4.2.2. Submissions by other parties

The Commission received four submissions prior to the publication of SEF 256:

- Consolidated Chemical Co (importer);¹⁵
- FTA Food Solutions Pty Ltd (importer);¹⁶
- World Search (importer);¹⁷

¹³ Section 269ZDA(1A)(b)

¹⁴ Submission – Orica Australia Pty Ltd, 29/07/14, EPR 256/007.

¹⁵ Submission – Consolidated Chemical Co, 09/07/014, EPR 256/004.

¹⁶ Submission – FTA Food Solutions Pty Ltd, 09/07/14, EPR 256/005.

¹⁷ Submission – PK Chemicals P/L trading as World Search, 17/07/14, EPR 256/006.

PUBLIC RECORD

- AusPac Ingredients Pty Ltd (importer)¹⁸; and
- Causmag International (manufacturer of magnesium oxide).¹⁹

Non-confidential submissions are available on the public record.

The submissions primarily addressed whether the anti-dumping measures should continue and whether the revocation of the measures could lead to a continuation of, or a recurrence of, the dumping and the material injury. While the majority of the submissions discussed the cessation of production at Penrice, a producer of magnesium oxide submitted that its industry could be affected by the proposed revocation of measures relating to sodium bicarbonate. No submissions were received following the publication of SEF 256.

4.2.3. Cessation of production at Penrice

Consolidated Chemical Co

The company advised that it was concerned with the importation of sodium bicarbonate.

It stated in its submission that:

We contend that Anti-Dumping measures are no longer warranted because the measures are having no effect and there is no current injury.

This is due to the fact that the local manufacturer Penrice is no longer operating, with production ceasing at their Osborne, South Australia operations on 24 June 2014. The entity known as Penrice Group has administrators appointed, who have found no buyer. Furthermore it is understood from media reports that creditors are owed in the vicinity of \$200 million. In summary, there is no longer an Australian industry and there is little prospect of a reopening.

In support of our assertions regarding the closure of Penrice's operations, we have attached a message from the administrators that were appointed to wind up the Penrice Group.

Hence, since June 2014 there no longer exists the case where there is a causal link between any dumping and the material injury.

FTA Food Solutions Pty Ltd (FTA)

FTA advised that it was an importer of sodium bicarbonate. FTA's submission stated, in part, that:

There is no longer a manufacturer of like goods in Australia. The only manufacturer- Penrice Soda Products- went into receivership and is no longer in existence as a buyer could not be found for the business. There is no alternative source or manufacturer within Australia and thus the concept of "injurious export pricing" from Chinese suppliers no longer applies. There is no longer an Australian industry to "injure" and therefore dumping measures can & should be revoked forthwith.

¹⁸ Submission – AusPac Ingredients Pty Ltd, 01/08/14, EPR 256/008.

¹⁹ Submission – Causmag International, 14/08/14, EPR 256/009.

PUBLIC RECORD

In support of its submission, FTA provided a copy of an article published on the Australian Broadcasting Commission's website, www.abc.net.au, titled *Penrice closure leaves Osborne site clean-up concerns*.²⁰ This article reported on the closure of the Penrice plant at Osborne and the issues surrounding the potential need for remediation work at this plant site.

PK Chemicals Pty Ltd trading as World Search (World Search)

World Search stated that it was an importer of sodium bicarbonate from China.

World Search stated in its submission that:

The simple reason for revocation of anti-dumping measures in this case is that the domestic (Australian) manufacturer – Penrice Soda Holdings Ltd has ceased chemical plant as of 24 June 2014 at the instructions of the company's Administrators – McGrath Nicol.

In support of its submission, World Search provided a copy of a media release from McGrathNicol announcing the cessation of operations at Penrice's Osborne chemical plant.

AusPac Ingredients Pty Ltd (AusPac)

AusPac advised that it had been involved in the sourcing and supply of sodium bicarbonate for use as an ingredient in the stockfeed industry for 9 years.

In its submission AusPac stated that:

Our primary source of sodium bi-carbonate was from Penrice Soda Holdings in Osborne South Australia, which was to our knowledge the only manufacturer of this product in the country. We received notice from McGrath Nichol that the company had been placed in administration in April and continued trading with them through until advised they were ceasing all operations in early July of this year.

We support the revocation of the dumping duty imposed on imported replacement stocks of this product.

4.2.4. Producer of potential like goods

In its submission, Causmag International (Causmag) informed the Commission that it was an Australian manufacturer of magnesium oxide and that some of its customers could substitute its product for sodium bicarbonate.

The submission submitted that the revocation of the measures could affect the Australian industry producing magnesium oxide as sodium bicarbonate competes with magnesium oxide in a particular market segment.

4.3. The Commission's assessment

4.3.1. Cessation of production of sodium bicarbonate in Australia

The evidence before the Commission is that the sole manufacturer of sodium bicarbonate has ceased production of sodium bicarbonate. Both the applicant and all the submissions received from importers specified that Penrice had ceased manufacturing sodium bicarbonate at its Osborne plant. The administrators of Penrice have also confirmed with the Commission that production had ceased on 24 June 2014.

²⁰<http://www.abc.net.au/news/2014-06-26/penrice-closure-leaves-site-clean-up-concerns/5551330>.

PUBLIC RECORD

The 2005 investigation and the 2010 continuation inquiry identified that Penrice's Osborne plant was the only production facility in Australia manufacturing sodium bicarbonate. Submissions received by the Commission and enquiries conducted by the Commission during this revocation review have not identified any Australian industry manufacturing sodium bicarbonate.

4.3.2. Producer of potential like goods

Causmag's submission raises the issue of whether magnesium oxide is a like good for the purposes of establishing whether revoking the measures would result in the continuation of injury to the Australian industry that anti-dumping duties were intended to prevent.

The Commission notes that the 2005 investigation and 2010 continuation inquiry did not consider whether magnesium oxide was a like good. Moreover, Penrice advised in the 2005 investigation that 'there are no commercially significant substitutes for sodium bicarbonate.'²¹

Section 269T(1) of the Act defines like goods as being:

..in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Where goods are found not to be identical, the Commission will consider whether the goods have characteristics closely resembling each other in relation to their physical likeness, commercial likeness, functional likeness and production likeness. These characteristics are discussed below.

1) Physical likeness

Physical likeness considers the extent of physical similarity between goods in terms of, for example, size, weight, shape, appearance, strength, standards, and purity.²² Whether the goods are classified to a matching tariff classification is also a relevant consideration in the Commission's *Dumping and Subsidy Manual*.

Sodium bicarbonate and magnesium oxide have differing physical and chemical characteristics, and different tariff classifications.

The Oxford Dictionary of Chemistry (Oxford Dictionary)²³ defines sodium bicarbonate as being " a white crystalline solid, NaHCO_3 , soluble in water and slightly soluble in ethanol; monoclinic; r.d. 2.159; loses carbon dioxide above 270°C"

The Oxford Dictionary describes magnesium oxide as being a "...white compound, MgO ; cubic; r.d. 3.58; m.p. 2800°C"

Sodium bicarbonate is classified to the tariff classification 2836.30.00, statistical code 27, while magnesium oxide is classified to the tariff classification 2816.10.00, statistical code 19. The tariff headings recognise sodium

²¹ Trade Measures Report No. 98, Penrice Soda Products Pty Ltd, June 2005.

²² Dumping and Subsidy Manual, page 9.

²³<http://www.oxfordreference.com/view/10.1093/acref/9780199204632.001.0001/acref-9780199204632>

PUBLIC RECORD

bicarbonate generally as a 'carbonate,' while magnesium oxide, under the heading 2816 is generally classified as an 'oxide.'

In the context of the above information, the Commission considers that sodium bicarbonate and magnesium oxide have different physical likenesses.

2) Production likeness

Information available to the Commission indicates that sodium bicarbonate and magnesium oxide are not produced in the same or similar ways, principally because sodium bicarbonate is manufactured, while magnesium oxide is naturally occurring (though may also be manufactured).

Both the 2005 investigation and the 2010 continuation inquiry stated that sodium bicarbonate could be manufactured either via the natural alkali method or the Solvay method. The 2005 investigation report²⁴ further described the production process for sodium bicarbonate as follows:

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 Oxford Dictionary specifies that magnesium oxide either occurs naturally as the mineral periclase or is prepared commercially by thermally decomposing the mineral magnesite.

The Commission considers that that sodium bicarbonate and magnesium oxide do not have a common production likeness.

3) Functional Likeness

Both goods, whilst having similar end uses in cattle stockfeed, also have multiple alternate end uses. Functional likeness refers to end-use. End-use will not of itself establish like goods, but may provide support to the assessment of physical and commercial likeness.²⁵

The 2005 investigation and the 2010 continuation inquiry final reports identified that the Australian producer of sodium bicarbonate produced three grades of sodium bicarbonate:

- pharmaceutical grade;
- food grade; and
- general purpose/industrial grade.

The grade of the sodium bicarbonate directly influences its use, for example, pharmaceutical grade requires additional purification and refinement processing compared to general purpose/industrial grade.

²⁴ Trade Measures Branch Report No. 98 - Sodium Hydrogen Carbonate (Sodium Bicarbonate) from the People's Republic of China - 2 October 2005.

²⁵ Dumping and Subsidy Manual, page 9.

PUBLIC RECORD

The 2005 application²⁶ lodged by Penrice stated:

Sodium bicarbonate is used in a variety of applications such as food additives, water treatment, stock-feed, chemical processing raw material, as a pharmaceutical raw material, aqua-culture and in rubber production and is either sourced from PSP or is imported.

Other end-uses include as a bath salt ingredient, fire extinguishers, cleaning preparations, as a laboratory agent and stockfeed buffer.

Causmag's website²⁷ identified potential uses of magnesium oxide. It stated that the main use of magnesium oxide in the Australian market was in the agriculture sector as an animal feed supplement. A summary of potential uses – which are broader than the limited actual uses of magnesium oxide in Australia – is outlined below.

Abrasives	Insulation
Animal feed supplement	Lubricating oils
Boiler (oil-fired) additives	Pharmaceuticals
Boiler feedwater treatment	Plastics manufacture
Chemicals	Refractory and ceramics
Coatings	Rubber compounding
Construction	Steel industry
Electrical	Sugar refining
Fertilizers	Sulphite wood pulping
Foundries	Uranium, gallium and boron processing
Glass manufacture	Wastewater treatment

Table 1 – Examples of potential uses of magnesium oxide²⁷

As stated above, the website identified a significant use of magnesium oxide to be as an animal feed supplement. The principal uses of sodium bicarbonate produced by Penrice were stated in its Annual Report prior to close of operations. The figure below demonstrates that sodium bicarbonate was principally used in food production, with a downward trend in the proportion of the product used as stockfeed.

²⁶ Application For Anti-Dumping Duties - Penrice Soda Products Pty Ltd - February 2005

²⁷ <http://www.causmag.com.au/>

PUBLIC RECORD

SODIUM BICARBONATE REVENUE

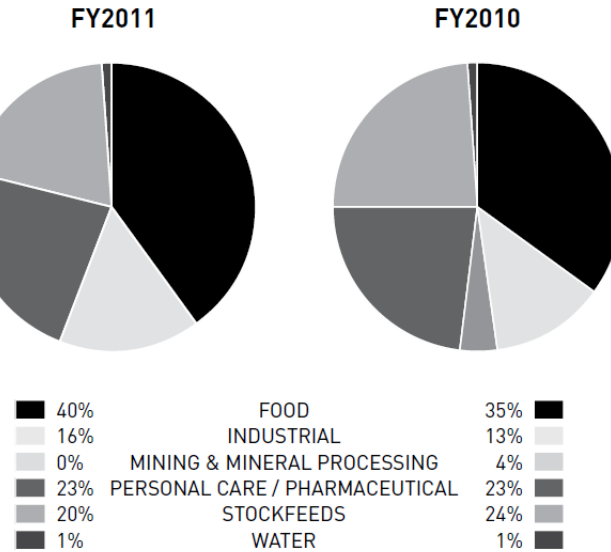


Figure 1 - Sodium bicarbonate revenue by sector

Source: Penrice Soda Holdings Limited 2011 Annual Report

In figure 1 above, only one third of Penrice's revenue is shown to be derived from industrial or general purpose grade sodium bicarbonate, the type used for stockfeed. Consequently, the primary uses of sodium bicarbonate in Australia appear to be other than as stockfeed. On the information available, it appears that although there are some shared applications of the goods and magnesium oxide, they are insufficiently similar to be considered functionally alike.

4) Commercial likeness

On information made available to the Commission, magnesium oxide and sodium bicarbonate appear to compete in the market place as alternative additives to cattle stockfeed. However, the Commission has insufficient information to establish the extent to which these products compete in terms of customer preference, nor has any submission been made clearly articulating the commercial inter-changeability of the products in the market.

4.3.3. The Commission's assessment

Magnesium oxide and sodium bicarbonate are not like goods in terms of s 269T(1) of the Act. The products have different chemical compositions, are derived from distinct raw ingredients and are manufactured through dissimilar processes. Although some commercial and functional similarities are observed, these similarities are not sufficient to conclude that the goods are alike for the purposes of a like goods assessment.

When considering all the characteristics as a whole, it is the Commission's view that the characteristics of magnesium oxide are sufficiently different to be not alike to the goods the subject of the measures.

As magnesium oxide is not a like good, it would appear that there is no longer an Australian industry producing like goods to the sodium bicarbonate which is the subject of the measures. Accordingly, the Commission's view is that pursuant to s 269ZDA(1A)(b) of the Act, there are no grounds to be satisfied

PUBLIC RECORD

that revoking the measures would lead, or is likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

The Commission is of the view that without an Australian industry producing like goods, there will be no continuation of the injury the measures were intended to prevent. The Commission's finding is that the anti-dumping measures applying to sodium bicarbonate exported from China should be revoked.

4.3.4. Date of revocation

The Act provides scope for the Minister to specify a date in his declaration that the dumping duty notice is effectively revoked from.²⁸ The date specified cannot be earlier than the date of initiation of the review²⁹ of a dumping duty notice.

4.3.5. Submission

Orica submitted that the revocation of the measures should be from the date the review commenced (i.e. the date of initiation).

4.3.6. The Commission's assessment

The Commission wrote to the external administrators of Penrice seeking further information in relation to Penrice and the company's cessation of sodium bicarbonate production. The purpose of this request was to establish when the potential for further injury to the Australian industry had ceased. The Commission sought information on whether the administrators were aware of any other sodium bicarbonate manufacturers in Australia, clarification on whether they were still seeking to sell Penrice's sodium bicarbonate plant as a going concern and information on whether they were still seeking orders for the purchase of any sodium bicarbonate that may be held in stock. The administrators of Penrice advised it would not respond to the Commission's enquiries.

The Commission has not received any other information or submission to indicate that injury is likely to be caused or continue if the measures were discontinued on any date after production ceased on 24 June 2014. Accordingly, the Commission's view is that the initiation date of this review (22 July 2014) is an appropriate date for the revocation of the measures. This is the earliest effective date available to the Minister to declare the measures as having been revoked, and in addition is after the plant closure date.

The Commission recommends that the anti-dumping measures applying to sodium bicarbonate exported from China comprising a dumping duty notice be revoked from 22 July 2014.

4.4. Submissions to the SEF

No submissions were received following the publication of SEF 256. Accordingly, the findings of the Commission as outlined in SEF 256 have not changed.

²⁸Section 269ZDB(1)

²⁹ section 269ZDB(6)

5. EFFECT OF THE REVIEW AND FINDINGS

The Commission has made the finding that with effect from 22 July 2014, the dumping duty notice (as amended on 21 November 2013) relating to anti-dumping measures applying to sodium bicarbonate exported from China should be revoked in relation to all exporters.

Should these recommendations be accepted by the Minister, the effect will be that:

- anti-dumping measures on sodium bicarbonate do not apply from 22 July 2014; and
- interim dumping duties do not apply to the goods entered for home consumption on and after 22 July 2014.